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WTO Reform and unilateral EU trade actions

Metals industry position on addressing global trade imbalances

Introduction

The future of Europe's raw materials value chains is dependent on free, fair & rules-based trade. Currently global trade is facing a multitude of challenges, which affects the business environment of EU non-ferrous metals sectors. Our industry is threatened by unilateral trade measures from some trading partners like US, and distortions from China and other countries who have circumvented global trade rules to artificially support their domestic industries.

As a consequence, Europe's manufacturing base is now impeded by artificially depressed global prices, rising imports, and other consequences of global trade imbalances.

Our call to the new European institutions: The EU should respond to these challenges with a robust trade strategy, that will secure fair competition as well as provide the modernisation of global and EU trade rules.

In this paper we propose several recommendations that would serve to improve the EU strategy, taking into the account current trade challenges faced by Europe's non-ferrous metals sector.

Our overall challenge: Market distortions and overcapacities in global metals markets

Currently we are witnessing the situation, where many global players are heavily interfering in the market using industrial policies. This leads to market distortions and overcapacities in metals markets. For example, in order to support its local metals industry, China has aggressively subsidised its domestic production of metals and other strategic materials through its "Made in China 2025" industrial strategy.

In order to make China's mining/metals industry competitive, China's government directly intervenes in the pricing of capital, labour, land, raw materials and basic inputs to the production process. These distortions create wrong price signals that affect the full value chain. Below are some examples of market distortions¹:

- **Subsidies:** The 65 analysed companies received subsidies accounted as non-operating income amounting to more EUR 5.2 billion (from 2011 to 2016). These grants make up 44% of these companies' aggregate after tax properties. In addition, the companies received another EUR 2.1 billion in deferred income subsidies.
- **Debt-equity swaps:** Additionally, the examined companies exhibit a very high debt ratio of up to 98%. Debts are regularly transformed through debt-equity swaps, where the State takes over the shares. This instrument is used to keep under-performing but strategically important companies alive.

¹ Analysis of Market-Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research & Consulting, Prof. Dr. Markus Taube, pp. 124-129; 130-133; 145-151.



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- **Energy and export subsidies:** The 65 examined companies have received over 4,000 individual subsidy transactions since 2011. Energy subsidies stand out due to their sheer magnitude (EUR 300 million between 2011 and 2015). Combined export subsidies totalled EUR 16.9 million.

As results, Chinese industry has already developed overcapacities for several metals – most notably aluminium, tungsten, magnesium, lead and silicon – with more expected in the future¹.

Solution 1: Push for reform of the World Trade Organisation (WTO)

Therefore, Eurometaux looks to the WTO, which we believe should act as the guardian of trade rules, standing at the centre of a multilateral system that aims to promote an open, rules-based and fair-trade environment against policies that lead to discrimination and protectionism. Currently, the rules-based multilateral trading system is facing its deepest crisis ever, with both its negotiating function as well as the dispute settlement mechanism being threatened.

Where does the WTO need to modernize?

We believe there several specific areas that need a specific attention of international trade policy makers. These areas include provisions for Dispute Settlement, Anti-Subsidy rules, other disciplines that can address market distortions.

Below we provide several concrete recommendations for modernization of the **WTO**:

- **Dispute Settlement:** Businesses all over the world depend on the stability and predictability offered through a neutral and efficient WTO Dispute Settlement. The crisis in confidence in the WTO could deepen further in the coming months if more unilateral measures are threatened and imposed, while at the same time appointments of new members on the Appellate Body are being blocked, which can put the whole dispute settlement at risk.

It is therefore of great importance that a solution to the impasse in the dispute settlement process is found.

- **Notifications:** Notifications are key in ensuring that measures adopted at national level and trade agreements negotiated among WTO members are compatible with multilateral trading rules.

Although the notification of newly adopted legislation or the conclusion of bilateral and regional trade agreements by WTO members is an established obligation under WTO rules, the track record of many members is not positive. The problem becomes particularly relevant when it comes to the notification of subsidies.

