

**Fair Trade Advocacy Office Response to
EU Green Paper on Unfair Trading Practices (UTP) in Retail Supply Chains
April 2013**

Summary

- A) The EU has a role to act under Treaty Article 115 Article 115 (Approximation of Laws Affecting the Internal Market), coupled with Article 116, which allows the EU to iron out distortions to trade caused by divergent national rules.
- B) The Fair Trade movement wishes to see the EU operate as a market where developing country suppliers are able to sell their goods and receive a fair financial return and experience good business practices (including certainty) so that trade enables development in developing countries, of businesses, workers and farmers.
- C) Unfortunately UTPs are widely applied to suppliers in both food and non-food supply chains and it is welcomed that EU is looking at this issue. Some member states have already acted to address UTPs and EU should build on best practice by Member states, and learn from other approaches having less impact than desired.
- D) We recommend that the EU adopt a regulation to enforce UTPs. See answers to questions 18 & 24 for more detail.

Questions:

0) Comments on the Introduction

We welcome the reference to buying alliances, as well as to businesses purchasing only for themselves. The forming of buying alliances consolidates the customer base into fewer larger customers who have more power relative to their suppliers. This in turn removes smaller/medium scale customers who could provide alternative markets for suppliers who don't want to accept UTP from an existing customer.

We welcome the inclusion of both food and non-food in this consultation. Since we are aware of unfair commercial practices also occurring in other sectors, particularly in labour intensive supply chains where suppliers view employment of workers as a variable cost. In these circumstances workers experience the brunt of unfair trading practices in the form of insecure employment arrangements, low wages, forced and under-remunerated overtime, and the avoidance of benefits (eg maternity, sickness pay).

We are perplexed that the EC choses to mention the voluntary initiative proposed by trade associations close to the retail end of the food supply chain. An alternative proposal was developed by trade associations closer to the primary production end of the food supply chain. These are businesses which experience more of the unfair trade practices, and so are better

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placed to develop a credible proposal compared to trade associations associated with the businesses who apply UTPs. We are concerned that the voluntary approach being proposed will absorb time, resources and inappropriately divert attention away from developing more credible and effective enforcement mechanism that stops UTPs occurring.

1) Do you agree with the above definition of UTPs? [set out in 2.1]

We assume the consultation is referring to definition on page 3 of the Green Paper ie that: 'UTPs are practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing'. We do not disagree with the scoping of UTPs set out in section 2.1. This definition could be strengthened by setting out how to interpret fair dealing. The principle of fair dealing in the UK Grocery Supplies Code clause 2 includes the following which it may be useful to bear it in mind: 'Fair and lawful dealing will be understood as requiring the retailer to conduct its trading relationships with suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues'. Such a definition can apply wider than just to the food supply chain.

We welcome the recognition that UTPs can occur due to unequal bargaining positions and would like to include further situations which can cause an unequal bargaining situation

- a) when the supplier is handling a time -sensitive product when all delays reduce the product's value. This weakens the supplier's position. Examples of this include perishable agricultural products, products that have a single moment use (Valentine's day, father's/mother's day, Christmas, Easter, Halloween, sporting events) and to a lesser extent fashion items.
- b) when one business partner is not purely operating as a customer but in some circumstances as a competitor. (ie has a vertically integrated business operating at two or more levels of the supply chain)
- c) when there are insufficient alternative customers for suppliers to be able to risk losing business with the customer they do have a relationship with.

Additional aspects of UTPs including the following:

- a) When a customer requires a supplier (A) to use another supplier (B). This removes supplier A's freedom to contact with whoever can best serve their business. It can also result in Supplier A incurring unexpected and sometimes inflated costs associated with purchasing from Supplier B.
- b) When suppliers are forced to pay for things that they have no control over. This can include paying for damage or loss or insufficient sales which occurs once a product is at the retailer's premises.

2) Is the concept of UTPs recognised in your Member State? If yes, please explain how.

N/A – Fair Trade Organisations are submitting their specific examples at Member State level.

3) In your view, should the concept of UTPs be limited to contractual negotiations or should they include the pre- and/or the post-contractual phase as well?

Yes UTPs do occur pre, during and post-contract stages. When actors that have power in supply chains don't use contracts it is difficult to define the start and end of a contract. Some actors that have power in supply chains give an "indication" that they will purchase a certain

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volume and product from a supplier, which could be considered to be pre-contract. But when it comes to specifying the actual volume (normally within contract stage) it is at this point sometimes the actors that have power in supply chains may significantly change the volume wanted, significantly changing the economics of producing that product, or in the worse cases deciding that no product is wanted.

