

EUROFER Contribution

A renewed trade policy for a stronger Europe

Question 1: How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

To help improving the EU's resilience, EU trade policy itself should be resilient.

EUROFER welcomes the Commission's concept of "Open Strategic Autonomy" acknowledging the need for the EU - facing unprecedented challenges internally and externally - to evaluate and further develop its policies and capacity to build up resilience, capacity to pursue and protect without inhibition its interests effectively. This implies a necessary shift in views on the trade policy functions: trade for the sake of trade ("we need to import to export") is not a sufficient answer. European trade policy should forcefully support strategic EU objectives set in the frame of rapidly evolving EU industrial and environment policies (focus on strategic and enabling industries, maximising integrated value chains within the EU and ambitious climate change objectives).

In this context, for basic sectors like steel facing massive global excess capacities fuelled by government subsidisation and other distorting support measures, the overarching function of abovementioned EU policies is to ensure that integrated production, manufacturing value chains and technological innovation can remain and further develop within the EU securing well-paid jobs and avoiding societal distress. The focus should be on the application of existing and deployment of new tools that effectively tackle distortions from imports and guarantee access to export markets.

The capacity of a resilient trade policy has been illustrated in our sector by the multiple EU anti-dumping and anti-subsidies actions against unfair Chinese steel imports that flooded the European market in 2016. It is not exaggerated to say that this unprecedented, concentrated action saved the European integrated steel industry four years ago.

Resilience will be further needed in (i) anticipating the situation of the European steel market and industry after the end of the running steel safeguard regime in June next year (if the risk of trade diversion to the EU would continue to exist) and (ii) designing a carbon border regime effectively avoiding carbon leakage: the EU's stance on the WTO rules and third countries' reactions and threats will be critical in both questions.

Resilience is also needed in EU trade related-rulemaking. Firstly, in the legislative process following the ambitious white paper on foreign subsidies expanding disciplines on foreign subsidies to ensure a level-playing field within the Internal Market. Secondly, in the adoption of

the update of the EU Enforcement Regulation calling for more autonomy when facing manifest violations of WTO commitments by trading partners, in particular with no unblocking of the Appellate Body in sight and with important trade partners like the US, Turkey, Japan, Indonesia not signing up to the Multi-party interim appeal arbitration arrangement. Thirdly, in the WTO reform (see Question 3).

Finally, the EU should continue to engage in significant efforts to obtain real progress in global excess capacity reduction and elimination commitments and take actions to combat the trade-distortive effects of overcapacity, diplomatically in the frame of the Global Forum on Steel Excess Capacity and technically in the context of WTO (see Q.3 hereunder) and FTA rule making.

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

On WTO reform, the general views and positions of the EU's two major trade partners are known: the U.S.A. fundamentally critical of the functioning and performance of the WTO unable to address distortions from state-led economies and policies and now taking strong unilateral action; China insisting on a status-quo while blaming the crisis on rising unilateral and protectionist practices by other WTO members.

For EUROFER, the following analysis and considerations are essential:

- The open, fair market orientations of WTO rules have been profoundly undermined by China's pervasive state-led economy exploiting WTO openness. Basic sectors like steel, plagued by massive excess capacities, market-disrupting subsidies and other support measures, are the first victims of this development.
- A most important development is the joint EU-USA-Japan statement on industrial subsidies. EUROFER fully supports the innovative set of technical subsidy discipline including new types of prohibited subsidies, injury presumption related to excess capacity and non-notification sanctioning. Significant leverage needs to be built up by forming a broader alliance of like-minded economies pushing this critical topic as a top priority.
- With regard to the WTO definition of actionable and countervailable subsidies, the current definition may no longer be fit for purpose in light of international EU climate change objectives. Especially for energy intensive industries facing intensive international competition like steel, there is a need for subsidies to enable the move away from carbon-based to carbon free operation. Such subsidisation should be green-lighted and presumed not causing injury to the domestic industry of importing countries to the extent that it does not provide benefits beyond placing climate friendly production at par with GHG emission intensive production.