¹ For example, Measuring distortions in international markets: the aluminium value chain, OECD, https://www.oecd-ilibrary.org/trade/measuring-distortions-in-international-markets-the-aluminium-value-chain_c82911ab-en



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An improved process for the notification would be a stepping stone to creating better rules defining the use of legitimate and illegitimate subsidies in pursuit of fairer global trade. For example, effective sanctions are needed for a failure of WTO Members to respect their obligation to notify annually their subsidy programs.

- **Disciplines for market distortions:** The non-ferrous metals industry needs a set effective disciplines to address subsidies and market distortions.
 - **Anti-subsidy rules** need to be stricter but sufficiently flexible to address 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. For instance, WTO subsidy rules need to address systemic State-led promotion of domestic industries.
 - Under **anti-dumping rules** for producers in state-directed sectors, normal value can be constructed using undistorted benchmarks. In addition, anti-dumping measures may always be imposed on dumped imports regardless of subsidies.

- **Safeguard rules:** it must be clarified that ‘unforeseen circumstances’ are not a requirement for the imposition of safeguard measures. Furthermore, 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.

- **Specific rules** should be foreseen to prevent that enterprises operating in countries with all-comprehensive industrial policies for their sector unfairly compete with European producers.

Eurometaux works through *Aegis Europe*, an alliance of manufacturers from over 25 sectors, including steel, ceramics, solar panels, car parts, train builders, textiles, bicycles and many others, to develop further concrete amendments for WTO Agreements of Subsidies and Countervailing Measures, Clarifications of the Anti-Dumping Agreements, Reforms in the area of Safeguards. For more information: <http://www.aegiseurope.eu/>

Thus, the World Trade Organisation is in need of urgent reform, to tackle the growing issues of all-encompassing industrial policies heavily interfering the normal operation of markets, which leads to market distortions and overcapacities. We urge the EU to advocate for an updated multilateral trade system equipped for the future, including the urgent reform of the dispute settlement system. Together with likeminded global partners, we must push for improvements in rules-based multilateral system, in order to rebalance the rapidly changed global market.

Solution 2: Take unilateral EU action to strengthen trade mechanisms

Given the scale of the challenge to fully reform international trade rules, the EU also needs to continue strengthening its own trade mechanisms, through the creation of new tools and the more assertive use of existing tools.



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Three priority areas for EU unilateral action

We have identified three primary areas where the EU can take meaningful unilateral action to help restore a global level playing field:

i. Introduce a new Enforcement mechanism

Currently we are experiencing the situation when US sanctions severely affect EU non-ferrous metals producers, even they are not necessarily focused on EU metals sector.

In 2018 our industry was impacted by:

- The imposition of US section 232 measures on aluminium
- The US withdrawal from the Iran deal
- Sanctions on Russian major metals suppliers.

We also face further uncertainty from:

- Addition US duties on cars and car parts
- Potential sanctions of the WTO Airbus-Boeing case

Despite the clear negative impacts on the EU market, we have seen a lack of action from EU authorities to counterbalance this policy and to create a level-playing field for EU companies.

In a view of this, it's crucial that the EU develops its own tools allowing it to use sanctions. In this regard, we would welcome the European Commission's President's proposal to upgrade the EU Enforcement regulation and to ensure the EU can counter balance the sanctions policies of third countries.

ii. Address state support & overcapacities

Although it is important to pursue the issue of state support and overcapacities at the international level, it is evident that EU needs its own tools to address structural overcapacities in third countries.

