

Trade Commissioner Malmstrom's future EU trade policy

Statement- Fertilizers Europe



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Fertilizers Europe representing the EU's nitrogen fertilizer industry welcomes the Commissioner's obvious good intent to maintain the robustness and fitness of EU trade policy to meet contemporary challenges, opportunities and problems.

In an ever competitive globalizing world economy, the European Union must adopt a **multi-dimensional trade policy** which retains flexibility able to push and promote policies across all levels, i.e. multilateral, bi-lateral and unilateral. Over – reliance on any one working level can only be problematic if not even paralyzing.

The Lisbon Treaty integrates trade policy into the Union's external relations portfolio. Yet despite the obvious historic success of EU trade policy as a unitary and well respected trade policy force, the real challenge for the Union, and in particular the Trade Commissioner now, is to maintain trade policy and regulation as a distinct discipline – and not merely an extension of foreign affairs diplomacy.

The “rule of law” under the framework auspices of the WTO and the EU's established trade regulation acquis must be fully referenced and respected.

EU producers “market rights” and “rights to defence” must be upheld. There is a need for even **more alertness with regard to reciprocal, symmetrical and equal terms and conditions with all our partners and competitors.**

Presently international/multilateral trade policy – with its central activity still resting on the WTO Doha Development Round - is in paralysis.

A new realism is needed if any agreement is to be made. **It is essential that the inevitable push for a zero tariff world or EU zero tariff status is balanced off with strengthened trade defence instruments.** In particular the correction of distorted raw material costings should be worked into the existing trade defence instruments. Fertilizers Europe continues to support the removal of the EU's lesser duty rule whenever structural raw material distortions in exporting countries continue to result in persistent dumping and subsidy campaigns to the EU.

Bi-lateralism involving a proliferation of free trade area and customs unions is growing and presently constitutes the highest activity area. It is vital that the EU negotiates the “right deals” for Europe. Thus there is no “right timing” but rather the “

right deal”. We consider this was correctly done with Ukraine; but sustain reservations on the TTIP.

In particular the EU fertilizer industry welcomes the Deep and Comprehensive Free Trade Area model as this promises a level playing field not only on commercial issues but across the whole economic, environmental, climate change and business operation scene.

There is remains an imbalance, however, between the “hard” trade aspects and the “soft” commitments made on HSE, climate change and corporate governance. There is indeed value in the Commission’s intention to promote “European values” but there must be care and attention to first, apply international standards and second, not to be perceived to be overly dominant or hegemonic.

In summary, Fertilizers Europe advocates hereunder that the Union should adopt a multi-functional trade policy – a trade policy which fully integrates contemporary challenges into the trade policy body and activity, i.e. energy rules against state fixed pricing and dual-pricing, a level playing field on climate change commitments, fair currency management; investment and labour standards and rules.

Above all, EU trade policy must be strong and effective in the pursuit of improving and securing a level playing field for European industry.

Fertilizers Europe Strategic Pillars for EU Trade Policy

- **Multi dimensional, strong and flexible** across international, bi-lateral and unilateral channels;
- **“Trade Rules based”**: WTO and EU acquis;
- **Deep & Comprehensive FTAs** that include HSE, climate and governance
- **Strong and effective trade defence**: including the correction of distorted raw material costs.
- **Addressment of “new issues”**: competitive currency devaluations; trade in energy; climate change; labour rights etc

INTERNATIONAL TRADE POLICY

The dynamics of conventional international level trade policy improvements have slowed to near paralysis. This is most evident from the prolonged delay in the Doha Round – the current round of multilateral negotiations.

The Doha Round itself is not very ambitious - the greatest achievement likely to be the traditional one of improved market access. However, for the European fertilizer industry, the benefits of this will be lost or unequal if the world's fastest growing economies such as the BRICs – Brazil, Russia, India and China do not open up their markets on a fully reciprocal basis. This should not only apply to tariffs but also to non –tariff measures which often, for fertilizers, are stronger import /export impediments than tariffs.