- Sectors including steel and aluminium have experienced strong reluctance to take WTO actions tackling China’s subsidies and SOE’s at the root (prohibitive evidence and injury requirements to take action under the WTO Agreement on Subsidies and Countervailing Measures and China’s accession protocol’s commitments on SOE behaviour). One way or another, these commitments need to be activated because these are part of the WTO deal to have China benefiting from open international markets, the more so now that China stepped out of the Global Forum on Steel Excess Capacity.
- Self-declared development status is exempting an important group of emerging economies from WTO existing obligations and undermining negotiations of new rules. Self-declaration is a one-off event when joining the WTO. There is a need for a mechanism that ensures countries to move to developed status in line with macro-economic as well as sectoral developments.
- A major cause of the disruption of the Appellate Body relates to WTO trade defense jurisprudence. A separate regime within the WTO dispute settlement system specifically for these actions could be envisaged as a way to de-block the functioning of the Appellate Body. There is a problematic trend of WTO dispute settlement jurisprudence increasingly restricting TDI applications by investigating authorities. This is implicitly acknowledged in the EU-USA-Japan subsidy statement proposing a more operation definition of “public body. Another example is the question of cost adjustment in anti-dumping procedures. Unconditional reference to this WTO jurisprudence and similar TDI aversion in future Multi-party interim appeal arbitrations to which major trade partners of the EU have not signed up, would create an international “legal distortion” in TDI matters to the disadvantage of EU industries.

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?

The EU should pursue a far-reaching negotiations’ agenda with its trading partners, so as to include – to the furthest extent possible – **binding commitments on non-tariff barriers, sustainable development, procurement and state aid requirements**. Industries which are already liberalized (such as the steel industry) benefit primarily from these commitments, by ensuring a level-playing field with the EU’s trading partners. To the extent possible, the so-called “first generation agreements”, which focus primarily on tariff elimination, should be re-negotiated so as to ensure consistency with the more recent FTAs.

More importantly, existing commitments on non-tariff barriers, sustainable development, procurement and state aid requirements should be effectively monitored and thoroughly enforced. The latest annual report of EU trade agreements unfortunately highlighted that the

EU's trading partners do not consistently adhere to their commitments.¹ The **Chief Trade Enforcement Officer**, combined with the revised Enforcement Regulation will be pivotal in that respect, to ensure that the EU has sufficient leverage to force its trading partners to abide by their commitments and, thus, to guarantee the market access of EU producers. In this respect, it is worth highlighting that some agreements - especially the first-generation ones - are difficult to enforce due to the weak provisions related to their **dispute settlement system**. An example is the EU-Algeria Association Agreement, whereby if the EU wants to bring a violation of the Agreement under the arbitration system, Algeria needs to appoint one of the arbitrators and can therefore block the process. This scenario should be avoided in future and modernized agreements. The EU-South Korea FTA could be a good model for what concerns the Dispute Settlement Chapter.

Question 6: How can trade policy support the European renewed industrial policy?

Trade policy must be part and contribute to a holistic approach to industrial policy serving industrial sectors in the EU. In many such sectors, considerable overcapacities have been built up in third countries looking to overcome structural imbalances through exports. The EU trade policy should focus on addressing these problems, that are distorting international markets, unilaterally and multilaterally.

EU trade policy should help achieving the EU's environmental and climate policies. For example, without effective use of the trade defense instruments, the green transformation of European industries like steel will not be possible.

In March 2020, the Commission presented a new industrial strategy to help drive Europe's competitiveness and its strategic autonomy at a time of moving geopolitical plates and increasing global competition. The EU trade policy should therefore contribute to the consolidation and resilience of EU strategic value chains/ecosystems and the strengthening of the EU as a trading power.

The intertwining of trade and industrial policies is embodied by the recent European Commission's White Paper on levelling the playing field as regards foreign subsidies, which is key to ensure a level-playing field on the Single Market. It will be important to move forward quickly with a legislative proposal, while striking a balance between effectiveness (and deterrence) and additional burden for European companies.

