



RAWmaterials

European Commission
Directorate-General for Trade

**Raw materials policy
2009 annual report**

Index

INDEX	2
EXECUTIVE SUMMARY	3
1. THE EU'S RAW MATERIALS INITIATIVE	4
2. A TRADE STRATEGY FOR RAW MATERIALS	5
3. ACHIEVEMENTS OVER 2009	7
3.1. ANALYTICAL WORK AND SUPPORTIVE ACTIONS	7
3.1.1. INVOLVEMENT OF STAKEHOLDERS	7
3.1.2. ASSESSING THE ECONOMIC IMPACT OF EXPORT RESTRICTIONS	8
3.1.3. REFLECTING DEVELOPMENT PRIORITIES IN TRADE POLICY	11
3.1.4. EXAMINING THE SELF-CONSISTENCY OF EU TRADE POLICY ON RAW MATERIALS	13
3.2. TRADE NEGOTIATIONS: DEFINING THE RULES OF THE GAME	14
3.2.1. BILATERAL NEGOTIATIONS: DISCIPLINES ADOPTED IN ONGOING FREE TRADE AGREEMENTS	14
3.2.2. MULTILATERAL NEGOTIATIONS AND WTO ACCESSIONS	15
3.3. TACKLING TRADE-DISTORTIVE MEASURES	16
3.3.1. SOLVING ISSUES THROUGH BILATERAL CONSULTATIONS	16
3.3.2. MARKET ACCESS PARTNERSHIP	16
3.3.3. WTO DISPUTE SETTLEMENT: A JOINT CASE OVER CHINA'S EXPORT RESTRAINTS	17
3.4. OUTREACH TO THIRD COUNTRIES	17
3.4.1. OECD WORKSHOP ON RAW MATERIALS	17
3.4.2. DIALOGUE WITH THIRD COUNTRIES	19
4. THE WAY FORWARD	19
5. ANNEX	21
OECD RAW MATERIALS WORKSHOP – CONCLUSIONS PROPOSED BY THE CO-CHAIRS	21

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Executive summary

On 4 November 2008, the Commission adopted "The raw materials initiative — meeting our critical needs for growth and jobs in Europe" communication. It defines an integrated strategy for the EU in the field and brings together all relevant policy areas into a coherent whole. Since the EU sources a significant part of the raw materials used by its industry on global markets, this strategy includes an important external trade angle. DG Trade pledged to regularly report on its implementation. This first activity report covers actions in the domain from the end of 2008 through 2009.

The action of DG Trade has focused on three goals:

- 1. **Defining the rules of the game**, by integrating trade disciplines most relevant to raw materials in ongoing trade negotiations;*
- 2. **Enforcing the rules of the game**, by tackling the illegal trade barriers most harmful to the EU economy;*
- 3. **Reaching out to third countries** to exchange views and analysis, be they importers or exporters of raw materials, so as to favour a coordinated approach amongst all relevant actors.*

Over 2009 progress has been achieved in all three areas.

- o DG Trade completed in mid-2009 an **inventory of trade barriers** in the field of raw materials (see section 3.1.2) and further assessed their **economic impact**, showing in particular the global nature of the issue. Some of the most harmful barriers to the EU economy have been identified and action has been taken to tackle them.*
- o The EU tabled **disciplines on export restraints** in several ongoing negotiations, bilateral or multilateral. In October 2009, the EU initialled a Free Trade Agreement with Korea, which foresees a prohibition on export duties, export bans, export quotas and other export restrictions (see section 3.2.1)*
- o DG Trade focused its attention on **tackling barriers**, and repeatedly discussed the issue of Russia's export taxes on wood and steel in bilateral committees (see section 3.3.1). The Market Access Strategy has been increasingly used for tackling export restrictions of specific third countries (3.3.2).*
- o In addition DG Trade deployed enforcement mechanisms. In December 2009 the EU together with the US and Mexico launched a case under the WTO dispute settlement rules regarding China's export restraints on nine raw materials (see section 3.3.3).*
- o In terms of **outreach**, the Commission co-organised a dedicated workshop with the OECD in October 2009. It brought together over 100 government representatives, academics and business representatives, enhancing the understanding of the economic effects of export restraints and facilitating an exchange of experience on policy aims. A tentative work programme for the coming years in the field was proposed by the event co-chairs and some suggestions are already being pursued by the Commission (see section 3.4.1).*
- o In addition, DG Trade intensified its efforts to discuss the issue with third countries, in both bilateral dialogues and other settings (see section 3.4.2)*
- o Finally, DG Trade took actions aimed at ensuring the **coherence** of EU trade policy on raw materials with other EU policies, such as environment and development priorities (see section 3.1.3)*

In 2010, the Directorate-General for Trade will pursue the implementation of the strategy in the three areas, continuing to ensure the coherence of the EU's trade policy, and further developing its outreach to third countries.

1. The EU's Raw Materials initiative

Over the last few years, the raw materials markets have been marked by a strong growth in demand, especially from emerging economies, together with a more recent augmentation of trade barriers imposed by third countries affecting supply to the EU.

Sectors such as aerospace, automotive, chemicals, construction, equipment and machinery, which provide a total added value of €1 324 billion and employment for some 30 million people in the EU, all depend to a large extent on a sustainable supply of raw materials¹.

The EU's economy is therefore sensitive to measures hampering the free circulation of goods and services linked with raw materials, especially when they lead to distortions of competition in the global market.

Most of the distortive measures take the form of export restrictions (covering export bans, export quotas, export taxes, export duties or discriminatory export licensing). In 2007, DG Trade identified in an informal fact-finding exercise, 400 tariff lines affected by export restrictions on commodities or barely processed products². The most affected sectors were chemicals, hides and skins, metals and minerals, and wood.

This general context prompted a renewed interest in raw materials, and the Competitiveness Council³ in 2007, and the European Parliament⁴ in 2008 requested further action by the Commission. On 4 November 2008, following a series of public consultations, the Commission adopted a communication entitled "*The raw materials initiative — meeting our critical needs for growth and jobs in Europe*"⁵.

This communication recognizes the importance of ensuring a **sustainable supply of raw materials** to the EU economy, and puts forward a strategy aimed at meeting this challenge. It suggests that the wide range of internal and external policy areas involved, ranging from industrial and environmental policy to trade policy, development policy and foreign policy, need to be pulled together.