4) At what stage in the B2B retail supply chain can UTPs occur?

It is possible for UTP practices to occur at any point in the supply chain and as a buyer or seller. The effect is worse when it is applied by the buyer, because they can withhold payment or pay less than expected. A supplier is only able to withhold product, which has less universal use compared to money!

When gross UTPs are applied this is evidence that a supplier is unable to walk away from a business deal, and for some reason needs to maintain business with a particular customer. UTPs can therefore be seen as a symptom of significant power imbalance in the supply chain. It is therefore possible for UTPs to be applied where ever there is a significant power imbalance between a buyer and a seller within a supply chain.

5) What do you think of the concept of "fear factor"? Do you share the assessment made above on this issue? Please explain.

Yes there is a very significant climate of fear amongst suppliers. Suppliers are very reluctant to come out publically and criticise a major or important customer, which they are unwilling to loose.

Sect 2.2 examples of UTPs and 2.3 potential effects of UTPs -

6) In your experience, to what extent and how often do UTPs occur in the food sector? At which stage of the commercial relationship do they mainly occur and in what way?

Yes UTPs occur in the food sector. As a movement that has many actors involved throughout the supply chain which all support the empowering of marginalised producers and workers, we are concerned about the working conditions of workers and farmers in supply chains serving the EU market. We have become aware of UTPs being applied to the exporters within these supply chains, who in turn apply UTPs onto small-scale farmers within developing countries. In perishable supply chains, which are short supply chains it is clear many UTPs are related to discounts or promotions proposed by the retailer or other actors with power within the supply chain.

7) Are UTPs present in non-food retail sectors as well? If so, please provide concrete examples.

Yes UTPs are present in non-food sectors, especially where there is a significant imbalance of power within the supply chain such as flowers, garments, stone etc that the Fair Trade movement works with.

8) Do UTPs have an adverse impact in particular as regards the ability of your company to invest and innovate? Please provide concrete examples and quantify to the extent possible.

9) Do UTPs affect consumers (e.g., through influencing prices, product choice or innovation)? Please provide concrete examples and quantify to the extent possible.

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10) Do UTPs have an impact on EU cross-border trade? Do UTPs result in a fragmentation of the Single Market? If yes, please explain to what extent UTPs impact the ability of your company to trade cross-border.

- 3 Legal framework –

11) Do the national regulatory/self-regulatory frameworks in place sufficiently address UTPs in some Member States? If not, why?

For the countries which do have frameworks these are not adequate if they are not perceived as accessible/useful to the 'victim,' usually the supplier. The AIM/FoodDrinkEurope survey shared at the High Level Forum's Business to Business Unfair Commercial Practices expert group indicated that food suppliers in all EU countries did experience UTPs from more than one retailer, and were not confident that the public authorities could help in their situation. Suppliers are afraid of losing their customers if it is found out that they have complained about a customer to an enforcer. Organisations which have experienced UTPs need to be able to complain anonymously to a regulatory body which is able to initiate investigations and then apply dissuasive penalties to the company applying UTPs.

One of the reasons why UTPs maybe insufficiently addressed, maybe that due to the climate of fear, victims do not speak out and so the frequency and severity of the UTPs are unknown or underestimated. Another reason might be that UTPs are a symptom of unequal bargaining/power positions, and so the powerful companies which apply UTPs are probably also effective in their lobbying against enforcement of this lucrative practice.

12) Is the lack of specific national regulatory/self-regulatory frameworks addressing UTPs a problem in jurisdictions where they do not exist?

Yes – since there are no options to stop, remedy and dissuade perpetrators of UTPs from these practices. The EU market is becoming increasingly interlinked with suppliers selling to retailers in a number of countries, and some retailers now operating in a number of countries. In this context if a country does not have adequate provision to stop UTPs there is the possibility that companies perpetrating these UTPs organise their business operations to avoid enforcement that stops the application of UTPs.

13) Do measures that seek to address UTPs have effects only on domestic markets or also on cross-border trade/provision of services? If so, please explain the impact on the ability of your company to trade cross-border. Do the differences between national regulatory/self-regulatory frameworks in place result in fragmentation of the Single Market?

Measures that effectively address UTPs within a country, improve the culture and operation of business within that country and make those customers more attractive business partners than customers who perpetrate UTPs in a country where there is no mechanism to stop these practices.