Question 8: How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further

¹ https://trade.ec.europa.eu/doclib/docs/2019/october/tradoc_158388.pdf

promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

Europe has the opportunity to lead the transformation of its economy to a future in which it is carbon-lean, environmentally responsible, circular and able to compete internationally. Steel is central to the EU economy, and it underpins the development of major manufacturing sectors right along the value chain. With supportive conditions in place, notably the right infrastructure and a supportive regulatory framework, the European steel industry will be empowered and fully committed to the EU's climate objectives and sustainable growth targets. The sector would be able to develop, upscale and rollout new technologies that could reduce EU steel production's CO₂ emissions by 30% by 2030 and by 80 to 95% by 2050, while contributing to greenhouse gas mitigation across all sectors.

Trade policy can support the transition to a greener and more sustainable society. In this respect, the policy recommendations below are among the essential ones to succeeding in the aims of ensuring the EU steel industry remains on track to meet its emissions reductions targets (i.e. 30% by 2030 and 80-95% by 2050) whilst also remaining competitive globally and finding a sustainable market for its green steel products:

- **International competitiveness throughout the transition and beyond should be ensured:** The steel sector is the most exposed to carbon leakage of all energy intensive industries. During and beyond the transition towards production of CO₂-lean steel, a supportive regulatory framework that ensures a level playing field with third country competitors is required. To this end, steel products sold on the EU market, whether produced in the EU or imported from third countries, and steel exported from the EU to third countries need to have similar CO₂ cost constraints.
- **In the short term, carbon leakage protection with a Carbon Border Measure should be improved:** The EU should introduce, for a transitional period, a WTO-compatible Carbon Border Measure (CBAM) that factors in both direct and indirect emissions to create an incentive for other countries to conform to the high EU standards while balancing the playing field. This measure needs to be set at an effective level to avoid carbon leakage via imported products; the measure also needs to be introduced in addition to existing carbon leakage provisions on free allocation and indirect cost compensation within the existing EU ETS. Introducing Carbon Border Measure and removing free allocation would not prevent carbon leakage; it would almost certainly be detrimental to steel production in Europe.
- **In the mid- and long-term, the following trade-related measures should be enhanced:**
 - As a complement to the Carbon Border Measure, a minimum CO₂ standard should be introduced and it should be based on the footprint calculation that must be met by all steel products sold on the EU market in order to ban the dirtiest steel from the market.

- In addition, measures and incentives to keep ferrous scrap in the EU for its subsequent treatment and quality improvement, helping to deliver on the EU's circular economy and CO2 reduction objectives.
- **Environmental costs:** The cost burdens imposed on EU manufacturing to protect the environment, and in particular the presence measures to limit the emission of carbon dioxide should be factored in dumping margin calculations.

Question 12 – In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?

The EU should fully use a combination of existing instruments and of additional instruments in order to address coercive, distortive and unfair trading practices by third countries.

The White Paper on levelling the playing field as regards foreign subsidies has acknowledged that there are 'regulatory gaps' in EU legislation that currently do not enable to tackle distortions created by foreign subsidies. The White Paper represents a one-time opportunity for the EU to set the record straight and achieve a level-playing field for the years to come, in an uncertain global context characterised by increasing trade tensions and polarities. Although this is an approach to address concerns in the context of the EU's Single Market, trade policy can play a crucial role to achieve the objective of levelling the playing field. We therefore look forward to a quick adoption and enforcement of the new instrument.

Existing instruments should be improved and reinforced:

1. **More effective use of Trade Defence Instruments (TDIs):** The EU needs more effective, trade defence instruments. Concretely, EUROFER considers the following improvements to be necessary:
 - Further shortening of the timing for imposition of provisional measures: Generally, EU TDI imposes provisional measures in 7 to 8 months after initiation. However, both the basic anti-dumping Regulation and the basic anti-subsidy Regulation provide for the application of provisional measures as early as 60 days from the initiation of the proceedings. The European Commission should therefore consider imposing provisional measures based on the information provided in the complaint, to ensure that the EU industries do not continue suffering injury caused by dumped or subsidized imports throughout the investigation process (which can last up to 15 months). The corresponding impact on exporters would be limited, as provisional duties are solely secured by way of a guarantee and may be refunded at the definitive stage, if needed.