The EU's Raw Materials Initiative is conceived as an integrated strategy, bringing together all relevant policy tools into a coherent approach. It is based on three pillars:

- **Reducing the EU's consumption of primary raw materials:** the first step in ensuring a sustainable supply of raw materials is to increase the efficiency in the use of scarce resources and to promote the recycling of these materials. This aim is all the more relevant in the context of limited supply growth facing ever increasing global demand.
- **Increasing the availability of raw materials sourced within the EU:** another important internal aspect of the initiative is to ensure that the right framework and conditions are in place to prevent unnecessary administrative burdens from limiting the use of locally available raw materials.
- **Promoting the sustainable supply of raw materials from third countries:** this is the main external angle of the strategy. Given the dependence of the EU on imports, it is important

¹ Annex 1 "Mineral raw materials value chain in EU27 (2005)" to the Staff Working Document, page 2.

² A more recent fact-finding exercise in 2009 suggests this number has largely increased (see section 3.1.2).

³ Conclusions of the Competitiveness Council, 22-23 November 2007.

⁴ European Parliament resolution of 20 May 2008 on trade in raw materials and commodities (2008/2051(INI)).

⁵ Reference {SEC(2008) 2741}.

to ensure that the supply of raw materials to our economy is both sustainable and carried out under undistorted and fair conditions for all parties.

In its Raw Materials Initiative, the Commission pledged to regularly inform policymakers and other relevant stakeholders on the implementation of the strategy. A comprehensive activity report encompassing all three aspects of the Initiative will be published by the end of 2010.

2. A Trade strategy for raw materials

The trade pillar of the Raw Materials Initiative was further refined in consultation with EU Member States and the European Parliament, and on the basis of discussions with other stakeholders. An important contribution to this process came from the conference "Trade and Raw Materials – Looking Ahead"⁶ organised by DG Trade on 29 September 2008. The conference identified the various aspects that are relevant for the EU's trade policy on raw materials through discussions on the regulatory, economic and technical environment for trade in raw materials.

The conference was attended by a total of 300 participants from administrations (from Member States and third countries), industry and industry associations, international organisations, non-governmental organisations, research centres, think tanks and universities. Participants came from Africa (Congo, Kenya and Uganda), America (Argentina, Canada, Chile, Mexico and the US), Asia (China and Japan), Russia and Europe in a wider sense (EU but also Turkey and Switzerland), providing an adequate global dimension to the event. Through a combination of plenary sessions and debates in working groups, participants exchanged views and experiences on the rationale behind, and the economic impact of, trade restrictions in raw materials as well as presenting possible solutions to meet this challenge.

The then Trade Commissioner Peter Mandelson closed the conference with an overview of the various components of a trade strategy in the raw materials field. These continue to provide the foundation of the EU's strategy for the sustainable supply of raw materials.

The goal of the EU's Trade strategy is to ensure that the Union can meet its demand for raw materials through a sustainable and predictable supply from third countries. A priority target are trade-disruptive measures that endanger a continued supply of raw materials, in particular for products where the EU is highly dependent on imports, and/or where the measures distort the level-playing field between EU economic operators and those from the third countries imposing restrictive measures. At the same time, the strategy foresees that governments can pursue legitimate policy aims related to raw materials, as detailed in section 3.1.3.

The challenge of ensuring a sustainable supply of raw materials can not be met through a "quick fix" remedy: neither at multilateral nor bilateral levels is the debate an easy one. A coherent trade policy therefore needs to amalgamate the various policy strands related to it and combine them into a single overarching strategy. Thus the EU's own Trade strategy is built on three main pillars, which have been further expanded into a detailed action plan:

1. **Defining the rules of the game:** a series of trade disciplines are relevant to improve the functioning of the global raw materials market. They include rules applicable to export restrictions, dual pricing, competition, taxation and investment provisions (e.g. in the

⁶ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=351&serie=228&langId=en>

mining sector). Since current WTO rules do not prohibit export duties, the EU's objective is to ensure that such rules are incorporated in ongoing and future negotiations, in both a bilateral (Free Trade Agreements and non-preferential agreements), and multilateral (DDA, WTO accessions) context. Other possible actions might involve classification of exceptions grounds where restrictions might be justified. On the latter there is no question that limitations to the supply of raw materials may be justified (for example on environment or development grounds). Of course these justifications need to be framed on the basis of clear rules and applied in a non-discriminatory manner.

2. **Effective enforcement and tackling of restrictions:** the Commission is committed to ensuring that trade rules agreed by all parties are applied in practice, and will tackle barriers hampering the sustainable supply of raw materials to EU economic operators. A series of tools are available to that effect, including instruments such as the Market Access Partnership (MAP) to tackle non-tariffs and other "behind the border" barriers in the markets of our most important trading partners, the Trade Barriers Regulation (TBR) or the WTO's dispute settlement. In view of the variety of barriers, it is essential to establish priorities in terms of countries and type of restriction, to ensure effective targeting of measures.
3. **Outreach to third countries:** along with rules-based activities, a further priority for the EU is raising awareness of the issue at an international level. The objective is twofold: to exchange views with similar raw material-dependant countries, and establish partnerships with raw material-rich countries that apply export restrictions, so that issues of common interest can be discussed from a longer term perspective. Actions cover (i) the intensification of bilateral dialogue with major EU trading partners, (ii) the commencement of work on raw materials in the OECD, and (iii) where appropriate, raising the topic in other multilateral forums such as the G8 or the United Nations Conference on Trade and Development (UNCTAD).

The strategy also includes a series of actions aimed at complementing the work structure described above and includes:

- involving all stakeholders and regularly reporting on the implementation of the strategy;
- undertaking analytical work such as monitoring trade barriers and developing economic analysis to assess their impact;
- engaging, where necessary, in the formulation of policy to define better adapted rules;
- ensuring coherence between the pillars of the strategy and across Community policies.

Complementing the general reporting work related to the Raw Materials Initiative, DG Trade has committed itself to issuing an annual activity report on trade activities. This first report covers actions undertaken during 2009 as well as those commenced at the end of year 2008.

3. Achievements over 2009

3.1. Analytical work and supportive actions

3.1.1. Involvement of stakeholders

As outlined above, the relevance of a close partnership with policymakers and all relevant stakeholders, including civil society, has been recognised from the outset as a key element to ensure the success of the strategy. DG Trade regularly reports on progress in the implementation of the Trade raw materials strategy and participates in meetings and/or workshops involving third parties.