It is crucial to the equilibrium of world fertilizer market that Brazil, China and India agree to the zero-rating and binding at zero of their fertilizer tariffs. The EU fertilizer industry can indeed only accept the zero-rating of the current 6.5% on the EU border if these three major importers of fertilizers and other major importer fertilizer economies in Asia and South America agree to complete and irreversible zero rating. Only thus can there be a more rational flow of trade to all major markets – and not to the EU alone.

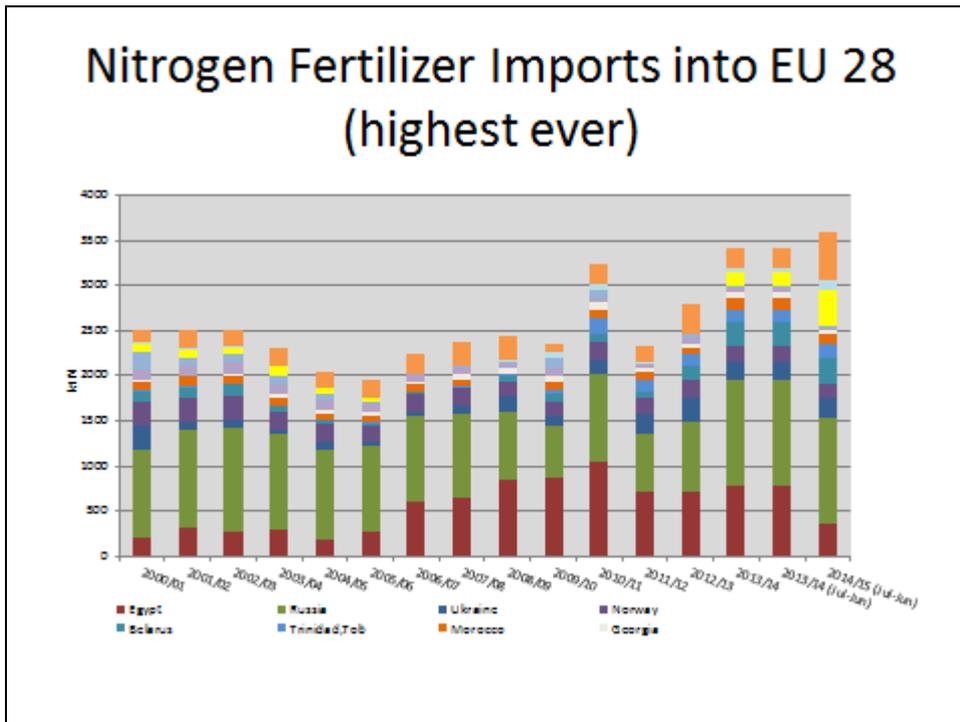


MARKET ACCESS POLICY

- **Zero rate EU 6.5% tariff on equal basis with major importing markets in Asia (especially China, India,) and South America (especially Brazil and Argentina);**
- **Seek removal on non tariff measures which serve as trade barriers and distortions on fertilizer imports;**
- **promote WTO membership and compliance;**
- **promote adoption of EU Single Market model for “near neighbours in FSU, Turkey, North Africa, near Middle East.**

The European Union's fertilizer market is like other manufactured goods markets is classified as liberalized and as such represents a truly open market to many different sources of imports.

This open position is evident from the regular 20 – 25 per share of imports making up the total nitrogen fertilizer market. Over recent years, import levels are hitting record highs. See chart below.



However, the Union industry along with the Union's trade defence instruments has been obliged to correct several serious and harmful dumping and subsidy campaigns. See unilateral section below.

The Doha Round does not directly address the real contemporary business issues challenging the order and conduct of the international economy, i.e. rules on investment, “fair” energy and raw material pricing, combating “resource nationalism”; assisting and promoting the establishment of rules and commitments on climate change with promote both beneficial to the environment and the most efficient business operations

Equally the WTO as an institution – while an undoubted success with a considerable *acquis* arising from the Uruguay Round and equipped with a meaningful and authoritative Dispute Settlement Scheme – can and should develop beyond dialogues and papers with other international economic institutions and develop real joint ‘linkage’ policies on labour with the International Labour Organisation; environment with UNEP; development with UNCTAD and currency positioning with the IMF.