- Facilitate the investigative burden on EU industries, while speeding the investigative process.
- Develop “threat of injury” actions: The Commission should make greater use of the concept of "threat of injury" to facilitate early remedies. More effective recognition and use of this provision is needed (e.g. by giving more weight to the existence of overcapacities) to initiate and apply (and/or extend) measures in reviews and new investigations. In this respect, the European Commission should make a full use of the new monitoring system for steel and cooperate with the industry to initiate cases before a situation of material injury actually materializes.
- Develop cost adjustment/Particular Market Situation methodology for dumping margin calculation (other than “significant distortions” methodology).
- Apply the highest level of duty possible: the European Commission should make full use of the provisions included in the modernised trade defence rules whereby, when determining the level of duties to be imposed, the Commission can pay regard to important distortions in the exporting market for relevant raw materials and, under certain conditions, the Commission may consider it necessary to waive the lesser duty rule and impose measures at the level of the dumping margin in order to remove injury.
- Further developing anti-subsidy actions and methodologies: 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. To increase transparency and notification compliance, a rebuttable presumption could be introduced that non-notified subsidies would be presumed to be a subsidy causing injury. In addition, measures should be automatically extended to any producer which does not cooperate with the investigation.
- The Union interest test: The complaining industry has to file massive and detailed submissions integrating technical, economic and legal arguments and proof, therefore, simple letters by associations or companies without detailed information should be disregarded.
- Flexibility to avoid severe market disruptions: trade defence measures should allow for a higher degree of flexibility in particular situations, such as a sudden dramatic worsening of the market and import situation. In these cases, a quick adjustment in line with the changes in the market should be possible, notably in the case of the EU steel safeguard measures.

2. Modification of the customs rules and/or practices to prevent the avoidance of payment of anti-dumping/CVD duties or regular customs duties through the inward processing (IP)

regime : Through the IP regime, EU processors are still able to avoid payment of the anti-dumping/countervailing/safeguard (AD/CVD/SFG) duty when non-EU imported goods are processed in the EU and then reexported outside the EU. We believe that the economic conditions shall always be examined at the EU level, given the fact that the goods – even if transformed and then reexported – are subject to an AD/CVD/SFG duty and thus require an examination of the economic conditions under Article 211(4)(b) UCC. We also consider that a maximum threshold of imports under the IP regime shall be established beyond which it is prima facie assumed that any additional IP authorizations will affect the essential interests of Union producers.

3. **Update of the EU Enforcement Regulation** to enable the EU to act during the paralysis of the WTO Appellate Body. It is also important to introduce tools allowing a unilateral response from the EU in the event of the adoption by a third country of commercial policy measures constituting a clear breach of international law and seriously harming the commercial interests of the Union.
4. **Strengthening of the FDI screening mechanism** by making it mandatory for all Member States to set up such a mechanism. There should be further harmonisation of scope between Member States and also the possibility to have a filtering decision at EU level.
5. **Regarding EU FTAs:**
 - There should be a more systematic implementation of trade agreement dispute settlement mechanisms.
 - The Chief Trade Enforcement Officer should pay particular attention to the overall monitoring of implementation of the trade agreements.

In addition, new instruments should be (proposed and) adopted:

6. **An Instrument on Foreign Subsidies in 2021:** following the recent publication of the White Paper, for which EUROFER has provided an extensive contribution.
7. **An IPI to address the lack of reciprocity in accessing third country public procurement markets:** The lack of progress on these negotiations in Council should not be accepted anymore and the European Commission should step up efforts and intensify its push to reach an ambitious agreement.
8. The EU should consider an *ad hoc* instrument, in addition to the Enforcement Regulation, allowing to reconsider market access conditions, where there are no reciprocal obligations, either under WTO law, existing FTAs or other international arrangements, such if foreign practices harm significantly EU commercial interests.