During 2009, **Member States** have played an active role in the definition and in the conduct of this policy with the adoption of conclusions of the Competitiveness Council on 28/05/2009⁷ and on 04/12/2009⁸. Throughout the year, periodic consultations related to the execution of the Action Plan were held in the Trade Policy Committee (formerly 133 Committee). Finally, Member States were closely associated to the attempts to tackle export measures, including through the Market Access Strategy and the Market Access Teams established between EU delegations, national embassies and business representatives in key countries (see section 3.3.2).

The **European Parliament** has been involved from the beginning of the process, with the Raw Materials Initiative building upon the guidelines set out in the European Parliament's resolution of 20 May 2008 "on trade in raw materials and commodities" (2008/2051(INI)). The Parliament has since been regularly kept informed of progress.

DG Trade took part in several meetings with the Consultative Commission on Industrial Change during the preparation of the **European Economic and Social Committee's** (EESC) report on raw materials⁹, to present the trade aspects of the Raw Materials Initiative and answer EESC representatives' questions.

In addition, DG Trade took part in several events involving **civil society**, including **NGOs** and **business associations**, to exchange views and provide information.

In October 2009, DG Trade organised a workshop to discuss the EU's trade policy and raw materials, as part of its Civil Society Dialogue¹⁰. Participants, including research institutes, industry associations and NGOs had a fruitful exchange on the EU's raw materials policy with the Commission (DG Trade, Enterprise, Environment and Development), highlighting, inter alia, the importance of an integrated policy approach to the topic. Furthermore, the Evert Vermeer Foundation, an NGO specialising in development issues, organised in November 2009 the "Fair Politics Expert Meeting on the Raw Materials Initiative and Policy Coherence for Development" in the premises of the European Parliament. This meeting aimed to create awareness and debate on the Raw Material Initiative by bringing together Members of the European Parliament, the European Commission, NGOs, businesses and experts from both Europe and Africa.

⁷ "An integrated approach to a competitive and sustainable industrial policy in the European Union", ref. 10527/09.

⁸ "Towards a competitive, innovative and ecoefficient Europe - a contribution by the Competitiveness Council to the post-2010 Lisbon agenda", ref. 17179/09.

⁹ CCMI/060 - Opinion on Communication from the Commission to the European Parliament and the Council: The raw materials initiative - meeting our critical needs for growth and jobs in Europe, COM(2008) 699 final.

¹⁰ <http://trade.ec.europa.eu/civilsoc/>

European industry has been kept informed through the bi-annual meeting of BusinessEurope's raw materials committee, at which DG Trade provides information on recent developments in the implementation of the Raw Materials Initiative. DG Trade has also intervened in events organized by business federations, such as the Raw Materials committee of the Bundesverband der Deutschen Industrie (BDI), or the European Raw Materials Trade and Investment forum (co-organized by BusinessEurope and the Canada-EU Mining Council), providing an opportunity to present a general outlook of the European Raw materials policy to a wider set of actors.

3.1.2. Assessing the economic impact of export restrictions

An important element of the Commission's work to implement the Raw Materials Initiative is developing and refining the assessment of the economic trends on the raw materials markets. During 2009, this was done both through the update of a database on export restrictions and through the co-organisation of economic workshops, such as an OECD event (see section 3.4.1)

Scope

"Raw materials" comprises a wide range of products, including *inter alia* simple minerals extracted from the earth and barely processed before being sold and shipped to countries far from their place of origin; secondary (recycled), raw materials which are increasingly important inputs to the European industries; or so-called strategic or critical raw materials, such as rare metals or ores found only in few locations worldwide. Apart from these unprocessed materials, there are also a large number of not-fully processed industrial inputs that are sometimes subject to similar constraints and policy challenges in the trade area as unprocessed materials. The Trade strategy covers all these kinds of raw materials: in the trade field, it is important to adopt a broad view in the definition and discussion of raw materials, as resulting distortions are equally problematic.

Assessing the importance of raw materials supplies

Europe is a supply chain economy: the materials that power our manufacturing industry are sourced from every part of the world. European companies need to import in order to export: not only **availability**, but **undistorted pricing** of raw materials in world markets is thus crucial to the sound functioning of the EU's economy.

Interdependence of national economies in the supply of raw materials

The global consumption of raw materials has increased since the beginning of this century with an evident impact on trade. This follows a decade of strong and continuous growth (until 2008) as is illustrated by world trade figures for certain key sectors:

- agricultural products: +9%/year in world exports 2000-2007
- base metals: +21.6%/year in global market over 2004-2008¹¹

The increase of trade in raw materials is a consequence of their increased consumption worldwide. As no single country possesses every type of raw material that it requires, or even owns them in sufficient quantity to meet its internal demand, trade necessarily has to come into play.

Thus it would be a mistake to assume that the sustainable supply of raw materials is exclusively a topic of interest for developed economies or for resource-poor countries. Indeed, even countries

¹¹ WTO trade statistics, processed by DG Trade.

generally qualified as "resource-rich" are facing the need to import some raw materials. For example:

- China, Canada, Russia and India figured among the top-10 iron ore and steel importer in 2007;
- China, Canada, Brazil, Russia and India figured among the top-15 chemical products importers in 2007;
- and the very same countries, more often than not, rank as the top exporters of these same products.

Thus the question of ensuring a sustainable supply of raw materials is or should be a concern to most economies, as most are part of and dependent on this supply chain. Any impediments to trade, such as export restrictions, will affect (admittedly to varying degrees), developing and developed countries, "resource-rich" and "resource-poor" countries.

Assessing the cost of trade-distortive measures

As the global demand for raw materials grows, the question of how efficiently they are used will become a key issue.

Export restrictions create a long-term risk, as they switch off the international price signals and distort the level playing field, which is crucial for efficient production and the efficient allocation and use of raw materials. As a result of such restrictions, international markets' prices could increase if supply falls, hurting downstream international producers that will be faced with higher priced inputs. At the same time, in the countries imposing such restrictions downstream firms will benefit from a "subsidy" in the form of artificially cheaper, "oversupplied" raw materials in comparison with the rest of the world. Such market distortions would divert resources away from other potentially more competitive industries while encouraging overconsumption, which, in turn, will be exacerbated by discouraging productivity growth. Moreover, eventually the depressed domestic prices will lead to a slide in production of the raw material concerned so that any initial benefits are often cancelled out by the loss in foreign market share and foreign currency income.

