



# AEGIS EUROPE ON WTO REFORM

## THE POLICY CASE

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## About AEGIS Europe

AEGIS Europe is an industry alliance that brings together over 25 European manufacturing associations committed to free and fair international trade ensured by an effective international level-playing field.

Our members account for more than €500 billion in annual turnover, as well as for millions of jobs across the EU.

AEGIS Members include the following European industry sector associations:

- Association of European ferro-alloy producers (EUROALLIAGES)
- Association of European Wheel Manufacturers (EUWA)
- European Aluminium
- European Association of Technical Fabrics Producers (TECH-FAB Europe)
- European Bicycle Manufacturers Association (EBMA)
- European Ceramic Industry Association (Cerame-Unie)
- European Container Glass Federation (FEVE)
- European Domestic Glass (EDG)
- European Federation of Rope, Twine & Netting Industries (EUROCORD)
- European Federation of Steel Wire Rope Industries (EWRIS)
- European Glass Fibre Producers Association (GLASS FIBRE EUROPE)
- European Industrial Fasteners Institute (EIFI)
- European Man-made Fibres Association (CIRFS)
- European Non-ferrous Metals Association (Eurometaux)
- European Rail Industry (UNIFE) – *Associated Member*
- European Steel Association (EUROFER)
- European Steel Tube Association (ESTA)
- Fertilizers Europe
- European Shipbuilding and Maritime Equipment Manufacturers (SEAEUROPE)
- Sustainable Solar Energy Initiative (EU PRO SUN)



## AEGIS Europe Objectives

AEGIS Europe is an alliance of European industrial sectors promoting manufacturing, investment, employment, growth and innovation in an environment of fair competition and a level playing field in the EU and abroad.

The alliance was created in 2016 to address the critical question whether the EU should accept that China was a Market Economy for purpose of anti-dumping policy.

Confirming the alliance's objective, AEGIS Europe sectors increasingly experience the critical need to expand their focus beyond EU trade defence policy and measures dealing with the effects of international economic and trade distortions, towards the root causes of distorted and unfair competition.

Well-designed and enforceable international rules that reflect today's realities are critical for this purpose. The WTO is the regulatory institution capable of effectively framing and enforcing an international level playing field for manufacturing industry. AEGIS Europe considers that a rules-based multilateral trade regime benefits all economies. However, the modernization of the WTO is necessary to address competing economic and political systems.<sup>1</sup>

AEGIS Europe supports the EU ambition to modernize and make the WTO more effective by introducing more transparency, new rules and disciplines and enforcement mechanism.

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<sup>1</sup> The recent *Franco-German Manifesto for a European industrial policy fit for the 21<sup>st</sup> Century* recognizes that “there is no regulatory global level playing field...This puts European companies at a massive disadvantage. When some countries heavily subsidize their own companies, how can companies operating mainly in Europe compete fairly?...More generally, we must constantly monitor and adapt as necessary our trade policy to defend our strategic autonomy: this includes the essential and urgent modernization of the WTO rulebook to improve transparency and more effectively fight against trade distorting practices including excessive subsidies to industry...”

## AEGIS POSITION ON REFORM OF WTO RULES

### For a global level playing field

#### Executive summary

The following reforms of WTO rules are needed to address third country economic and policy distortions to fair and transparent competition :

- 1) Anti-subsidy rules need to be stricter but sufficiently flexible to address the extremely diverse forms of government support and the lack of transparency in implementation. The concept of prohibited subsidies should be expanded to cover the most fundamental trade and competition distortions, including all subsidies to a sector benefiting from systemic State support. The following changes should be made in relation to both WTO dispute settlement actions and national anti-subsidy investigations, wherever possible :
  - (a) WTO subsidy rules need to address systemic State-led promotion of domestic industries.
  - (b) State guarantees of a company's continued operations must be sanctioned.
  - (c) All enterprises operating in countries with systemic industrial policies must be presumed to be acting at the direction, and providing benefits on behalf, of the State.
  - (d) WTO rules should treat the subsidisation of production in third countries as circumvention of measures against imports directly from the supporting country.
  - (e) Effective sanctions, applied already at the complaint stage, are needed for a failure of WTO Members to respect their obligation to notify annually their subsidy programmes.

