EUROFER
THE EUROPEAN STEEL ASSOCIATION

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EUROFER view

Inception Impact Assessment on a Foreign Subsidy Instrument

EUROFER supports the ambitious White Paper on Foreign Subsidies and agrees with the Commission on the presence of a regulatory gap, which we believe exists and needs to be filled:

- The steel sector has **experienced the near impossibility to have WTO actions initiated tackling third country subsidies and State-Owned Enterprises** at the root, due to the prohibitive evidence and injury requirements to take action under the WTO ASCM. Moreover, many WTO members are failing to respect their obligations to notify subsidies to the WTO, which complicates the imposition of sanctions to remedy situations of unfair competition, even with a functioning Appellate Body.
- The **traditional (vital) anti-dumping and anti-subsidy measures are punctual remedies** limited to one product at the time and per country.
- The **EU steel safeguard are exceptional, temporary measures** (to expire on 1 July 2021) aimed at mitigating trade diversion.

With economic depressions, **mills that are at risk of closure or experiencing losses will be more and more acquired by subsidised third country companies** which will distort and possibly take control of an increasingly high share of the EU market, undermining the industrial base in the EU.

Thus, **EUROFER strongly favours Option 2 of the IIA (take legislative action at EU level)**. Given the current absence of disciplines regarding foreign subsidies, the EU must take prompt action to counter the distortive effects of foreign subsidies on the internal market and develop new legal instrument(s) complementing the EU acquis: adapting the existing rules will be needed to strengthen, for example, EU TDIs, enforcement provisions and abnormally low tenders, but this approach will be insufficient to establish a sufficiently broad and effective general scrutiny method (e.g. compulsory notification mechanism for subsidised acquisitions, adequate redressive measures, etc).

We agree that **the three presented options are not mutually exclusive.** Option 1 could provide guidance to the Member States and contracting authorities in the field of public procurement, but alone it would neither create a sufficient incentive for national/local authorities to tackle distortive effects of foreign subsidies nor give these authorities a strong legal basis to address such distortions. EUROFER also supports the strengthening of international rules for the granting of subsidies both at WTO and bilateral levels, as outlined in Option 3. This is however a long-term

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task with uncertain results. A level playing field in the EU in relation to subsidy rules requires the EU itself to first develop ambitious and workable legal rules that can be then promoted in the multilateral context.

Finally, **Article 207 TFEU should be the preferred legal basis**: while there must be a role for Member States in enforcing the new disciplines, a common centralised approach towards both investigations and redressive measures is essential.

To have an impactful new tool, the EU Steel industry suggests the following:

- In the steel sector, facing massive, increasing overcapacities globally, **the distorting effect of subsidies should be presumed:** the overcapacity issue and presence of distorting subsidies have already been recognized as a priority at international level by the G20 with the establishment of a Global Forum on Steel Excess Capacities.
- While the EU needs to remain open to investments, the presence of a fundamental long-term **EU interest in favour of removing the distortions** caused by foreign subsidies should be presumed.
- **Subsidies granted to any undertakings, wherever established**, which facilitate activities that distort the internal market **should be covered**.
- **Sanctions should be proportionate but acting as a credible deterrent** to incentivise entities to provide the required information in a timely and transparent manner.
- The new tool should **cover subsidised raw materials** which may be provided to an EU company from its mother company established in a third country.

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