These experiences indicate that the EU can not operate as a single market when suppliers avoid supplying certain countries where UTPs can be applied with impunity. If these UTP practices are not addressed across the EU then EU market will operate as a fragmented market.

14) Do you consider further action should be taken at EU level?

- Yes

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15) Where it exists, does UTP regulation have a positive impact? Are there possible drawbacks/concerns linked to introducing UTP regulation, for example by imposing unjustified restrictions to contractual freedom? Please explain.

- a) Regulation and enforcement to stop application of UTPs does have a positive impact on businesses which are weaker than the perpetrating business. The application of UTPs makes suppliers more risk-averse. The application of these UTPs will stop potentially some excellent products being produced by these weaker supplier both reaching the market, and being a sustained offering in the market.
- b) UTPs restrict the contractual freedom of suppliers and other weaker businesses. UTPs such as when a supplier is forced into an exclusivity arrangement, or when suppliers are tied to a third party's product/service limit the contractual freedom of a supplier. Regulation and enforcement to prevent UTPs being applied rectifies the imbalance between powerful and weaker companies.

- 4. Enforcement rules –

16) Are there significant discrepancies in the legal treatment of UTPs between Member States?

If this is the case, are these discrepancies hindering cross-border trade?

Please provide concrete examples and quantify the impact to the extent possible.

We are aware of the uneven application of the European Late Payments Directive which exhibits the disadvantage of legislating by directive since it results in divergent rules in different member states. In some cases some member states allow much longer payment periods than others.

17) In case of such negative impacts to what extent should a common EU approach to enforcement address the issue?

Yes the EU should regulate. The EU should take a coordinated approach which results in a level playing field across the EU. The example of the late payment directive highlights the benefits of taking a regulatory approach towards enforcement of UTPs.

BIICL report "Enforcing Good Practice in Vertical Relationships in the Food Supply Chain" proposes how the EU should stop unfair trading practices to occur within the EU. It highlights the following "Positive Characteristics of Enforcement"

- Dedicated enforcing authority that can initiate its own investigations, receive complaints anonymously, impose financial penalties and build up sector-specific expertise;
- Application of a rule that does not rely on whether the retailer possesses significant market power;
- Possibility for the parties to make joint commitments to avoid an official finding of wrongdoing;
- Creation of a forum where suppliers and retailers can resolve issues in order to prevent future crises;
- A dispute resolution mechanism which makes clear in what manner parties may attempt to resolve issues;
- The possibility for stakeholders to be represented by business organisations to further ensure anonymity; and

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- Imposition of obligations on retailers to comply with a standard or code through changes to their business structures through, e.g., the appointment of an in-house compliance officer, and requirements to issue periodic reports on compliance.”

The EU needs to set out a minimum standard and then member states which have already acted to stop unfair trading practices can either demonstrate how their existing mechanism meets the EU minimum, or they can update their current mechanism. Regulation would enable a clear and consistent method of enforcement. To address unfair trading practices it would be appropriate for national administrative authorities to receive complaints and then initiate investigations and legal proceedings. Existing dispute resolution mechanisms could be used, and complemented if it was felt they weren't sufficiently accessible or user friendly. For example the Unfair Commercial Practices Directive requires that individual Member States provide an effective legal framework to combat unfair commercial practices in order to comply with the EU directive.

There is also a need for EU level enforcement. Ideally an independent, dedicated enforcement body, or a unit within a DG should be set up with adequate resources and powers to coordinate cases and address situations of unfair commercial practices occurring across borders in a consistent way.

18) Should the relevant enforcement bodies be granted investigative powers, including the right to launch ex officio actions, impose sanctions and to accept anonymous complaints?

Yes enforcement bodies should be able to receive anonymous complaints, launch investigations, impose sanctions.

- i) Anonymous complaints:
 - a) Currently Czech Republic, Hungary, Latvia, Slovenia, and UK¹ are able to receive anonymous complaints.
 - b) In addition to receiving anonymous complaints, and keeping information confidential – several countries also undertake monitoring to check unfair commercial practices are not applied.
- ii) Launch investigations
 - a. Currently Czech republic, France, Germany, Hungary, Latvia, Slovenia and UK⁵ are able to independently initiate an investigation if there is sufficient suspicion of their definition of UTPs being applied,
- iii) Sanctions:
 - a. Currently Czech Republic, France, Germany, Hungary, Latvia, Romania and UK⁵ have enforcement bodies which are able to apply remedies/sanctions that could change the behaviour of companies.
 - b. Financial sanctions can be complemented by other measures. In the UK the Groceries Code Adjudicator is able to “Name and Shame”.