Public policy aims – such as strengthening of infant industries, or ensuring a stream of government revenue from commodity exports, or even restricting trade in environmentally sensitive goods like timber – are often cited as the justification for export restrictions. Analytical work in this respect (see section 3.4.1) has been assessed by DG Trade: the conclusions reached by academics are complex and will necessitate further work. Nevertheless, there are first indications that in a majority of cases, similar objectives could be more efficiently achieved through more targeted or less trade-distortive measures.

In some cases, export restrictions are not only sub-optimal in terms of global welfare loss, but can very directly harm the country imposing them. For example, Bangladesh consistently ranks as the top world exporter of raw jute (HS 5303) and jute yarn (HS 5307), a raw material trade that has generated over \$400m of foreign currency revenue for the country in 2009¹². On 7 December 2009, the government of Bangladesh decided to ban jute exports, which had immediate consequences not only on users worldwide, but primarily on Bangladeshi producers and exporters.

¹² *United Nations Commodity Trade Statistics Database (COMTRADE).*

As a consequence the export ban was partially lifted in January 2010 under the pressure of domestic economic operators themselves.

Finally there is another set of problems. In a globalised economy, export restrictions can also pose a more systemic risk. By raising world prices and cutting off supplies of raw materials, beggar-thy-neighbour export restrictions invite a cycle of retaliation that is as economically counterproductive as it is politically hard to resist. As global demand is expected to further grow, policymakers cannot afford to ignore the knock-on effects of shutting down or overly politicizing supply markets.

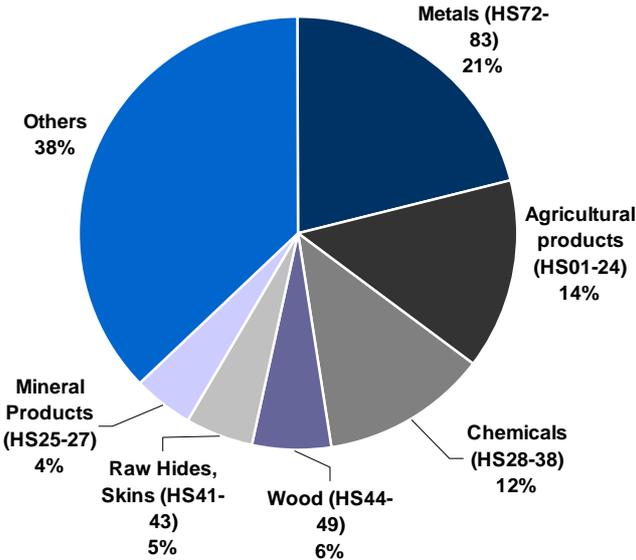
Monitoring the number of export restrictions on raw materials

A basic, albeit key element in the Trade strategy is the monitoring of export restrictions measures applied worldwide on raw materials, as solid factual information is critical to the definition of policy and establishing priorities for future steps. In line with this drive, the export restrictions database created in 2007 is updated on a yearly basis.

By September 2009, the database covered 19 countries including Algeria, Argentina, Brazil, China, Egypt, India, Indonesia, Kazakhstan, Russia, South Africa, Thailand and Ukraine. 1233 export restriction measures¹³ were identified. On a purely quantitative outlook, the countries imposing the largest number of measures included Argentina (888, a high number which is explained by the presence of a 5% horizontal export tax), Ukraine (80), China (40), Russia (39), South Africa (30), Kazakhstan (27), and Algeria (25). It is important to note that this inventory presumes neither the **legitimacy** (incl. WTO compatibility) nor the **actual economic impact** of the measures identified. Further assessment needs to be carried out on a case by case basis.

The most affected sectors include agricultural products, chemicals & allied industries, metals and mineral products, raw hides and skins, and wood.

The chart on the right provides a breakdown of the number of measures¹¹ applied by sector.



Defining priorities among trade-distortive measures targeted by the Commission

¹³ A "measure" is defined as a tariff line at HS4 level being subject to either quantitative restriction (export quota or export ban), an export tax, or a non-automatic export licensing process.

Prioritising between the export restrictions to be tackled is a complex task requiring a case-by-case evaluation of the **market situation** for a given raw material, and the level of **legitimacy** of the measure itself.

Regarding the market situation, demand side as well as supply side factors have to be taken into account.

As to the demand side, it is important to look at the weight of the sectors using these raw materials in the EU economy, be it in terms of added value and/or employment, as well as at the availability of alternative inputs and/or alternative production processes.

On the supply side, it is crucial to look at whether the market for a given raw material is competitive (notably without operators disposing of significant market power). If that is the case, the impact of punctual export restrictions could be relatively low as firms switch to alternative suppliers. Even this is, however, not totally insignificant given the time and costs associated with switching suppliers. For other raw materials, some suppliers benefit from a monopolistic or quasi-monopolistic position on world markets. In such cases, export restrictions could significantly impact the EU economy and beyond:

- Export bans or quotas can lead to the temporary or even definitive closure of production units in the EU, since these are simply not able to access the inputs they require to continue in business. This obviously has a direct impact on the EU's economy and its employment levels.
- Export taxes can lead to increased input costs, with a negative effect on the competitiveness of EU companies. At the same time the domestic industry of the country applying export restrictions will benefit from lower input prices, thus artificially boosting its own competitiveness and further lowering that of EU-based companies. This eventually leads to losses of production capacity and employment in the EU.

The question of the legitimacy needs to be further assessed as regards its coherence with the EU's other policies, such as environment or development priorities, as detailed in section 3.1.3.

3.1.3. Reflecting development priorities in trade policy

The area of "raw materials" is wide ranging, encompassing a variety of topics from the competitiveness of EU industry and environmental policies, to the EU's relations with third countries. From the Commission's perspective, this intertwining of issues is a powerful reason for developing an integrated strategy.

A particular aspect of the work regarding the Raw Materials Initiative, and in particular its trade dimension, has been to ensure coherence of EU trade and development policies. In this respect, DG Trade has launched work on several key issues:

- in specific bilateral negotiations, aiming to integrate development priorities into trade policy;
- clarifying the possible exceptions grounds to be applied when agreeing on disciplines on export restrictions;

- defining priorities when tackling trade-restrictive measures, taking into account the EU's development objectives in the assessment of the acceptability of any given measure.

Development aspects of the raw materials policy

Trade agreements can be a useful tool in promoting the economic diversification of developing countries. Economic Partnership Agreements (EPAs) differ from other trade negotiation instruments, in so far as their focus is the development of the EU's African, Caribbean and Pacific (ACP) partners.