This is not a call for an international managed or dirigisme economy but rather a recognition that globalization and regional integration require ‘joined up’ and linked policies in order to ensure a true level and fair playing field.

For the European fertilizer industry there are four outstanding areas which require further attention and development. The four areas are currency management, climate change commitments, investment and fair energy pricing based on the market economy model.

Firstly **competitive currency devaluations** such as the Russian rouble in 1998 and in 2014 do lead to distorted and unfair economic and trade situations. Similar situations have arisen for other manufacturing industries with regard to the Chinese and Korea currency devaluations.

Only by close co-ordination amongst international institutions such as the WTO and IMF together with consultations with national and business partners can understandings and resolutions be found on appropriate currency levels. This can apply to crisis conditions or normal conditions. Our experience is that the (unmanaged) alternative is damaging dumping campaigns – heavy corrections using trade defence instruments and trade frictions.

Secondly, **common commitments and a level playing field on climate change** and greenhouse gas abatements require a cohesion push from all international economic fora. The dominance albeit natural of environmental institutions should not distract from the profound economic and environmental realities.

The European fertilizers industry is the most energy and carbon efficient in the world. It is not acceptable that the most efficient should be closed down while others “free ride” the environment and the economy.

Yet if its external competitors are not subject to the same rules and commitments there will be carbon leakage – and no benefit gained by world’s environment or economy.

The WTO and UNEP have worked together to find a common analytical and legal understanding of the issues involved. The best solution is a Multilateral Environment Agreement which establishes a level carbon playing field.

Without this arising from the forthcoming Paris international climate change Treaty, then the EU itself must find mechanisms and safeguards, eg the release of free allowances under the EU ETS regime for the EU energy intensive fertilizer industry. WTO compatible border tax adjustments cannot be ruled out.

Thirdly, on **international investment policy** it is regrettable that this area was dropped from the Doha Round. With restoration to the WTO level unlikely in the short term, Fertilizer Europe supports the use of the OECD and the Union’s Global Europe programme as the most practical fora and means for promoting economic, ethical, labour and environmental standards associated with investment. As the European Union has a highly developed acquis especially with regard to manufacturing standards, i.e. the BAT, BATREF and EMAS programmes the Union’s trade policy should endeavour to promote these standards in all relevant fora.

Investment is another area where the WTO along with other relevant international bodies do need to revive the discussion on investment and the standards – economic – environmental and ethical necessary for the fair conduct of business and trade.

Fourthly, trade in energy products remains an area where distortions and difficulties continue to prevail without comprehensive and or enforced international legal rules.

The WTO should agree a Trade Related Energy agreement (TRES). This should regulate standards for trade in gas and energy products. Unfair state fixed pricing, dual pricing and harmful discriminatory pricing should be “outlawed”. As an absolute minimum, WTO members should commit themselves to “cost plus profit plus future investment” cost pricing. The latter is not a market price but it does represent an absolute minimum below which energy producers should not go below. See Russia’s cost plus profit plus investment commitment made in Russia’s WTO Accession Treaty below.

