

AEGIS EUROPE INDUSTRIES CALLING FOR A GLOBAL LEVEL PLAYING FIELD

**A call for a more effective application of existing EU policy
instruments and improvements where needed**

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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...”

The EU has long prided itself on having a high level of product, social and environmental standards, a high degree of openness in public procurement and a high degree of vigilance to encourage competition in the EU market.

Less attention has been given to the way in which those policies and regulations create an uneven playing field for EU manufacturing facing import and foreign competition.

AEGIS Europe urges a more coherent management of the trade implications of EU competition, public procurement, environment, energy, product and other regulatory policies, to maintain a level field for EU manufacturing.

EU INDUSTRIES CALLING FOR A GLOBAL LEVEL PLAYING FIELD

A call for a more effective application of existing EU policy instruments and improvements where needed

Introduction

Globalisation of markets and industries intensifies the distorting effects of government policies that unfairly protect and support domestic markets and industries. Thus, the EU needs to address more effectively State-led distortions that are undermining the viability of traditional and innovative European industries, both at home and abroad. The EU needs to be more assertive in using – and where needed modifying – existing tools as well as developing new policy instruments to ensure a level playing field for EU industries while at the same time creating much needed leverage at the multilateral (WTO) level². The new Commission’s encouraging political objectives and orientations need to be endorsed and supported by the Council and the European Parliament and effectively implemented by the Commission.

² Commission President-designate Van der Leyen mission letter to Trade Commissioner-designate Hogan (https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-phil-hogan-2019_en.pdf); Braver, Greener, Fairer, Memos to the EU leadership 2019 – 2024, Brueghel (https://bruegel.org/wp-content/uploads/2019/09/BRAVER-GREENER-FAIRER_Memos2019_1.pdf)

I. EU should be less self-restraining in the interpretation and application of existing rules

- EU position on the consequences of the 15th anniversary of China's WTO accession re the methodology applied to imports from China in AD proceedings, is the best example:
 - Initial Commission's position was simply that EU should accord China MES "in fulfilment of an international obligation"
 - Ultimately, the EU adopted a new and distinct methodology for imports from countries "with significant distortions" (including China)
 - Now, WTO panel has confirmed that other WTO members were not obliged to treat imports from China the same way as those from other countries, i.e. may continue to treat imports from China distinctly. (China has suspended its WTO complaint)
- Other examples of overly rigid EU practices:
 - Countervailable subsidies not cited in the anti-subsidy complaint but uncovered during investigation were considered non-countervailable on the basis of an overly cautious interpretation of the WTO law. This approach has been changed by the EU legislator.
 - The EU should consistently register imports in anti-dumping and anti-subsidy investigations at the start of investigation: this is an issue now because the practice has not been adapted to the new legal text (EU TDI Modernization)
 - Partial or non-cooperation should not be accepted and should have consequences in the formulation of the measures.
 - Application of anti-subsidy rules (definition of public body, subsidies for production in third countries, etc.)

- There is a need for the full application by WTO panels of the WTO DSB principle of deference to be given to investigating authorities which adopt one permissible interpretation of a given provision (Article 17(6)(ii) Anti-Dumping Agreement)

Examples of ways the EU can be more assertive & effective

TDI-related actions: more assertive use of discretion under existing rules (in addition to increasing the number of personnel working on TDI at the Commission to ensure full capacity to realize enforcement ambitions)

- **Self-initiation by the Commission:** 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
- **Retroactive application of provisional measures should be more actively applied.** This includes the effective use of registration from the initiation of an investigation
- As is already the case with anti-circumvention investigations, **anti-absorption investigations should not be limited timewise** to two years following the imposition of measures
- **Overcapacities and the assessments of injury, causation and Union interest:**

The existence of government-led substantial structural overcapacities in the targeted country should create:

- a presumption of the existence of material injury and a causal link, and
- a strong, if not irrebuttable, presumption that measures are in the Union interest

- **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 needs to 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 without inhibition**: the EU should more open to consider use of the **safeguards tool** (a tool which is interpreted and applied so restrictively is of no practical use taking away from EU industries a legitimate protection that was part of the WTO deal of opening markets against the right to safeguard domestic industries)

II. The EU needs to recognise the restricted coverage of existing WTO rules (including in some cases a broad interpretation of current exceptions to the WTO rules) and take actions pending (encouraging) the adequate updating / addition of multilateral agreements. WTO rules cover more areas than GATT but still leave important space for national measures.

- New, appropriate tools and measures are needed to fully address
 - structural overcapacities in third country (especially where manifestly supported by national industrial policy),
 - situations where goods which are not imported but which injure EU producers (e.g. means of transport),
 - injurious pricing of services; and
 - to balance the unilateral costs of EU climate change policy against countries not applying same standards.

Measures in areas not (fully) covered by WTO rules

- **Public procurement rules**
 - Adopt an ambitious “International Procurement Instrument” to foster reciprocity and provide leverage to push third countries to open their markets with strong price adjustment measures, a specific treatment for third country SOEs while preserving Articles 85 and 86 of Directive 2014/25/EU.
 - Strengthen the EU public procurement framework in relation to e.g. contract award criteria or abnormally low tenders. The possibility set out in Directive 2014/25/EU to respond to the non-reciprocity in third countries (Articles 85 and 86) should be made mandatory for all EU-funded projects of critical or strategic infrastructure or technology, or that would allow access to sensitive EU information or key expertise.
 - Strengthen EU long-term financing tools and introduce due diligence requirements for all EU public funding/financing programmes with regard to the participation of third country suppliers or providers and consider the possibility of withdrawing credit lines or co-funding grants in the absence of reciprocal market access in their country of origin.
- **Competition rules**
 - There are modern EU rules to ensure effective competition within the EU, but no WTO rules to tackle monopolies, horizontal subsidies and cartel behavior by producers from and countries with a state-led trade-disruptive economic model. Greater consideration is needed of the international context and international state-led disruptive forces when applying EU competition rules.
 - EU State aid assessments: to consider subsidies granted by third countries & other unfair practices in favor of third country producers which compete with EU industries
 - EU assessments of market dominance abuse: to presume market dominance based on overcapacities & automatically for SOE's in sectors with systematic State support

- **Surveillance of situations of government-led structural overcapacities³:** Structural overcapacities as such depress prices even without import surges. Such capacity situations should trigger market surveillance.
- **Trade measures to address injurious pricing of cross-border services, non-imported goods**
- **Environment (including carbon emissions) regulations:** measures such as border taxes to achieve a level playing field on the EU market considering that EU regulations impose a cost on EU producers but not third country producers.
- **EU FTA's:** enforcement mechanisms need to be strengthened and where existing to be used actively including environmental and social commitments and standards
- **EU GSP:** EU should exclude from GSP benefits those products of a beneficiary country which are subject to EU trade measures (to address in the upcoming GSP review)

³ Refer to AEGIS Europe Business Case on WTO Reform collecting EU industries' experiences facing massive global excess capacities (<http://www.aegiseurope.ee>)