Based on a review of what has been effective so far the regulation to address unfair business to business trading practices should require Member States to ensure that their national administrative authority has sufficient powers, including:

- I. Monitor the functioning of the instrument (i.e., its national implementing legislation);
- II. Initiate investigations;

¹ http://www.biicl.org/files/5941_biicl_b2b_report_finalversion.pdf

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- III. Receive anonymous complaints (including from third parties with knowledge of breaches) and maintain confidentiality;
Act to address Unfair Business to Business practices with any organisation trading with a European company;
- IV. Order cessation of any unfair trading practices even without proof of actual loss or damage, or of intention or negligence on the part of the retailer, or a large company purchasing;
- V. Require publication of any decision against a retailer, and possibly also a corrective statement;
- VI. Enforce observance of its decisions effectively; and
- VII. Impose financial penalties for infringements that are effective, proportionate and dissuasive.
- VIII. To act when a finding by another public authority determines that there is an imbalance in the relationship between two parties.
- IX. Operate with prompt timings to ensure that grievances are heard and acted upon quickly.

The Commission could follow up Member state activities, or for multi-country cases the Commission could also have the explicit power to investigate and enforce breaches of the instrument in a manner similar to DG COMPETITION.

- 5 Types of UTP –

- 5.1. Ambiguous Contract Terms
- 5.2. Lack of Written Contracts
- 5.3. Retroactive Contract Changes
- 5.4. Unfair Transfer of Commercial Risk
- 5.5. Unfair Use of Information
- 5.6. Unfair Termination of a Commercial Relationship
- 5.7. Territorial Supply Constraints
- 5.8. Common Characteristics of UTPs

19) Does the above list detail the most significant UTPs? Are there other types of UTPs?

The above list highlights significant UTPs with exception.

- The missing UTP from the list is “uni-lateral changes to an arrangement.” Fair practice occurs when both parties agree with the business deal and both can see mutual advantage in participating in the business deal.

Further comments to make:

- Unfair Use of Information (5.5) could be expanded to “unfair use of samples” which is a problem in garment sector. Fair practice would occur when the bulk order is given to the supplier who provided the sample or that the supplier of the sample is significantly financially rewarded for developing the design that then goes into production.
- It would be better if 5.8 was set out more clearly that “a transfer of costs incurred and the shift of entrepreneurial risk to the weaker party in the relationship” will be regarded as an indicator that a UTP has been applied. It is not clear why the word “entrepreneurial” is used.
- It isn't always clear *when* an agreement is made. Some companies give ‘indications’ that they will want a certain volume at a certain price at a certain date. But closer to the time they dramatically reduce the volume of product wanted. This jeopardises the supplier's business. Selling a smaller volume at the same price will not adequately cover set-up

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costs. Or could result in perishable product that could have been sold to another customer being sold as a low-price “distress” sale. Clarity is needed as to *when* an agreement is made and therefore protected by UTP regulation.

20) Could setting up a list of prohibited UTPs be an effective means to address the issue?

There are pros and cons to a list of prohibited practices.

Pros:

- Suppliers/complaints can easily recognise when they have experienced a prohibited practice
- Suppliers or complainants might need to present less evidence to prove a breach and so initiating enforcement action maybe easier.

Cons

- Publishing a list of prohibited practices but without sufficient enforcement led to some companies choosing to apply UTPs that they previously had not.
- Such a list would need updating, as powerful companies can find new ways to apply UTPs onto weaker supplier companies and so extract a greater proportion of the margin in the supply chain for their company.

Would such a list have to be regularly updated?

Yes

Are there possible alternative solutions?

Yes – an approach based on principles could be an alternative to listing banned practices. The following principles could be used as a basis:

- i) Fair dealing as set out in the UK GSCOP² could be used in a UTP regulation as the good/fair practice desired.
- ii) Agreements need to be clear (i.e. un-ambiguous contract terms – as proposed in 5.1 Ambiguous contract terms & 5.2 Written Contracts of the Green Paper) and need to cover as a minimum
 - I. price,
 - II. volume to be delivered and when and where to,
 - III. specifications of the product,
 - IV. when the supplier will be paid,
 - V. a fair process for agreeing changes and recompense for those changes
 - VI. a fair process, including notice for terminating an agreement
- iii) No unilateral changes – i.e. all changes to an agreement have to have the consent of both parties (this is partially covered by 5.4 Unfair Transfer Of Commercial Risk in the Green Paper)
- iv) No retrospective changes (this equates to 5.3 Retroactive Contract Changes of the Green Paper)