Correction of natural gas dual pricing

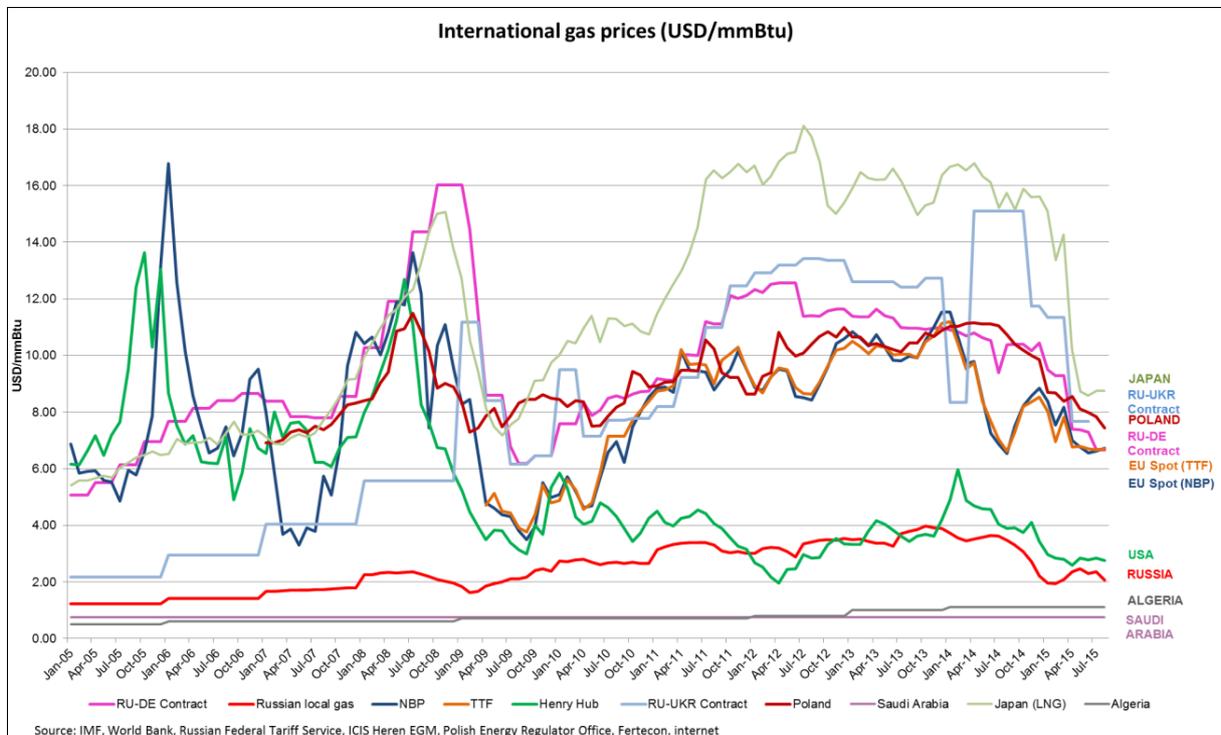
While the WTO in the future should agree to outlaw or prohibit harmful energy dual pricing policies at its source, the WTO and its members must continue to be allowed to correct the harmful effect of dual pricing at the (EU) frontier.

Presently many countries have tools within the anti-dumping and anti-subsidy defence instruments to correct dual pricing. However, these are sometimes considered “second best” solutions or for discretionary use under special circumstances.

For energy intensive industries in the EU paying energy prices which can 5 to 10 times higher than the artificially low state fixed prices paid by our near neighbours, the corrective power of trade defence instruments is a first order and mandatory affair. At times, without such corrections the EU market would have experienced an avalanche of imports – and closure of some of the world’s most efficient plants in the EU.

OECD Market Gas Prices against Artificial Low priced State prices in Russia, Algeria and Saudi Arabia

Natural gas represents between 60% to 80% of the production cost of a finished fertilizer.



Removal of the EU lesser duty rule in cases of structural raw material distortions.

Fertilizers Europe continues to support the European Commission's TDI – Modernisation proposal on the above. Presently this proposal is blocked in the Council where Member States are divided over this.

However, the EU fertilizer industry which must compete on its own market - against profoundly artificial low natural gas prices arising from Gazprom's export monopoly dual pricing practices and similar policies in OPEC countries continues to insist that such profoundly anti-competitive gas pricing practices must be fully corrected – and this should include the removal of the EU's lesser duty rule.

BI-LATERAL TRADE POLICY

On the basis that the EU's free trade area (FTA) programme wants to promote deeper economic integration, the EU nitrogen industry is fully supporting EU efforts to promote a level-playing field for gas, fertilizers and climate change commitments.

In this regard, leveling actions with our “near neighbours” around the Mediterranean and in wider Europe, e.g. Russia, Ukraine and Belarus represents a real opportunity to remove market distortions and unacceptable subsidy practices which lead to dumped and or subsidized fertilizer products on the EU market.

