

**Public consultation on the preparation of a new
communication on raw materials**

Contribution by Cerame-Unie

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POLICY AREA: DEFINING CRITICAL RAW MATERIALS

2. Do you see any additional raw material that should be considered as critical? If so, please explain.

Cerame-Unie appreciates the work of the ad-hoc Working Group on defining critical raw materials, notably the establishment of a list of critical raw materials. However, we strongly support the view that action should be taken to tackle problems related to both critical and potentially critical raw materials. As regards the potentially critical raw materials, such as for instance Magnesite and Bauxite, we urge the EU and Member States to take all necessary steps to avoid an increase of the supply risk which would render these substances critical for the EU industry.

3. Do you have any comments regarding the recommendations of the report? If so, please specify.

Cerame-Unie agrees with most of the recommendations of the report, in particular with the following ones:

- *Update of list of critical raw materials every five years and increase of scope of criticality assessment*
- *Improving availability of reliable, consistent statistical information in relation to raw materials*
- *Preparation of European Raw Material Yearbook*
- *More research into life-cycle assessments for raw materials and their products on a "cradle-to-grave" basis*

- *Maintaining current EU policy choices in bilateral and regional trade negotiations (FTAs), example: prohibition of export duties in FTAs*
- *Pursuing WTO Dispute Settlement*
- *Raise awareness in multilateral fora, such as WTO and OECD*
- *Increase coherence of EU policy with respect to raw materials supply, for example in the assessment of injurious dumping*
- *Setting up a sub-group of the Raw Materials Supply Group which shall ensure the follow-up of the criticality report*

Concerning the last recommendation mentioned here, i.e. the set-up of a sub-group of the Raw Materials Supply Group ensuring the follow-up of the criticality report, we believe that the views of the EU refractory ceramic industry should be represented in such a group. This is justified by the fact that the EU refractory industry is of strategic importance for the whole EU industry – indeed, refractory products are supplied to a large number of very important energy-intensive industries such as steel, cement etc. Steel, for instance, cannot be produced without ceramic refractories.

POLICY AREA: TRADE

8. Do you have any comment regarding the main findings of DG Trade activity report? What activities should be prioritised? Are there, in your opinion, additional activities not mentioned in the report which should be pursued in this strategy?

In our view, the raw materials activity report 2009 of DG Trade reflects the most important trade aspects in relation to raw materials. In principle, we agree with the action points outlined by this report.

Bilateral trade negotiations with third countries and regions on the conclusion of Free Trade Agreements (FTAs) are one important way to address raw material concerns. More specifically, the EU should insist, whenever possible, on the prohibition of export duties in new FTAs. We welcome the recent re-launch of FTA negotiations with Mercosur (Brazil, Argentina, Uruguay, and Paraguay) which could prove very important for the EU industry. Apart from FTA negotiations, high-level political dialogues such as the EU-China High Level Economic and Trade Dialogue are another means to tackle raw material issues. The EU should also continue to engage in a regular dialogue with Russia to counter the recent increase of Russian export restrictions on raw materials and prevent the establishment of new similar barriers.

On a multilateral level, the EU should use its influence in WTO accession negotiations, for instance in the ongoing negotiations with Russia, to achieve the broadest possible prohibition of export restrictions on raw materials in WTO accession protocols. Although exceptions to the general prohibition of export restrictions are inevitable (e.g. for environmental reasons), the

scope of such exceptions should be as limited and clear as possible. The ongoing WTO accession negotiations with Russia are of utmost importance in this context.

One of the most important actions in the field of trade concerns the ongoing **WTO panel proceedings on Chinese export restrictions on raw materials** (WTO dispute settlement case 395). For further information on this point, please see below the Cerame-Unie reply to question 9 of this consultation.

Export restrictions on raw materials should also be considered in the framework of **anti-dumping investigations**, notably when it comes to findings of dumping or the question whether Chinese companies should be granted "Market Economy Treatment". Chinese export restrictions such as export taxes should be considered as de-facto subsidies for competing domestic producers which prove that the persisting strong influence of the state on the economy leads to market distortions. As a consequence, "Market Economy Treatment" for Chinese companies subject to EU anti-dumping investigations should generally be refused in such cases.