Less Developed Countries ("LDC") economies that primarily depend on the exploitation of their mineral resources need to promote further economic diversification. A country that is excessively dependent on a single export sector may be strongly impacted by price volatility of this product if it does not protect itself from these effects. Strategies which support the growth of different sectors through increased investment in research and development, innovation and training are therefore to be encouraged. In addition, absence of solid government institutions assisting in the management of mineral rents and tax collection to stabilize revenues generally acts as a constraint on broader based growth.

The EU's development policy supports measures by developing countries, in particular industry deficient LDCs, to improve the framework conditions for the sustainable use of raw materials and a development-orientated use of the revenues. A large part of this action is made by contributing to the establishment of a comprehensible legal framework promoting legal security and protection of investment, as well as supporting good governance¹⁴. On an international scale, the relevant development-policy aspects of sustainable extraction and use of raw materials will continue to be advocated in future. This includes in particular endorsing the implementation of internationally acknowledged minimum standards and conventions in the areas of environmental protection, occupational safety and health protection¹⁵.

In this context, the EPA process supports the development aspects of the Raw Materials Initiative such as the strengthening of economic governance, the creation of an improved investment climate, transparency and the promotion of sustainable management of natural resources.

Developing fair rules on export restrictions in FTAs and non-preferential agreements

Under certain circumstances, restrictions to the supply of raw materials may be justified: situations may arise where export restrictions are important to support, for example, development objectives, protection of the environment or the sustainable exploitation of natural resources. There is an obvious case for coherence between EU development policy as presented above, and the EU's need for a sustainable supply of raw materials in order to create win-win situations: good governance, transparency of mining deals and mining revenue, a level playing field for all companies, financing opportunities, sound taxation regimes and sound development practices are beneficial both for developing countries and the EU. For the agreed measures to bear the expected positive effects, they need to be framed on the basis of clear rules and objectives. Any measure must be applied in a non-discriminatory manner (i.e. the EU should not suffer any penalisation

¹⁴ See also the communication "The raw materials initiative" (SEC(2008) 2741), section 2.1.A "Strengthening States" and 2.1.B "Promote a sound investment climate".

¹⁵ See also the communication "The raw materials initiative" (SEC(2008) 2741), section 2.1.C "Promote sustainable management of raw materials".

beyond that imposed on other operators), and not be unnecessarily burdensome or trade restrictive (i.e. be proportionate to their objective).

This is not new in trade policy where various examples clarify that environmental protection or shortages can provide a reason for introducing restrictive measures¹⁶.

DG Trade has been working to further clarify the various possible grounds for exceptions that it may contemplate in its bilateral agreements. By their nature these deliberations need to be formulated with due respect of the negotiating process and to date have essentially been made on an *ad hoc* basis in the context of specific negotiations or existing agreements. The Commission will continue to take steps to further improve its thinking in this important area and share its results with external actors at the most suitable instances.

Defining priorities between the trade-distortive measures targeted by the Commission

As outlined in the economic analysis above, DG Trade takes into account several criteria when assessing what export restriction measures should be tackled in priority. Beyond the purely economic and industrial criteria, are those established in line with the EU's development policy and environmental protection objectives.

3.1.4. Examining the self-consistency of EU trade policy on raw materials

An important element of the Trade strategy is to ensure the full coherence of the various strands of EU trade policy on this specific issue. This encompasses a wide variety of topics, from the preferential access to EU market granted unilaterally to third countries under the Generalized System of Preference (GSP) or other bilateral agreements; to the conditions of use of Trade Defence Instruments (TDI), or the EU's own import regime for various raw materials. In 2009, work has focused particularly on these two last topics.

Trade Defence Instruments

The EU should ensure that any distortion in the cost of raw materials resulting from export restrictions, dual pricing practices or mechanisms with a similar economic effect in operation in the exporting country, are addressed and offset in the context of Trade Defence Instruments (TDI) investigations. Even if tackling the effects rather than the source of the problems constitutes a "second best" solution, TDI can prove an effective tool for implementing the Trade raw materials strategy. Indeed, such instruments provide a means of tackling trade distortions at downstream level resulting from unfair trade practices, such as exports to the EU of downstream products at dumping prices as a direct result of distortions on raw materials markets.

In 2009, this issue was discussed internally, in view of implementing more consistently certain practices. Thus in several cases, a distortion in the raw materials sector was considered as a "significant state interference" justifying the refusal to grant Market Economy Treatment (MET) and leading to findings of dumping.

EU import regime for raw materials

¹⁶ Examples of justifications are contained in Article XX GATT and, for shortage (of foodstuff), Article XI GATT.

Although import duties are already low or at zero level for most industrial raw materials, reflecting the transformational nature of EU's economy, certain tariffs continue to be maintained on a small number of goods, often as a result of a compromise between the interests of domestic producers and those of importers.

The Commission follows attentively the evolution of this balance and the remaining tariff lines with positive duties continue to be followed on a case-by-case basis. In 2009, work was launched in the Trade Policy Committee "STIS" (formerly 133 STIS Committee), on the issue of import duties on bio-ethanol for use in the chemicals industry - in the framework of the sectoral work on chemicals engaged by the Swedish presidency and DG Trade. That particular matter proved to be a sensitive one. Gathering together various policy areas and needs to be further explored in the light of all pertaining technical details.

3.2. Trade negotiations: defining the rules of the game

Over the past year DG Trade has concentrated its activity on the issue of export restrictions (covering export duties, export bans, quotas and non-automatic export licences), both in bilateral and multilateral settings. The issue of dual pricing has also been evoked in certain negotiations. Moreover, DG Trade has begun to examine the question of disciplines on investment (e.g. restrictive investment provisions in the mining sector). Finally, horizontal work aimed at ensuring the coherence the EU approach in ongoing and future negotiations has also been undertaken.

3.2.1. Bilateral negotiations: disciplines adopted in ongoing Free Trade Agreements

EU bilateral trade agreements are made with various objectives in mind: some are primarily competitiveness-driven, with a main focus on market access (such as those inscribed in the framework of the Global Europe strategy), while others are strongly integrated with the EU's development policy. We will focus in this section on the first kind of agreements.

In terms of export restrictions, the majority of discussions in current bilateral negotiations have focused on disciplines for export duties, since quantitative restrictions (i.e. export quotas and export bans) are already covered by GATT rules for WTO members.