21) For each of the UTPs and corresponding possible fair practices identified above, please:

² http://www.offt.gov.uk/shared_offt/monopolies/GSCOP-Order.pdf - the UK Groceries Supply Code of Practice

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	Types Of Unfair Trading Practices	a) Indicate whether or not you agree the analysis of the Commission. If applicable, provide additional information.	b) Explain whether the UTP is relevant for the sector in which you are active.	c) Explain if the corresponding possible fair practice could be applied across the board in different sectors?	d) Explain if the UTP should be prohibited per se or if its assessment should be made on a case by-case basis.
5.1.	Ambiguous Contract Terms	We agree with the assessment. Companies required to comply with a UTP regulation could be required to publish their general Terms and Conditions, and provide them to the regulator to publish on their website. (This is the practice required by NEBIH, Hungarian Food Authority ³ .)	Between some food retailers and their suppliers there are no contracts.	General Terms and Conditions which set out i) payment periods, the process for ii) how changes (both human decisions and unforeseen risks) and iii) termination will occur is applicable across a wide number of sectors.	
5.2.	Lack of Written Contracts	This should be listed as the first type of UTP. Then it is possible to assess if the terms are ambiguous. This UTP can be improved by adding the following concept. Unless a business has gained agreement in writing to a change – then that business is not able to rely on that change. I.e a business which want to make the change needs to discuss to get an agreement which the supplier is happy with (and meets concept of fair dealing).	Yes – this is relevant for food	Having written contracts as a record of what is agreed is essential.	Now that much of business is undertaken by email it is possible for written records and notes to be made. This UTP should be prohibited per se.
5.3.	Retroactive Contract Changes	We agree with Analysis. Clarity is needed as to <i>when</i> a contract is made, to then be able to assess what is a retroactive change.	These UTPs occur both in food sector, and in other perishable sectors.	Yes – this is relevant to other sectors	

³ <http://www.nebih.gov.hu>

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	Types Of Unfair Trading Practices	a) Indicate whether or not you agree the analysis of the Commission. If applicable, provide additional information.	b) Explain whether the UTP is relevant for the sector in which you are active.	c) Explain if the corresponding possible fair practice could be applied across the board in different sectors?	d) Explain if the UTP should be prohibited per se or if its assessment should be made on a case by-case basis.
5.4.	Unfair Transfer of Commercial Risk	We agree with the analysis and think it could be expanded. I) This UTP could be broadened to cover all risks – including those unforeseen. Good practice would involve setting out a process for agreeing/resolving who bears the risk. II) This UTP should set out more clearly that companies should not be expected to bear risks for activities that they have no control over or have not caused. This is implied in description of “shrinkage” but not spelt out.. III) Other transfers of “commercial” risk include a unilateral deduction of a percentage of invoice cost to cover for example advertising costs.	Icelandic volcano ash which resulted in no flights to Europe led to suppliers unable to air freight perishable produce to the EU market, and these suppliers lost money. Bangladeshi national strikes led to clothes not being produced in time, and some EU retailers then chose not to buy the clothes, or penalised the suppliers for late delivery.	Yes - this is a principle which should be respected in business dealings. Different sectors have different risks and what is a fair sharing of risk may need to be set out. One area which causes concern to developing country farmers is that the payments they receive for their crops may be determined by futures market millions of miles away. For business to business transactions it may not be fair for the price to fluctuate with no minimum price guaranteed to the supplier.	Once specific risks are defined for a sector then
5.5.	Unfair Use of Information	Yes. I) An additional element to add to the “fair practice” might be to require those companies which are both customers and competitors to guarantee a minimum sales period to the supplier which innovated. II) In the garment sector, some customers to not place the final order with the supplier that submitted the design sample which they then take to mass production. This UTP could be expanded to include samples.	Yes. In Fair Trade, new standards are developed for new products. Branded Fair Trade products are replaced by a retailer’s “own label” Fair Trade product. This reduces the ability of the innovating company to recoup their investment costs. Yes – this is applicable in the garment sector, if samples are regarded as belonging to the designer and their company.	This will need to be updated with sectoral specific information. This UTP will depend on the different roles being played by companies within a sector. Where there are vertically integrated companies for example acting both as a buyer and a competitor then the appropriate use of information becomes more critical.	
5.6.	Unfair Termination of	Yes. Sometimes the customer reduces the order so much that it become	Yes in food, and other perishable products.	This is a relevant UTP when there is more supply available than	