Finally, the **Market Access Partnership (MAP)** is another useful tool to tackle trade distortive measures of third countries in the field of raw materials. The MAP builds on the cooperation of the European Commission, Member States and business stakeholders to identify illegitimate trade distortive measures of third countries and to work together to overcome them or mitigate at least their impact on the EU industry. Since its launching in 2007, the MAP has proven quite successful in tackling market access barriers. In the future, it will be important to make sure that the MAP keeps its focus on raw material issues.

9. Please identify trade distortive measures (i.e. export restrictions) concerning raw materials that in your view should be tackled.

For Cerame-Unie, **Chinese export restrictions on raw materials which are necessary for the EU refractory industry** are the greatest concern to date. The most important refractory raw materials affected by such measures are magnesite, bauxite and graphite. These raw materials have been subject notably to Chinese export duties in the range of 10-20 %, leading to an artificial subsidization of the domestic refractory industry. Other trade restrictive measures from China include export quotas and export licensing.

These trade restrictive measures lead to an **unfair competitive situation**: For instance, Chinese producers of magnesia carbon bricks (refractory product) have a price advantage on the raw materials of more than 50 %, and an unfair cost advantage for their magnesia carbon bricks in foreign markets from this factor alone of approx. 30 %. As a consequence, the EU refractory industry loses market shares worldwide and finds itself in a long-term difficult situation. Further information concerning this subject can be found in the PRE paper "refractory ceramics and industrial minerals are critical for European industry".

Cerame-Unie strongly supports the **WTO panel proceedings** concerning Chinese restrictions on exports of raw materials (panel request of the EU on 4 November 2009, together with USA and Mexico, WTO DS 395). The panel request includes bauxite and silicon carbide which are used by

the EU refractory industry. However, we feel that magnesite should be added to the scope of the panel proceedings. The European Commission (DG TRADE) has confirmed that the EU does not exclude filing a second panel request which would add several raw materials to the case. For Cerame-Unie, the inclusion of magnesite would be a crucial step forward to abolishing the WTO-incompatible Chinese measures –export restrictions on magnesite are indeed the most harmful ones for the EU refractory industry.

The export restrictions in question are mainly export duties, export quotas and a system of minimum export prices. These restrictions are in violation of several GATT provisions (e.g. Articles VIII, X and XI) as well as commitments under China's WTO Accession Protocol, notably Annex 6 to the Protocol which establishes a binding and exhaustive list of products on which China is allowed to impose export duties (thus the export duties on bauxite and other refractory raw materials are in violation of Annex 6 of the Accession Protocol).

Cerame-Unie welcomes the panel ruling of 18 May 2010 which dealt with a number of preliminary objections raised by China as a reaction to the panel requests of the EU, Mexico and the USA. The panel confirmed that its terms of reference are not limited to those products falling under the tariff lines described in footnotes 1-9 of the panel requests. The panel has rejected China's allegations and concluded that the tariff lines are only indicative of the broad scope of the case.

On 1 June 2010, the three complaining parties (EU, USA, Mexico) filed their first written submissions to the panel. China's first written submission was due on 4 August 2010. We are looking forward to support the European Commission further in the ongoing panel proceedings and we are prepared to submit more information on the relevant substances if necessary.

POLICY AREA: IMPROVEMENT OF THE REGULATORY FRAMEWORK CONDITIONS INSIDE THE EU

18. Do you agree with the recommendations made in the report on "Exchanging Best Practice on Land Use Planning, Permitting and Geological Knowledge Sharing" or do you have any specific ones to be added. Please explain.

Cerame-Unie appreciates the work carried out by the ad-hoc Working Group on Exchanging Best Practice on Land Use Planning, Permitting and Geological Knowledge Sharing. Also in the ceramic industry, local access to raw materials (clay) is sometimes hampered or the permitting process is too lengthy leading to uncertainty of long term local availability.

*A key priority is therefore the encouragement of Member States to elaborate a **land use planning policy** including long term estimates for regional and local minerals demand. This is of particular importance for the ceramic brick and roof tiles industry which needs local access to clay pits.*

*This need for local access to raw materials should also be reflected in **national raw materials policies** that should be based on a strong geological know-how of the raw materials present in the different Member States.*

*Furthermore the industry fully supports the recommendation to **speed up the authorisation process** and welcomes the best practices provided in the report, in particular the easy access to transparent and coherent information on national extraction legislation and the early consultation with stakeholders.*

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