- 2) Anti-Dumping rules need to be clarified as follows :
  - (a) Producers in State-directed sectors are not operating in the ordinary course of trade and normal value can be constructed using undistorted benchmarks.
  - (b) AD measures may always be imposed on (dumped) imports regardless of subsidies.
- 3) Safeguard rules : the ‘unforeseen circumstances’ requirement needs to be removed, and there needs to be provision for open-ended safeguards to address major structural overcapacities.
- 4) New tool is needed to address the injurious pricing of non-imported products, in particular means of transport.
- 5) New tools are needed to allow measures to address two other instances of unfair trade :
  - unfair competition in cross-border services; and
  - dumping by producers in one country that injure a domestic industry in relation to the market in one or more third countries.

## AEGIS POSITION ON POLICY REFORM OF WTO RULES

### For a global level playing field

Based on the real problems faced by its members in EU and global markets, AEGIS Europe has identified third country economic and policy distortions to fair and transparent competition<sup>2</sup> and the reforms to substantive WTO rules needed to address them. Major problems include excess capacity and market distortions fueled by subsidies and other types of government policies and measures, as well as all-encompassing sectoral industrial policies heavily interfering in the normal operation of markets.

#### **Reform of the WTO Agreement on Subsidies and Countervailing Measures (ASCM)**

A major challenge in disciplining government support comes from the extremely diverse forms which the support can take and the lack of transparency in the way programmes are implemented. Problems include the identification, understanding and documentation of:

- central, regional or provincial Government support programmes, particularly where WTO members do not comply with their subsidy reporting obligations;
- the beneficiaries of support programmes, particularly where company accounts are not public and/or do not meet good accountancy practice standards;
- support at no cost to the beneficiary or at less than adequate remuneration (e.g. raw material or other inputs, R&D results, or logistics, insurance or other services);
- obligations on suppliers of goods and/or services (which themselves may benefit from government support) essentially forcing them to sell at lower prices or to otherwise grant benefits to domestic downstream producers;

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<sup>2</sup> Refer to AEGIS Europe Business Case on WTO Reform

- obligations to use domestic inputs rather than imports to meet domestic content requirements;
- restrictions on domestic competition via market access limitations (can happen via government procurement rules or practices, e.g. or can be economy-wide);
- manipulation of the domestic regulatory framework;
- the non-implementation of standards and policies such as the non-enforcement of bankruptcy codes or environmental regulations;
- forced technology transfers which eliminate R&D costs for domestic operators;
- the extent to which apparently private entities are carrying out government functions and/or industrial policies, and/or operating under government direction;
- de facto state guarantees which allow companies to avoid going bankrupt or to otherwise operate outside market constraints.

There need to be stricter disciplines, including prohibitions, and greater flexibility in the WTO rules to cover the situations which arise in practice. However, the current rules (including the specificity requirement) and their interpretation by the Appellate Body do not provide that discipline and flexibility.

The ASCM provides three distinct regimes tackling Government support programmes, two of which involve a request for WTO dispute settlement in relation to prohibited and/or actionable subsidies, and one involving national anti-subsidy investigations. The concept of prohibited subsidies should be expanded to cover the most fundamental trade and competition distortions. Changes indicated below to the ASCM rules should be made in relation to all possible WTO remedies, whether involving WTO dispute settlement actions or national anti-subsidy investigations, wherever possible.



### 1) Systemic State support programmes

WTO subsidy rules do not address State-led plans that promote an array of domestic industries, or even single sectors. Current WTO rules only address subsidies to specific producers of a single product. This needs to change as it does not reflect the magnitude of today's distortions. Change could be achieved by, for example, removing the specificity requirement, shifting burdens of proof (particularly where subsidy programmes are not reported) and reducing evidentiary burdens.

In the specific context of WTO dispute settlement to address prohibited and/or actionable subsidies, a finding of systemic State support for a given sector should be sufficient to consider all subsidies granted to that sector to be prohibited (i.e. that finding would remove the need to demonstrate serious prejudice), and it could be considered that in such cases, the two distinct ASCM remedies are not mutually exclusive.