A first important result in 2009 was the conclusion of the EU-Korea FTA negotiations. Then Trade Commissioner Catherine Ashton and South Korean Trade Minister Kim Jong-Hoon initialled the FTA agreement on 15 October 2009, which foresees a prohibition on export duties, export bans, export quotas and other export restrictions.

In other negotiations, such as the EU-Ukraine FTA, parties agreed to fully eliminate existing export duties in the context of the FTA, following a partial elimination as part of Ukraine's accession to the WTO in 2008. As regards the specific issue of energy raw materials, the EU has also developed a proposal addressing the issue of pricing including a prohibition on dual pricing. Both sides engaged in discussions on this proposal during the 7th round of negotiations held at the end of June 2009.

The general idea of disciplines was tabled in the FTA with Colombia and Peru, although details of their implementation continued to be finalized at the end of 2009.

The importance of the issue for the EU is also shown in other negotiations such as those of the EU-Gulf Cooperation Council¹⁷ FTA, where the issue of export duties remains as one of the principal stumbling blocks to a successful outcome of the talks. While paying a high importance to this issue the EU has continued to be cooperative and has tabled new proposals in 2009. In this instance, the Commission continued to reflect on what would be the best path ahead, bearing in mind the importance of the GCC and the clear precedent that any agreement concluded would set for negotiations with future partners.

Finally, some negotiations have yet to reach a more advanced stage and the issue of export duties, with an EU position in line with the one in other bilateral negotiations, remains on the agenda and will be subject of future talks. This is the case for the EU-India FTA or the EU-Canada CETA negotiation.

3.2.2. Multilateral negotiations and WTO accessions

As far as multilateral negotiations are concerned, the EU tabled in the past a proposal regarding disciplines on export duties in the context of the Doha round, which is currently not subject of discussions but nonetheless continues to constitute EU's position.

The EU has used the opportunity of WTO accessions to include this issue in negotiations with a range of candidate countries relevant from a raw materials supply perspective. Amongst these candidate countries, those presenting the clearest interest for the EU in terms of raw materials supply include Algeria, Azerbaijan, Belarus, Kazakhstan and Russia.

Azerbaijan currently applies export duties on a variety of goods but has stated its intention to eliminate them during its WTO accession process. The related timeframe, leading to the eventual suppression of export duties remains under consideration. In any event, the elimination of these duties will be contingent on the progress of the accession negotiations as a whole.

Belarus, Kazakhstan and Russia, which were individual candidate countries to the WTO, announced in July 2009 their intention to accede to the WTO as a Customs Union. On 15 October, the three countries further announced that they would coordinate their negotiating positions and seek to agree to similar commitments concerning all chapters falling under the competence of the Customs Union. At this time, the issue of export duties, pricing policies and service and investment are expected to remain under the national competence of each country and hence are not to be harmonized within the Custom Union itself.

Under previous bilateral negotiations, Russia had agreed to take steps on the issues of export duties. In particular it had agreed to take up commitments on export duties and dual pricing as part of its WTO accession package and under the 2004 bilateral market access deal it concluded with the Commission. Concretely, this element is reminded in the ongoing dialogue with Russia regarding the export duties on wood, as detailed in section 3.3.1.

In any event, the Commission will remain vigilant so as to ensure that EU trade interests related to the three countries are adequately taken account of, either through the Customs Union process or if and when individual country accessions take place.

¹⁷ *Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.*

3.3. Tackling trade-distortive measures

During 2009 DG Trade gathered information about trade barriers through dialogue with economic operators and assessed their economic importance and legitimacy on a case-by-case basis. In the first instance DG Trade attempted to resolve identified issues through consultations with the relevant countries (see also section 3.4.2). If no progress was registered (despite repeated attempts), DG Trade resorted to alternative tools such as the Market Access Partnership or the WTO's dispute settlement.

3.3.1. Solving issues through bilateral consultations

Russia's export duties on wood

New schedules for gradual export duty increases for wood were adopted by Russia in 2006 and 2007, particularly affecting EU wood-related industries largely dependent on imports from Russia, such as paper producers. The EU institutions and business community reacted very strongly against Russia's plans at all levels, pointing out that this decision, clearly at odds with the commitments undertaken in its WTO accession protocol (as detailed in section 3.2.2), undermined Russia's credibility in these negotiations. One result was that the final export duty increase, initially scheduled for 1 January 2009, was postponed to 1 January 2011, with a moratorium on further increases. In light of the damaging impacts on both EU industry and Russian wood producers, the EU does not consider this result to be satisfying and pursues discussions on the issue with Russia.

Steel trade with Russia and Kazakhstan

Trade in steel products with both Russia and Kazakhstan is governed by special regimes. Trade with Russia is governed by a bilateral steel agreement banning export duties on related raw materials, while trade with Kazakhstan is governed by autonomously set EU import quotas with the perspective to conclude a steel agreement with the same raw materials provisions.

When Russia and Kazakhstan independently announced their intention to increase (resp. introduce), an export tax on metal scrap, the EU announced to its counterparts that the implementation of such a measure would immediately and directly impact the level of the steel import quotas applicable for these two countries.

3.3.2. Market Access Partnership

As part of its Global Europe initiative, DG Trade has developed a tool aimed at removing trade barriers to enable EU companies to take full advantage of global markets: the Market Access Partnership (MAP). This tool has now been in place for 3 years and proved its effectiveness with more than 30 successful barriers removed in 2009.

The Trade strategy for raw materials takes full advantage of the MAP.

Within this framework, firstly, the Market Access Advisory Committee (MAAC), which brings together the Commission, the Member States and business representatives, has been a useful forum to share information on the different barriers, to flag issues of particular relevance to industry and to enhance general cooperation among stakeholders. For example, restrictions

imposed by China were considered by this committee on a number of occasions and specific working groups, such as the one on textiles established in January 2009, further complemented this work.

Finally, the Complaint Register of the Market Access Database was also used by economic operators to notify difficulties they met related to raw materials. Examples include export duties introduced by Russia or China. From this list of barriers, priorities were identified for each of our main trade partners. Export restrictions appear on the priority list of 7 countries.

3.3.3. WTO dispute settlement: a joint case over China's export restraints

China applies export restrictions – including quotas and export duties – on a series of key raw materials. Because of the especially strong position of China as a supplier, these restrictions not only increase global prices for these materials but they also distort worldwide competition for the downstream industries. Indeed, industries processing these materials in China have access to cheaper inputs than their competitors abroad, including EU industries, which amounts to an artificial subsidization of the domestic industry. This distorts the level playing field that can be expected between WTO members.

