



REFORM OF THE WTO
For a global level playing field

July 2019

CONTENT

- About AEGIS Europe
- AEGIS Europe Objectives
- AEGIS Europe Position on Reform of WTO Rules

About AEGIS Europe

AEGIS Europe is an industry alliance that brings together around 20 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 Europe 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.¹

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

¹ The recent *Franco-German Manifesto for a European industrial policy fit for the 21st 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 EUROPE POSITION ON REFORM OF WTO RULES

For a global level playing field

Executive summary

AEGIS Europe considers that reforms of WTO rules are needed to address 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:

- (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 anti-subsidy measures against imports directly from the supporting country;
- (e) Effective sanctions, including in anti-subsidy actions, 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. The Safeguard rules need modifications:
 - (a) It must be clarified that ‘unforeseen circumstances’ are not a requirement for the imposition of safeguard measures;
 - (b) Importing Members must be given the discretion to apply safeguard measures to imports from developing country Members which have either export competitiveness or significant production capacities in relation to consumption of the product in the importing Member.

4. The Dispute Settlement Understanding needs to be adapted
 - (a) to specify that decisions of the AB are not binding precedent;
 - (b) to clarify that the WTO agreements covering trade remedies (AD, AS and safeguards) are to be interpreted in deference to the investigating authorities whenever their actions reflect a plausible interpretation of the relevant provisions.

5. A new WTO instrument is needed to address the injurious pricing of non-imported products, in particular means of transport.

6. New rules are needed to address major structural overcapacities and two additional instances of unfair trade:
 - unfair competition in cross-border services;
 - dumping that injures a domestic industry in its export markets.

AEGIS EUROPE 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 economic and policy distortions to fair and transparent competition² and the reforms to substantive WTO rules needed to address them. Major problems include excess capacity and market distortions fueled by subsidies and other government policies and measures, as well as all-encompassing 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 wide variety of forms which the support can take, and the lack of transparency in the way support 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;

² 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 (for example, via government procurement rules or practices, or economy-wide market access restrictions);
- 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 the recipients;
- the extent to which nominally private entities in fact carry out government functions and/or industrial policies, and/or operate under government direction;
- *de facto* state guarantees which allow companies to avoid going bankrupt or to otherwise operate outside market constraints.

Stricter disciplines, including prohibitions, and greater flexibility in the definition of subsidies are needed to reflect situations which arise in practice. The current rules (including the specificity requirement) as interpreted by the Appellate Body do not provide that discipline and flexibility.

At the same time, stricter disciplines must not contradict the critical need for climate policy-related domestic programmes. In particular, there needs to be an express allowance for measures specifically undertaken to achieve emissions reductions in a way that maintains a level playing field for all operators on the domestic market of the country implementing those measures.

The ASCM provides three distinct regimes tackling Government support programmes, two of which, prohibited and actionable subsidies, require WTO dispute settlement and one allowing the imposition of national import measures. 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 generally 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, modulating the specificity requirement to allow greater coverage of subsidies which benefit large groups of domestic operators (and entirely removing the requirement in the case of government-provided benefits which result in the creation or maintenance of significant levels of production overcapacities), 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 (dispute settlement and national countervailing measures) 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 practice 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)

Clarifications of the ADA are needed to show:

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 Safeguards:

1. Clarification that unforeseen circumstances are not a requirement for the imposition of safeguard measures

GATT Article XIX:1(a) requires that the circumstances giving rise to the need for safeguard measures were unforeseen, and the Appellate Body has taken the position that "unforeseen circumstances" remains a requirement for the imposition of safeguard measures under the Safeguards Agreement. This interpretation renders the safeguard instrument ineffective in addressing emergencies, making it necessary to clarify that unforeseen circumstances are not a requirement for the imposition of safeguard measures.

2. Application of safeguards to Developing Country Members

Importing Members must be given the discretion to apply safeguard measures to imports from Developing country Members which have either export competitiveness or significant production capacities in relation to consumption of the product in the importing Member.

Reforms of the Dispute Settlement Understanding

AEGIS Europe is in favor of a functioning DSU which preserves and protects the negotiated agreements, including the injunction not to add to or diminish Members' rights and obligations, because this creates certainty and predictability for businesses. Further, given that AB decisions have consistently reduced the applicability of trade defence (by, for example, refusing to apply Art 17.6 ADA; see explanation in annex), AEGIS Europe believes it is important to provide that WTO dispute settlement decisions show appropriate deference to the trade remedies actions of investigating authorities.

Accordingly, the following changes to the DSU are needed:

1. to clarify that the WTO agreements covering trade remedies (AD, AS and safeguards) are to be interpreted in deference to the investigating authorities whenever their actions reflect a plausible interpretation of the relevant provisions; and,
2. to specify that WTO dispute settlement proceedings do not create binding precedent, that Panel/AB findings are specific to the particular dispute at hand, and that previous Panel/AB reports are to be taken into account in subsequent disputes only to the extent relevant and to the extent their findings are sufficiently persuasive in the subsequent disputes.

Injurious pricing of non-imported products

A new WTO instrument is needed 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 tools

A new WTO instrument is needed which would allow the imposition of open-ended and not necessarily *erga omnes* trade measures, where it is established that major State-supported structural overcapacities exist in a given WTO Member (without regard to any other factor, whether concerning the level of State support, import trends, the occurrence of injury, or any other).

To the extent a Member wishes to bring the issue of State-supported structural overcapacities to WTO dispute settlement, that should also 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.

Tools are also needed to allow measures to be taken in relation to two additional 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 (similar to the concept of an actionable subsidy).