



## **EP Forum on Fair Competition in International Trade & Law Enforcement Manifesto**

Traditionally, it has been considered that a level playing field in international trade – which allows the dynamic competitiveness of EU manufacturing to shine – is assured by means of trade defence instruments (anti-dumping, anti-subsidy and safeguards). There is a growing realisation that more is needed and that in particular, the current WTO rules and dispute settlement mechanism do not adequately address the distortions generated by a state-led trade-disrupting economic model. The aim of this Forum is to promote free and fair trade and law enforcement and discuss the consideration and adoption of measures which will address such distortions and re-establish a level playing field, at least in the EU and ideally across global markets.

### **1. WTO REFORMS**

New – and more effective – WTO rules need to be negotiated, in particular to address state-induced distortions, including those related to diverging environmental and social standards and enforcement, which impact trade. The WTO should also become the tool to drastically limit state-subsidised overcapacities and predatory monopolistic behaviour. In addition, standards of evidence and other tools need to be used more broadly to ensure the effectiveness of WTO rules, and in particular to encourage compliance with transparency obligations. The US, EU and Japan would have a crucial role in designing the WTO reforms.

### **2. TOOLS TO ADDRESS STATE-INDUCED DISTORTIONS**

**INDUSTRIAL SUBSIDIES:** A major challenge of addressing government support to domestic producers comes from the diverse forms which the support can take: direct payments from government; direct government provision of good and services; restrictions/obligations on suppliers of goods and services; obligations on industrial customers and consumers in the domestic market; restriction on domestic competition via market access limitations.

The fact that there are so many different forms of support which result in unfair competition means that there needs to be flexibility in the rules to cover the situations which arise in practice.

In addition, there must be adequate sanctions for non-cooperation.

**STATE-LED FOREIGN INVESTMENTS:** To address the distortions caused by state-led acquisitions, and the risks they pose to public order and strategic assets in the EU, the EU needs to shape and implement new legislation in this area.

**PUBLIC PROCUREMENT:** Another area where EU rules are needed to address the impact of state-led distortions in causing an uneven playing field is public procurement in the EU. Especially remarkable is the lack of reciprocity on the part of many WTO Members in this area.

**STATE OWNED ENTERPRISES (SOEs):** As a general matter, more attention is needed to the ways in which the activities of SOEs distort the EU market, and how best to counteract those distortions.

**CYBERSECURITY THREATS/KNOW-HOW HACKING/LACK OF RESPECT FOR IP/INNOVATION THEFT/FORCED TECHNOLOGY TRANSFERS:** EU policy makers need to consider legislation to limit and severely sanction all these known unfair practices originating in third countries, in coordination with similar efforts taking place in other trading partners.

**SOCIAL DUMPING:** Taking into account labour standards in third countries is a new feature of the EU's trade defence legislation, thanks to the MTDI revisions. Broader provisions are needed outside the trade defence context to address global trade distortions caused by significant divergences in labour standards, including labour involved in international transport.

Bilateral and multilateral trade agreements entered into by the EU now help by including sustainable development clauses which require the EU's trading partners to meet environmental, labour and human rights standards as well as responsible business standards. The EU must build and implement effective enforcement mechanisms to ensure that these standards are met, and market access denied when they are not.

**CURRENCY MANIPULATION:** Current WTO and other provisions do not adequately deal with currency manipulation used to distort global markets.

### **3. ENDING THE TRADE-DISRUPTIVE EFFECTS OF DOMESTIC RULES & IMPROVING ENFORCEMENT**

**CUSTOMS RULES & REGULATORY ENFORCEMENT:** There is a continuing need to work toward a more effective enforcement of customs rules (and legislative modifications as needed) to address activities which have a distorting effect on trade (e.g. circumvention via use of rules of origin and inward processing, inadequate REACH enforcement at the border, etc. ...).

**EU COMPETITION RULES AND UNFAIR TRADE IMPACT:** There are very modern rules to encourage competition within the EU, but no WTO rules to tackle monopolies, horizontal subsidies, and cartel behaviour by producers from countries with a state-led trade-disruptive economic model. Greater consideration is needed of the international context and state-led disruptive forces when applying EU competition rules.