The EU has raised these restrictions with China over the years in all the various bilateral forums available, be they technical or high level. Unfortunately, these efforts have not been met by any engagement or even reaction from the side of China. In reaction to this the EU, together with Mexico and the U.S., requested formal WTO consultations on 23 June 2009. Since these discussions did not lead to an amicable solution, a request was made on 21 December 2009 for the establishment of a dispute settlement panel at the WTO.

This panel request focuses on a batch of products including yellow phosphorous, bauxite, coke, fluorspar, magnesium, manganese, silicon metal, silicon carbide and zinc.

The measures in place – quotas, export duties and minimum export prices – appear to be in violation not only of general WTO rules, but also of specific commitments that China signed up to, as part of its WTO Accession Protocol. This sets out either prohibitions against the use of export duties or establishes strict caps on a limited number of products, all of which have been broken. Export quotas without justification are prohibited under Article XI of GATT. China has similarly failed to notify many of its export quotas to the WTO, despite its firm commitment to do so.

3.4. Outreach to third countries

An important element of DG Trade's action is to exchange general information on raw materials policy with third countries and at the same time present the EU's approach on the matter to these, with a view to improving mutual understanding. This concerns not only import-dependent countries in a similar position to that of the EU, but equally supplier countries, some of which apply export restrictions. Outreach is conducted under various settings, including bilateral dialogues, as well as thematic discussions in plurilateral instances such as the OECD.

3.4.1. OECD Workshop on raw materials

In early 2009, DG Trade made a proposal to hold an OECD Workshop dedicated to raw materials with the aim of fostering debate on the issue and starting a dialogue with countries that resort to export restrictions. This proposal was approved by the OECD Trade Committee on 29 April 2009 and the workshop took place on 30 October in Paris.

The main objective of this workshop was to increase awareness of the issue amongst both OECD and non-OECD members, through an exchange of views on economic and policy implications. Chile, Israel, Russia and Argentina figured amongst the non-OECD members that participated.

The event was organized around two sessions:

- The first session focused on **economic aspects**. An improved understanding of the economic effects of measures affecting the supply of raw materials is instrumental in getting a clear grasp of the more important policy dimensions. The session began with an overview of export restrictions and their economic impact, followed by presentations from industry representatives in the form of case studies (sectoral approach);
- The second session focused on an exchange of views between member and non-member countries, and aimed to clarify the objectives that are pursued through export restrictions policies. This proved an interesting starting point to discuss policy alternatives that allow the achievement of similar objectives to those being fixed whilst being less distortive of trade flows. This session was particularly focused on **policymakers** so as to foster inter-administration dialogue.

The detailed programme and the interventions are available online on the OECD's website, <http://www.oecd.org/trade/ntm/rawmaterials>

The workshop constituted a useful step in broadening the analysis and the understanding of the use of export restrictions with help from a varied audience. This setting also allowed for fruitful discussions amongst over 100 representatives from governments, academia, think tanks and businesses.

The workshop certainly confirmed that raw materials are an issue of global interest, affecting both developed and developing countries.

With regard to the economic dimension, the interventions illustrated the global dimension of the issue and the interdependence between importing and exporting countries.

Some participants underlined the potentially negative effects of export restrictions on LDCs and DCs (especially those more exposed to shifts in trade patterns).

The research papers presented by economists and the case studies presented by industry showed that export restrictions cannot be perfunctorily described as a case of clear-cut counter-opposition between developing and developed countries: developing countries can be just as damaged by the inefficient allocation of resources generated by such restrictions as developed countries¹⁸. In particular, it was suggested that some countries that today resort to export restrictions would in fact be better off in the longer term if the use of such instruments was disciplined globally.

¹⁸ "[The economics of export taxation: a theoretical and CGE-approach contribution](#)", Antoine Bouet, *International Food Policy Research Institute*.

Regarding the policy dimension, exchanges on the policy rationale behind the measures were fruitful. Various grounds for imposing export restrictions were described, such as ensuring fiscal revenues; food security; or fostering industrial development. Some participants highlighted the need to distinguish the grounds of given restrictions on the basis of the individual conditions of each country. Noteworthy was the frequent reference to restrictions for industrial purposes as one of the most distortive measures. Some pointed at the basic right of all countries to diversify their economies but did highlight that alternative means to achieve such objectives do exist¹⁹.

Following these discussions, the two co-chairs of the workshop proposed joint conclusions that are available as an annex of this document.

3.4.2. Dialogue with third countries

The preparation of the OECD workshop described above provided a significant opportunity to carry out exchanges with a number of countries involved in the preparation of the event. Additional developments in EU bilateral dialogues are listed below. The level of activity is mainly dependant on the agenda items of periodical summits and/or work committees already established.

In addition, we have used the various existing bilateral mechanisms and the Market Access Partnership to establish or reinforce dialogues with third countries on raw materials.

A first step has been to include raw materials in the dialogue structure with EU trade partners. With **China**, efforts to include raw materials on the agendas of the High Level Economic Dialogue (HED) and of the May 2009 Summit have not materialized even if the topic has been part of the agenda of various meetings at more technical level. As for the **US**, discussions were launched regarding the possible inclusion of raw materials under the Transatlantic Economic Council (TEC) umbrella. Another example includes **South Africa**, where during the EU-South Africa Trade Cooperation Committee in June 2009, both sides reaffirmed their commitment made at the G20 Washington Summit and reiterated at the London Summit, to refrain until the end of 2010, from imposing new export restrictions. Both sides also agreed to keep under review the impact of other measures undertaken in the context of the economic crisis that could distort trade and investment flows.

As for the Market Access Partnership, work under this heading was particularly useful in working together with some third countries on raw materials, as has been the case for the regular dialogue established with Japan.

4. The way forward

Whilst last year's economic crisis may have partially alleviated the short-term pressure on prices, the Commission considers that the underlying fundamentals pushing towards higher prices and/or increased supply risks for raw materials have not been greatly affected. Moreover, trade distortions have far from disappeared and continue to negatively affect EU companies. The continued relevance and importance of this initiative remains very high, and its implementation requires a long-term concerted effort. Thus, and in line with the sustained activity in the Raw

¹⁹ "[Economic impacts and policy objectives of Export Restrictions: Chile's Experience](#)", presentation at the OECD workshop on raw materials.