Fertilizers Europe supports as far as possible the adoption of the *acquis communautaire* as the reference or benchmark for “neighbourhood” agreements. It is highly preferable that the terms and conditions of any neighbourhood agreement are equal – reciprocal and symmetrical.

Asymmetrical arrangements – which have characterized earlier Association agreements - are often inappropriate in today's world for a commodity business like nitrogen fertilizers. Technology – intellectual property knowledge and rights – manufacturing operations are all very similar and therefore there is no real justification for special or differentiated treatment for the Union's partner country.

On the contrary, many of our neighbourhood partners should be required to bring their gas, energy, fertilizer and climate change policies and practices up to the standards of the *acquis communautaire*. Thus Fertilizer Europe wholeheartedly supports the drive toward deep and fully integrated free trade area agreements that include environmental, social and manufacturing standards.

Arguably, **the EU-Ukraine DCFTA is the most important neighbourhood** agreement for the EU fertilizer industry. We commend the current Treaty particularly for its inclusion of an energy chapter promoting free and fair energy markets and trade. We also appreciate the 7 year transitional tariff reduction arrangements set down.

The **TransAtlantic Trade & Partnership Agreement (TTIP)** due to its very economic size and policy ambitions represents a unique and powerful challenge. This is especially true for energy intensive industries – and nitrogen fertilizers are amongst the most energy intensive – because the USA shale gas revolution represents both a fundamental gas advantage and an

investment boom in fertilizer investment capacities in the USA. Given these costs and capacities challenges, the EU fertilizers industry has requested sensitive status for certain

products on tariff reduction schedules and consideration of other safeguard measures. The EU industry recognizes the importance for European itself to improve its energy competitiveness.

UNILATERAL TRADE POLICY

Trade Defence Instruments

Fertilizer Europe is opposed to any form of “politicization” or “foreign policy” considerations impacting upon the conduct and outcomes of the EU’s trade defence instruments. The technical and legal nature of the instruments is established in specific WTO and closely related EU laws. These laws together with verified economic facts of an in depth investigation must be the determinant factors with regard to the establishment of all defensive measures.

It should always be understood that the trade defence instruments have been a fundamental cornerstone of the GATT/WTO liberal trading system.

The unfair nature of dumping and subsidization were confirmed at the very establishment of the GATT and the WTO. The well-defined GATT/WTO criteria allowing for a “safety” defensive measures have actually assisted the profound economic liberalization process. If unfair trade is not seen to be “fairly corrected ” then states and societies will just simply create retaliatory barriers and tit for tat protectionist measures. Formal fair and firm trade defence instruments prevent this

The EU, with the Commission as the administering authority, continues to conduct the most WTO compliant regulation and practice in the world. This should continue.

However, the EU often goes **beyond standard WTO provisions employing the “lesser duty rule” and a public interest test in the form of the Community Interest clause.** With regard to the “lesser duty rule’ we believe that this should be removed for countries conducting constant unfair dumping or subsidy campaigns targeted at the EU.

Equally, persistent and institutionalized dual pricing – the classic being the Russian example shown on Page 7 – resulting in such repeat dumping and or subsidy should be further corrected by the removal of the lesser duty rule. These situations were recognized in the TDI Modernisation proposal of the Commission, but unfortunately the Council could not agree upon the appropriate correction involving the removal of the lesser duty rule.

The EU institutions and Fertilizers Europe with regard to ammonium nitrate anti dumping proceedings including “gas market adjustments” have been challenged by the Russia in the Luxemburg Courts. In February 2013, the General Court ruled categorically positively, in favour, of the legality of a “market gas adjustment” in cases where a “particular market situation” arises that justifies the replacement of a regulated gas price with a market gas price. The same case is now before the WTO Dispute Settlement and the evident steadfastness of the EU/EC on this is most welcome.