**ENVIRONMENTAL RULES & ENFORCEMENT:** EU environmental regulations are more stringent and often more costly than those in many other countries. In addition, EU industry is to a large extent bearing the costs of an emissions trading system which does not include imports within its scope. EU policy makers must ensure that these rules and the appropriate enforcement of these rules in the EU do not distort competition in the domestic market vis-à-vis imports.

One particular example of an international trade distortion caused by divergent environmental standards is transport pollution, and in particular the pollution caused by international shipping of goods compared to other means of transport. Moreover, this is a clear example of environmental dumping, as the cost of this highly polluting means of transport does not yet reflect measures to address environmental damage. In effect, low shipping labour, emissions and ship standards distort the true costs of international shipping and thereby operate as a subsidy granted by EU trading partners which unfairly distorts competition in favour of EU imports.

The EU must develop a set of measures that allows the EU industry to recover the full costs of its decarbonisation efforts. Products made in the EU, imported and sold on the EU market need to have

a similar carbon cost constraint. Such measures should be WTO-compliant, non-discriminatory (between competing materials) and should ensure as soon as possible a level-playing field both on the EU domestic and exports markets.

## ANNEX

### CASE STUDIES

#### - **IMPORT RESTRICTIONS – VARIOUS SECTORS** (*Annex Key Market Access Barrier List*)

Since 2016, Algeria has been imposing prohibitive import restrictions and increasing burdensome administrative requirements at import affecting numerous European exporting industries such as cars, ceramics, chemicals, cosmetics, food and drinks and steel. Algeria has been applying a variety of import measures such as quotas, non-automatic licences, tariff hikes, additional taxation and temporary import bans impacting around 900 products. The estimated value of affected trade with Algeria for a number of sectors, including automotive, chemicals, ceramics, cosmetics, flavour, food & drink and steel sectors is approximately 5.8 billion EUR.

Algerian measures appear to be in breach of the market access obligations taken under the EU – Algeria Association Agreement. Their application is non-transparent and unpredictable, worsening bilateral trade relations and the climate for business there.

#### - **INDUSTRIAL SUBSIDIES – BICYCLES** (*Annex - Distortions in the Chinese Bicycle, E-bikes & Components Industry*)

The European Commission [report](#) on significant distortions in the Chinese economy shows there are distortions in many significant sectors, including those of aluminum and steel which are key materials to build bicycles and e-bikes. The Government of China has been heavily promoting the Chinese bicycle, e-bike and components Industry, as one of the favourite green and high-tech industries in China, providing unprecedented and very ample subsidies. The different types of financial support include preferential loans from state-owned banks, export credit subsidy programs, export guarantees and insurance and tax rebates. There is an overall 12<sup>th</sup> 5-Year Plan to regulate the Chinese industry in general as well as one specific to the bicycle industry. Additional subsidies are provided within the framework of the [13th 5-Year General Plan](#). The Chinese bicycle industry faces a problem of structural overcapacities that are promoted by the government. China has the capacity to produce 130 million bicycles and e-bikes annually, but the total annual demand worldwide is only 120 million.

To allow for a level playing field and to legitimately defend the European bicycle industry against dumped and subsidized bicycles and e-bikes from China, multiple trade defence instruments are currently in place. Besides anti-dumping duties on imports of bicycles from China, which have been in place for 25 years, the European Commission initiated in 2017 [anti-dumping](#) and [anti-subsidy](#) investigations of imports of Pedal-Assist E-bikes from China. The Commission imposed [provisional anti-dumping duties](#) on imports of Pedal-Assist E-bikes on July 18, 2018. In addition, the anti-dumping duties on imports of bicycles from China have been extended to EU imports from seven other countries (Cambodia, Pakistan and Philippines, Indonesia, Malaysia, Cambodia, Sri Lanka, Pakistan and Tunisia) as a result of Commission [anti-circumvention](#) investigations.

#### - **CUSTOMS RULES SILICON** (*Annex Commission Implementing Regulation (EU) 2016/1077 of 1 July 2016 imposing a definitive anti-dumping duty on imports of silicon originating in the People's*

*Republic of China following an expiry review under Article 11(2) and a partial interim review under Article 11(3) of Council Regulation (EC) No 1225/2009)*

EU silicon producers are protected by an anti-dumping duty on imports originating in the PRC. Silicon is one of those industries where overcapacities are huge (confirmed by the Commission during its last AD investigation). Silicon is being processed into products which are then re-exported outside the EU. The EU customs legislation allows goods imported under inward processing to be fully exempted, contrary to the US: neither the conventional duty nor the AD duty are collected in the EU.