### 2) State guarantees

The guarantee by the state, whether explicit or not, of a company's very existence (continued operations) provide a benefit which is much more than the sum of traditional individual subsidies. These guarantees must be sanctioned so as to result in lower evidentiary burdens and/or the creation of presumptions (which would, for example, facilitate the initiation of investigations and the imposition of commensurate levels of measures).

### 3) State support granted via State-owned enterprises (SOE's) and "private operators" in countries with systemic industrial policies

All enterprises operating in countries with all-encompassing State-imposed industrial policies (whether SOEs or not) must be presumed to be acting at the direction of, and providing benefits on behalf of the State, whether service providers (providing, e.g., financial or logistical services) or energy, raw materials or goods suppliers (i.e. providing inputs at any point in the supply chain).

4) State support granted to establish or invest in production in another country

Current WTO rules concerning anti-subsidy investigations do not discipline the subsidisation of production in third countries. This strategy is increasingly used to circumvent trade remedies re-establishing fair trade. WTO rules should expressly allow this situation to be treated as circumvention of measures against imports directly from the supporting country.

5) Burden of proof

WTO rules require Members to notify annually their subsidy programmes. Effective sanctions for a failure to respect transparency obligations are needed (e.g., introduction of adverse presumptions or other means for reducing evidentiary burdens, the possibility of country-specific safeguards, etc; in any case, more is needed than simply denying a violating Member the right to chair a WTO committee). Specifically, in relation to anti-subsidy investigations, these sanctions should apply already at the complaint stage, effectively reducing the evidentiary burden for complainants.

**Clarifications of the Anti-Dumping Agreement (ADA)**

Necessary clarifications of the ADA are as follows:

1) Producers in State-directed economies are not operating in the ordinary course of trade

The ADA must be clarified to confirm that where there is State direction of whole economies or specific sectors within an economy (for example in the energy or banking sectors), producers in the economy or sector are not operating in the ordinary course of trade, thereby permitting the construction of normal value using undistorted benchmarks. This rule must apply whether or not the State in question grants subsidies.

2) AD measures may always be imposed on imports benefiting from subsidies

The ADA must be clarified to confirm that (apart from the question of avoiding double-counting in relation to export-only subsidies) a Member may impose AD measures to address dumping regardless of the existence of distortions due to State intervention, i.e. the Member is not required to have recourse only to remedies under the ASCM against imports benefiting from any State support.

### **Reforms in the area of Safeguards**

The following changes are needed in relation to the WTO Safeguards Agreement:

1) Removal of the ‘unforeseen circumstances’ requirement

GATT Article XIX:1(a) requires that the circumstances giving rise to the need for safeguard measures were unforeseen. This provision renders the safeguard instrument ineffective in addressing emergencies, and must be removed so as to allow Members to address any surge of imports which causes injury.

2) Open-ended safeguards to address major structural overcapacities

A new clause is needed in the Safeguards Agreement which would allow the imposition of open-ended, non-liberalising and not necessarily erga omnes safeguard measures, once it is established that major State-supported structural overcapacities exist in a given WTO Member (without regard to any increase of imports or occurrence of injury, either actual or imminent). To the extent a Member wishes to bring the issue of State-supported structural overcapacities to WTO dispute settlement, that should be possible (effectively treating any Government support as prohibited subsidies in such a case). In any event, these measures must not be considered exclusive of other WTO remedies which may be available.

## **Adoption of a new tool to address the injurious pricing of non-imported products**

A new tool should be adopted to address the injurious pricing of products which are not actually imported into the customs territory where the injured producers are established. Existing WTO remedies are inadequate to address this issue, in particular with regard to means of transport, including ships and airplanes.

### **Additional measures**

Tools are needed to allow measures to be taken in relation to two other instances of unfair trade :

- measures to counter unfair competition in cross-border services (trade defence-type instruments and/or a WTO dispute settlement remedy);
  - measures to counter dumping by producers in one country that injure a domestic industry in a second country, in relation to the market in one or more third countries.
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