Market Economy Status for China: Fertilizers Europe as a member of the EU sectoral industry alliance AEGIS supports the view that China’s MES status must involve technical

qualifying tests and not be a purely political/foreign affairs decision. While China's WTO Accession treaty suggests that MES is an issue for certain consideration by December 2016, it remains for the relevant administering authority to evaluate the merits of granting MES.

Globalisation and international communication mean faster markets and faster movements. Fertilizer Europe welcomes the Union's more active employment of the imminent threat of injury clause, monitoring of markets and tougher more stringent undertakings. Equally there have been considerable improvements in anti-fraud actions and co-ordination in general with the customs authorities.

The stand out areas for improvement however are a comprehensive legal base - upon which to conduct product scope and circumvention proceedings; a better understanding of volume injury and a volume indicator as an injury margin; and the fullest appreciation of the contemporary importance of profit ratios within the corporate world and within trade defence disciplines.

ROCE captures everything!

Summary and Conclusions

Some Measures of Performance

ROCE 'captures' everything!

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In particular, Fertilizers Europe representing the enormously capital intensive nitrogen fertilizer industry has long been advocating the adoption of the 15% ROCE profit indicator over the ROS profit ratio indicator; and at the same time explaining that an industry with investments ranging from revamps at Euro 50 million; re-builds at Euro 400 million and new investments today costing over US\$ 1.5 to 2 billion cannot tolerate constant unfair trade and low 5 to 8% ROS based profit ratings in trade defence measures. At the very least, the EC/EU should acknowledge the ROCE profit indicator as a valid reference when making profit and injury evaluation judgements.

Finally Fertilizer Europe recognizes that the Union has become over-reliant on the use of the anti-dumping instrument. However, the correct instrument should be used to correct or address the precise problem, i.e. the anti-dumping instrument for dumping and the anti-subsidy for subsidy.

Macro-economic subsidies, e.g. the Russian state fixed gas pricing regime is correctly corrected by the EU anti-dumping instrument. It is notable nevertheless that the WTO

agreement on subsidy addresses specific subsidies only. Thus non-specific subsidies assisting unfair trade should be address by the anti-dumping instrument – as appropriate.

Fertilizers Europe has observed and experienced the increased Commission and Member State preference for anti-subsidy action. However this must be serviced by expert Commission staff and the political and diplomatic management of the complaints against governments' subsidy programmes well prepared.

It is notable nevertheless that the WTO agreement on subsidy addresses specific subsidies only. Thus non-specific subsidies assisting unfair trade should be address by the anti-dumping instrument – as appropriate.

Generalised System of Preferences (GSP) The GSP is a valid trade instrument for development and trade. But it should only be applied to the truly least developed countries and not to advanced developing countries with established high incomes or with established investments in technology comparable to the EU. We thus applaud the EU's exclusion of high income GCC states from the regime as well as Russia and China.

Furthermore, current GSP tariff concessions should be conditional upon respect for sustainable development and good governance.

Fertilizers Europe supports linkages to the ILO labour standards, human rights and environmental standards. We strongly advocate the linkage of GSP advantages with commitments to climate change – and in particular to adherence to international climate change treaty commitments.

Fertilizers Europe does not support the granting of GSP concessions to countries which practice persistent dual pricing of gas which promotes also dumping or subsidy campaigns on the EU market

The GSP scheme and its management should be simplified with regard to graduation out of the scheme and with regard to a simple workable safeguard mechanism.

Duty Suspensions: Since the introduction of the new GSP scheme in January 2014, commercial operators have tried to (mis) use the duty suspension scheme as a means to re – introduce GSP tariff concessions. This is wholly unacceptable.

It is also completely contradictory to current EU trade and sanctions policies vis a vis Russia, that any duty suspension request be made that benefits Russia.

CONCLUSION

In summary, Fertilizers Europe advocates that the Union should adopt a multi-functional trade policy – a trade policy which fully integrates contemporary challenges into the trade policy body and activity, i.e. energy, climate change, currency, investment and labour factors.

Above all, whether it is offensive or defensive activity – or legal trade instruments - the Union must remain alert effective and efficient in the vital and important function of trade policy and regulation.

16TH October 2015