Given this flexibility in Europe – which does not exist in its major trading partners - , around 75 % of the total Silicon imports from the PRC are totally exempted. This full duty exemption has severely undermined the effectiveness of the anti-dumping measures while the European silicon industry is constantly threatened by Chinese exporters given the full closure of the US market (AD duty of 139.9% on Chinese silicon) and the existence of huge overcapacities in China.

- **EMISSIONS REGULATIONS – BICYCLES** (*Annex – Milan Polytechnic Institute study*)

EU bicycle and e-bike manufacturing is much more sustainable than importing product made in China: one bicycle or e-bike imported from China results in an additional 61 to 123 kgs of CO<sub>2</sub> and other dangerous emissions, such as the sulphuric dioxides created by the primitive fuel ("sludge oil") still utilised by container ships. This has been documented in a study carried out by Milan Polytechnical Institute (see attached).

Approximately 50% of these extra emissions are caused by the production of aluminium, steel, chemicals, etc in China, which still involve the use of coal to a large extent, and the rest by container shipping (60% of containers go back empty to China because of the EU trade deficit with China).

This means that if all 20 million bicycles and e-bikes sold in Europe each year were imported from China (at present 60% are made in Europe, thanks to the anti-dumping duties on bicycle imports from China and now on e-bikes), there would be extra emissions each year of over 2 million tons of CO<sub>2</sub> and other dangerous emissions like sulphuric dioxides.

It also means that each job restored to the EU in this industry saves 30 to 50 tons of emissions per year.

- **INDUSTRIAL SUBSIDIES & EXPORT RESTRICTIONS – STEEL PRODUCTS AND RAW MATERIALS** (*Annex file concerning certain Indonesian obstacles to trade affecting the union stainless steel industry*)

Indonesia is a characteristic example of restricting access to raw materials, encouraging increase of steel capacities and illustration of China's "Going out" strategy.

On 2015 Indonesia did not produce a single ton of stainless steel. In just 2 years, Chinese stainless-steel investments in Indonesia created a brand-new industry. Their exports are flooding the international markets. Indonesia, having an artificial cost advantage via export restrictions on nickel ore and metal scraps, will soon become the 2<sup>nd</sup> worldwide stainless-steel producer after China, able to supply the whole European demand: there is no way that such capacity build-up can be justified by domestic demand growth estimations, it is only creating additional worldwide overcapacity, exerting significant pressure to European producers.

Indonesian export restrictions on raw materials, together with various subsidies granted locally and the Chinese going out strategy, are leading to this sudden expansion of the domestic stainless-steel

industry; the Indonesian distortive practices are incompatible with WTO obligations, in particular with Article XI, Article X and Article VIII of GATT 1947, as well as the SCM Agreement.

- **DUAL PRICING – FERTILISERS** (*Annex Russia Gas Market distortions arising from state interventions*)

The Russia government by state statute instructs Gazprom – a state-owned enterprise – to sell gas on the domestic market in Russia at artificially low, even below total cost levels. In contrast, Gazprom's sales to the EU are done by maintaining a pipeline export monopoly which assists the pricing of export sales to the EU at premium export monopolistic price levels. This gas dual pricing policy and practice means that EU industry suffers double injury, ie first the high gas prices are damaging to competitiveness and second energy intensive industries like the fertilizer industry are often confronted with the permanent dumping/subsidy campaigns of Russian competitors.

The EU/EC has assisted the correction of this dual – pricing policy by offensive and defensive trade policy actions as well as by competition law actions vis-à-vis Gazprom completed in June 2018.

The offensive trade policy actions are at the WTO (Russia's

WTO Accession agreement obliged Russia to price gas on a total cost plus profit plus investment basis) and in bi-lateral attempts at a PCA II Europe agreement, as well as energy dialogues aimed at establishing a “level playing field”.

As these actions have not yet borne fruit, trade defence remains vital in order to defend energy-intensive industries, such as fertilisers, from unfair Russian dual gas pricing and associated dumping and subsidy campaigns.

The EU TDI modernisation package includes a provision to remove the lesser duty rule when there are structural raw material distortions. Here, the Russian dual-pricing situation is an example of its relevance.