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	Types Of Unfair Trading Practices	a) Indicate whether or not you agree the analysis of the Commission. If applicable, provide additional information.	b) Explain whether the UTP is relevant for the sector in which you are active.	c) Explain if the corresponding possible fair practice could be applied across the board in different sectors?	d) Explain if the UTP should be prohibited per se or if its assessment should be made on a case by-case basis.
	a Commercial Relationship	unviable for the supplier to make deliveries at that price. The effect is termination.		demand, but the suppliers have to invest to be able to produce the product. If the customer terminates the agreement then the supplier has to find alternative customers at short notice, in a saturated market.	
5.7.	Territorial Supply Constraints	n/a			
5.8.	Common Characteristics of UTPs	Yes the transfer to risk onto the weaker business is an indicator of an UTP being applied.	In food and garment sector suppliers are forced to meet new standards (take on more cost) but not necessarily for an increased payment or improvement in terms.		

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22) As regards specifically Territorial Supply Constraints, please explain:

a) What would you consider to be objective efficiency grounds justifying a supplier not to supply a particular customer? Why?

b) What would be the advantages and disadvantages of prohibiting territorial supply constraints (as described above)? What practical effects would such a prohibition have on how companies set up their distribution systems in Europe?

n/a

23) Should the above possible fair practices be embodied in a framework at EU level?

Yes an improved version of the UTPs listed in chapter 5 should be enforced through regulation which is applied across the EU. There is a need at the EU for a coordinated approach to be taken, particularly due to the nature of some food and garment retailers operating shops in several member states, but coordinating their buying and perhaps application of UTPs from one central location. Careful wording of legislation is needed to ensure that products which are sold within the EU should require those businesses in the supply chains serving the EU market to cease applying UTPs.

Would there be any disadvantages to such an approach?

Pursing a regulation takes time, during which the unfair trading practices continue.

24) If you consider further action should be taken at EU level, should this be a binding legislative instrument? A non-binding? A self-regulatory initiative? Regulation is the best approach, since the EU doesn't want to have disparity between the member states as to what should be a minimum standard. Countries which already have enforcement can demonstrate how their approach meets the minimum approach set out by the EU's regulation. If the EU passes a directive this may result in different business practices being applied across the member states due to different treatment in different MS and therefore act as a barrier to imports contrary to Article 30.

- The positive effects of enforcement will result in more efficient supply chains.
- The EU should chose a legal instrument that will have the most impact in terms of uniform application of law/principles is a regulation (regulations would be best)
- A series of principles and offences should be established within the legal instrument (including definitions of key terms, such as 'unfair trading practices')
- Creating an instrument that is flexible enough to take into account existing systems in the Member States that might already be working

Based on a review of what has been effective so far the regulation to address unfair business to business trading practices should require Member States to ensure that their national administrative authority has sufficient powers, including:

- I. Monitor the functioning of the instrument (i.e., its national implementing legislation);
- II. Initiate investigations;
- III. Receive anonymous complaints (including from third parties with knowledge of breaches) and maintain confidentiality;
- IV. Act to address Unfair Business to Business practices with any organisation trading with a European company;

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- V. Order cessation of any unfair trading practices even without proof of actual loss or damage, or of intention or negligence on the part of the retailer, or a large company purchasing;
- VI. Require publication of any decision against an abusive actor in the supply chain, and possibly also a corrective statement;
- VII. Enforce observance of its decisions effectively; and
- VIII. Impose financial penalties for infringements that are effective, proportionate and dissuasive.
- IX. To act when a finding by another public authority determines that there is an imbalance in the relationship between two parties.
- X. Operate with prompt timings to ensure that grievances are heard and acted upon quickly.

- 6. General remarks –

25) This Green Paper addresses UTPs and fairness of B2B relationships in the B2B food and non-food supply chain. Do you think that any important issues have been omitted or under-represented in it?

UTPs are caused by an imbalance of power. Whilst a single company is able to approach 40% market share before competition authorities intervene. An association of suppliers are not allowed to have more than 15% market share collectively. The EC needs to revisit thresholds for investigating companies which become so powerful that they are able to apply UTPs.

The Green Paper fails to acknowledge the significant range of products which are imported into the EU which are then sold in retail shops. Suppliers in non-EU countries currently experiencing UTPs applied by EU businesses would welcome measures which improved the practices of EU purchasing companies and offered to the non-EU supplier an avenue for redress when they experienced UTPs.

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