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EU Opening statement on market distortions (Session B)

In view of the potential for, and the reality of, market distortions in this sector, we would like to briefly address the question of how such distortions can be avoided, and, if not, how they can be remedied.

Control of subsidies

An important tool in preventing the build-up of such distortions in the market is to discipline the granting of subsidies by governments, because certain subsidies can lead to the creation or maintenance of excess capacity and distort the conditions of competition, notably in shipbuilding. In the EU, we have our tried and tested state aid rules, which over the years have been remarkably successful in limiting subsidies, thus helping to create an environment in which our 27 member states can compete on a market-based level playing field.

Under EU state aid rules, all subsidies are prohibited unless they fall within a number of narrowly drawn categories which are considered to have a negligible impact on trade. In other words, we do not outlaw all subsidies – subsidies remain legitimate tools of public policy - , but we only allow aid on the basis that its broader benefits (for example, more R&D) outweigh any minor distortion of competition it provokes. The overall aim is to keep any distortions to a minimum. For example, we would not allow open-ended debt forgiveness to a particular firm but we would allow, under certain conditions, environmental aid or R&D aid, which has wider benefits. Similarly, we would allow aid to a company in difficulty with a view to help it restructure, but only against examination of its restructuring plan proving viability without further subsidisation. Importantly, we would require the company and its private investors to contribute a large part of the costs of restructuring and to compensate competitors by e.g. capacity reductions, in order to minimise any distorting effect of the aid.

In this regard, our system is "WTO-plus", in that most aid is prohibited, while under WTO rules only export and local content subsidies fall into the prohibited category. The "plus" also consists in pre-determined conditions under which certain types of aid can be allowed, the application of which is supervised by a supra-national authority i.e. the European Commission.

Our system is based on prior notification, so that any proposed subsidy has to be notified to the European Commission and approved before it can be granted by the member state in question. If member states grant unauthorised aid, this can be subject to repayment; indeed, there have been a number of well-publicised instances in recent years where the Commission has required member states to recover illegal aid from firms.

The success of this policy is shown by the fact that aid as a % of GDP has fallen from 1.1% in 1992 to 0.5% in 2007. Although the financial crisis has required a special response from governments in the financial sector, support to the real economy has been kept within acceptable limits and markets have not been distorted.

Rules on shipbuilding aid

Of course, there is no "one size fits all" approach to this issue and we do have certain special rules to suit the specific characteristics of certain sectors, including shipbuilding. In the case of shipbuilding, there are special features which can lead to imbalances in the market. Ships are not produced in large series and production lead times are very long – this can lead to sharp variations in demand depending on economic conditions.

In all cases, the aim of these rules remains to encourage the development of an efficient, market-based industry and to eliminate any non-viable over-capacity.

You will see from the notifications of our member states, that this regime has enabled State support to be targeted to specific market failures thus avoiding market distortions. We will comment separately on the notifications of other parties.

One of the most important elements of rules on subsidies, particularly in a sector such as this, is to build confidence and trust between the parties concerned. Therefore notification and transparency of subsidies are very important and we have tried to promote this approach, not only within the EU, but also through some of our FTA's and in other international bodies. The main idea behind agreeing elements of WTO-plus subsidy control is to see the effects of trade liberalisation materialise into concrete business opportunities for companies, and not to see them reversed or jeopardised by subsidisation.

More than just subsidy control required

Of course, rules on subsidies are not, by themselves, enough to prevent market distortions. The definition of a "subsidy" is relatively restricted – it only covers "financial contributions" by governments. It does not explicitly deal with many government measures which cause distortions e.g. export taxes, regulatory measures, aspects of government procurement, and it does not discipline abuses or concentrations of market power by private-sector firms e.g. cartels and other anti-trust issues. Such practices are often not identifiable as "measures" and can never be adequately captured by a category of "non-subsidy support measures".

In the EU, our state aid rules do not exist in isolation. They are part of an integrated single market which involves, amongst other things, the harmonisation of rules and the consequent absence of technical and legislative barriers to trade, as well as a functioning competition policy to deal with unfair practices by firms. This framework has taken time to develop and implement, but it has been a worthwhile process, and is the reason that we no longer have to use anti-dumping rules between EU member states.

An integrated single market is achievable in a customs union, such as the EU, but it does not exist on a wider level. Since, in this forum, we are discussing how to deal with market distortions in the shipbuilding sector, which is essentially a global market, we can conclude that something more than subsidy rules is required. The control of subsidies is not by itself sufficient to remove all market distortions, notably the build-up and maintenance of non-viable capacity and the consequent dumping of ships. The absence on a global level of rules which will address the other causes of such distortions means that even if we have rules on subsidies, distortions will always be with us, especially in periods of economic downturn.

Therefore, as we cannot remove distortions completely, we need an instrument to deal with their consequences and to provide a remedy for parties which are injured by dumped prices. We know that, for various reasons, it has not so far been practicable to apply anti-dumping rules to ships, but we cannot pretend that the problem does not exist for this particular sector and advocate what is an essentially "WTO-minus" approach.

Disciplines on market distortions

The WTO-minus situation exists for shipbuilding largely because no one has yet found a way to take "border measures" against unfairly traded ships. This is because ships, in the accepted sense, are not imported and do not clear customs. As we have seen, in the case of dumping, this means that there is no remedy at all for a recognised unfair trade practice, either in the market of the importing country or in a third country. In the case of subsidies, instead of the classic "two-track" approach to disciplining subsidies i.e. countervailing duties at the border and dispute settlement in the WTO, there is only a single "track", in the form of a dispute settlement case on the basis of "serious prejudice". The latter is a potentially effective weapon for remedying injurious subsidies (as demonstrated in a number of cases) but the lack of a CVD option reduces the remedies available. For the same reasons, conventional safeguard measures (to counter sudden and sharp import surges) are not practicable.

From the EU's point of view, this WTO-minus situation for shipbuilding on a global level is at odds with the WTO-plus approach we take internally. However, this is not just a problem for the EU. It would be hard for any delegation here to argue that shipbuilding should have lesser coverage than other products as regards to unfair trade, which can result in severe market distortions. Presumably, no delegation is in favour of such distortions. Therefore, it is normal that consideration should be given to working towards an improvement in the current levels of disciplines.

Many ways of controlling market distortions

We have set out the problem of distortions and the rules which we use to prevent them. We believe there is need to redress the balance of this "WTO-minus" situation and to level the playing field. We believe our system is a good one, but of course, in a global context here in the OECD, we don't pretend that it is the only way of approaching this problem and we certainly do not seek to simply impose it on others.

At the very least, there is a need for much greater transparency and full notification of support measures. This is a pre-requisite for discussions on bringing discipline to the shipbuilding market. These must involve an exchange of ideas between all parties and we would be prepared to learn from others in this room and, in an OECD context, to take on board the best ideas put forward by any party to the discussions.