For example, the notion of overcapacities can be used in EU anti-dumping regulations and be taken into account while assessing injury, causation and Union interest. In addition, the existence of substantial structural overcapacities in the targeted country should create a presumption of the existence of material injury and a causal link, a strong, if not irrebuttable, presumption that measures are in the Union interest.

iii. Further improve Trade Defence Instruments

Effective trade defence instruments – including anti-dumping and anti-subsidy measures – are essential tools for Europe's non-ferrous metals industry to protect its companies against unfair trade practices. EU trade defence instruments have been recently subject to major reforms, including the application of new EC Anti-dumping Methodology applied in cases



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of significant market distortions by third countries as well as Trade Defence Modernization package. We are looking forward to assessing how these changes will work in practice.

In addition, we would like to provide several recommendations on how to further improve the efficiency of EU TDIs:

- **Self-initiation of TDIs cases by Commission:** Self-initiation would improve the effectiveness of the instrument, especially where OLAF or national investigations already provide evidence of unfairly traded or circumventing products.
- **Threat of injury:** more effective recognition and use of this provision is needed (e.g. by giving more weight to the existence of overcapacities), both at initiation and in the imposition of measures
- **Provisional measures:** Should be applied earlier, even before the verification of questionnaire responses. As the requirements for the acceptance of complaints/requests are so high in the EU (almost a sort of pre-investigation before the investigation), quicker provisional measures would be appropriate (rather than waiting until close to the deadline)
- **Non-cooperation:** Should be more effectively sanctioned, especially in the context of anti-subsidy investigations concerning a sector for which subsidies have not been notified to the WTO as required
- **Safeguard measures:** should be used more often. The EU should make more liberal use of safeguards tool, as currently this tool is interpreted and applied so restrictively that there is no practical use.

Three further areas for EU unilateral action

In addition to the three priority areas above, the EU can also make meaningful improvements to public procurement, competition rules and foreign direct investments:

i. Public procurement

While the EU has a very open public procurement system, that is accessible to third countries, European companies do not always benefit from similar conditions while accessing third countries' markets. Thus, it is important to strive to level playing field, introducing principles of reciprocity and ensuring that the rules are respected by third countries' companies.

ii. Competition rules

The notion of overcapacities as well as subsidies granted by third countries can be introduced in EU competition rules. For example, notion of overcapacities or position of a company as State Owned enterprise can be used while assessing market dominance abuses, as a presumption of market dominance.

iii. Foreign Direct Investments

Following the concerns about the rise in the strategic assets' acquisition by non-EU investors, the EU came up with the new framework to screen Foreign Direct Investment, which entered into force in April 2019. In this way it creates a mechanism for the European Commission and Member States to discuss the specific investments that have the potential



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to create public order and security concerns, in particular when government-controlled and funded investors are involved. We welcome the creation of this important mechanism and we are looking forward to assessing how these changes will work in practice.

Thus, unilateral policies of third countries create severe distortions that affect EU non-ferrous producers. EU must act to prevent these distortions from overwhelming its own manufacturing base. In parallel to the EU's work on the reform of international trade rules, EU needs to strengthen its own trade mechanisms, while using more assertively already existing trade tools as well as creating new ones. We are looking forward to welcome new Commission's initiatives in the areas several key areas, including sanctions policy, overcapacities, trade defence instruments, public procurement, competition rules and foreign direct investment.

About the industry

Eurometaux is an association representing the interests of the combined non-ferrous metals industry towards EU policy makers. It is the decisive voice of non-ferrous metals (NFM) producers and recyclers in Europe that aims to promote sustainable production, use and recycling of non-ferrous metals in Europe as well as a supportive business environment for our members to thrive in. Eurometaux contributes constructively and proactively to EU policies and regulation across four main areas: international trade; energy and climate change; environment, health and safety; and sustainability.

Non-ferrous metals contribute to the European creation of wealth and jobs: they represent 2% of EU GDP and create 450,000 direct jobs and over 1 million indirect jobs in Europe. Their use in high-tech and high added-value activities makes them very valuable to the EU's economy and competitiveness. The non-ferrous metals industry is indispensable for modern society. Thanks to their intrinsic properties – including durability and recyclability - non-ferrous metals are vital in order to meet essential societal needs and to build a low-carbon economy.