Material Initiative, the Commission will continue to keep a strong stance in all domains of trade policy relevant to guarantee the EU a sustainable supply of raw materials.

During 2010, work will continue along the three stands defined in the Trade raw materials strategy, i.e. negotiations, tackling of barriers and outreach to third countries. Moreover, actions aimed at further improving economic analysis of the issue and improving the coherence of EU policy will be carried out. A special attention will be given to the involvement of the European Parliament, considering its increased role on trade matters under the new Treaty.

DG Trade will embed disciplines relevant to raw materials in ongoing and future EU negotiations. Work may be extended beyond the question of export restrictions to include further reaching issues, such as investment.

As to Free Trade Agreements, we expect to report on the finalization of the negotiations with the Andean Community and Central America in 2010, and on progress achieved in the forthcoming negotiations with India and Canada. Regarding Partnership and Cooperation Agreements, DG Trade intends to work with countries with an interest in raw materials, such as China and Mongolia.

As far as WTO accessions are concerned, we will take every opportunity to pursue negotiations on relevant trade disciplines with a series of countries including Azerbaijan, Belarus, Kazakhstan and Russia.

DG Trade will continue to actively pursue barriers hampering the sustainable supply of raw materials to the EU economy, through monitoring the use of restrictions worldwide. In cases of infringement of a bilateral or multilateral commitment, while dialogue is the much preferred approach, recourse to bilateral or multilateral dispute settlement cannot be excluded.

More specifically, with regard to the use of the WTO dispute settlement mechanism, the panel requested on 21 December 2009 at the WTO focuses on a limited batch of measures and products. However, the EU's concerns vis-à-vis China are not limited to these measures and further legal action cannot be ruled out if these concerns are not effectively addressed.

An important part of DG Trade's work will be dedicated to reaching out to third countries, taking into consideration the environment and development dimensions, developing a thematic raw materials bilateral dialogue with the EU's strategic partners, and strengthening ongoing debates in plurilateral or multilateral forums. In this respect DG Trade has requested the inclusion of the "raw materials" topic in the work programme of the OECD secretariat for 2010-2012, with the aim of developing an international understanding on the issue. Secondly, DG Trade, together with DG Enterprise, will consider bringing better synergies with debates in forums such as the United Nations Conference on Trade and Development. This could help to advance more specifically on the question of the coherence between development policy and export restrictions measures. Third, the WTO has chosen to dedicate its 2010 World Trade Report to "Trade in Natural Resources", thus confirming the importance of the issue: and providing a potentially useful dimension for the bringing debate to a multilateral setting.

Finally, DG Trade will continue to pursue the objective of consistency of the EU's general trade policy with regard to raw materials priorities.

5. Annex

OECD raw materials workshop – conclusions proposed by the co-chairs

1. Conclusions by the chair of session 1: "Economic impacts of export restrictions"

- The discussions have underlined the high interest in the topic and suggested a broad approach is needed.
- The importance of export restrictions on raw materials for the world economy has been recognized, especially noting the high level of level of interdependence between importing and exporting countries
- Export restrictions affect a wide range of products and touch on a broad range of policies such as development policy, industrial policy or fiscal policy
- There is a consensus that, independently of their actual purpose, such measures create substantial economic inefficiencies
 - many export restriction policies are probably suboptimal for the country applying them; many of them are also probably suboptimal in a global welfare perspective
- Export restrictions on food products can have a big impact on (L)DCs that are net food importing countries (in particular small ones). But sometimes (L)DCs use export restrictions for fiscal needs and in some cases a differentiation may be necessary
- Export restrictions are sometimes used as industrial policies and the suggestion was made to look for alternatives for the desire to diversify economies
- There is a strong case for international cooperation: WTO would be the natural forum for disciplines
- A series of steps could be taken to take this issue forward:
 - Build a database of export restrictions on raw materials, update it regularly and publish it
 - Develop a ranking of policies, from the most consensual to the most controversial
 - Continue to gather case studies and best practices of various policy experiences. What kind of restriction most effectively meets the development objectives? Regarding industrial policy, what non-distortive policy could be undertaken by developing countries wishing to develop their industry in a particular sector? Or can it be useful to compare provisions related to access to raw materials in existing agreements?

2. Conclusions by the chair of session 2: "Policy objectives of export restrictions"

- Initiative for today's workshop was much driven by work on export restrictions under the NTM agenda in Trade Committee. It was felt there was a need to turn back to more basic questions regarding export restrictions, in particular what the economic implications are and what the policy objectives are and what the best means are to achieve these policy objectives.
- Today was a success of its own, thanks to the numerous and diverse participation
- We need much more reflection to draw solid conclusions on all that has been put forward and discussed today, here are however my first impressions
 - Global issue: Access to raw materials is an issue of global concern that requires a global response.
 - Width of scope: we have had a great variety of sectors covered in the interventions covering primary and secondary raw materials: agricultural commodities, natural gas, timber, metals, chemicals, rare earths etc. So the issue encompasses "strategic" metals as well as a wide range of inputs used by the processing industry.
 - All agree that export restrictions have an economic impact. Some explained that the exact impact depends also on the size of the country and that a cooperative solution was needed to improve welfare gains.
 - Diversity of measures: export bans, export taxes, export licenses (attributed in a non-transparent or discriminative way) or differentiated VAT rebates
 - Diversity of policy motivations and possibly the need to have some policy space for temporary measures: fiscal and income redistribution, industrial policy, environment, food security. That is accepted broadly, but business needs regulatory certainty, improved transparency and clear rules of the game for a level playing field
 - Many comments suggest LDCs and DCs are equally if not harder affected: examples of smaller food importing countries affected by food security measures; or "knock-on effects" of export restrictions on 3rd countries producing the same raw materials.
 - There is an important trade component, but clearly also other fields play an important role for raw materials (e.g. environment, social).
- All in all, an extremely rich discussion with a lot of food for thought. The discussions also suggest a range of issues merit further analysis.
- These will be very valuable also in light of the mandate of the OECD Trade Committee's work programme. A good follow-up would be to invite the OECD secretariat to present an oral report to the Working party of the Trade Committee meeting in December and call on all to reflect on how to follow-up. Discussions today also suggest there the topic merits a

broader landing beyond the Trade Committee to look at issues such as environment or investment. More broadly, I see a merit in members further reflecting about the question of raw materials, as an issue of interest to OECD and non-OECD members.