

Long-awaited breakthrough in trade defence against China.

However, to be effective, an analogue country methodology should be maintained!



When China joined the WTO in December 2001, a transitional arrangement for its accession allowed for it to be treated as a non-market economy (NME) in anti-dumping proceedings. China's current NME status allows the possibility to use prices of a comparable surrogate country (the so-called 'analogue methodology') rather than domestic prices (which are often artificially low due to state intervention) in order to calculate the dumping margin. The use of NME methodology is outlined in the terms of the Chinese WTO Accession

Protocol but some of the provisions are due to expire on 11th December 2016 (after 15 years). For China, there is no doubt but that it will automatically become a market economy as of 12th December 2016. It is even already threatening with retaliation and legal challenges. According to research carried out by the Catholic University of Leuven, the granting of Market Economy Status to China could put 202,000 jobs at risk in the EU.

On the 9th November 2016 the European Commission presented its changes to the EU's anti-dumping regulation. According to the Commission, the modifications should allow for the same level of protection. The proposals include the following:

- There will no longer be a distinction between market economies and non-market economies. In future, the analogue methodology will only be maintained for non-WTO members.
- Nothing changes for the members who play by the rules: the standard methodology continues to be applied.
- For WTO-members where 'significant market distortions' exist, a new methodology will be used.
- Significant market distortions are related to state interventions that can lead to industrial overcapacity.
- The definition of government intervention is related to the five technical criteria used by the EU for defining a market economy.
- In the new methodology, the normal value of products would be put together on the basis of undistorted prices/costs. For this purpose, international prices or costs in a comparable country could also be used.
- To support companies who will have to deliver the burden of proof, the EU will issue reports on sectors and countries. This information will become part of each individual investigation. In practice, this means that the Commission will take over the burden of proof.
- For existing cases or cases initiated upon entry into force, the new provisions will only apply after the first expiry review.

For industriAll Europe, the reversal of the burden of proof remains very contentious. Indeed, the lack of transparency in a number of third countries make it impossible to collect the necessary information regarding subsidy schemes, forms of indirect subsidisation and indirect state influence. In industriAll Europe's view, scepticism is justified because of the increased complexity of the new procedure compared to the analogue methodology. This means that there is a huge chance that the new provisions will lead to lower dumping margins and/or to less cases (especially from small sectors and SMEs). It is also not clear at what point market distortion qualifies for switching to the new methodology. Moreover, it remains to be seen whether the Commission is able to free the necessary resources to invest in making in-depth market analyses. Furthermore, in defining market distortions that lead to dumping the EU should also take into account social distortions resulting from the non-respect of core labour standards (such as the right to organise and the right to collective bargaining).

To conclude: industriAll Europe appreciates the efforts of the Commission in finding a compromise regarding this very sensitive issue. Nevertheless, it remains of the opinion that to be effective it is necessary to maintain the ability for European industry to have recourse to an analogue country methodology without being obliged to deliver the burden of proof in dealing with anti-dumping cases against non-cooperative and non-transparent jurisdictions. Furthermore this is completely in line with international agreements. Section 15 of the Accession Protocol of China to the WTO clearly states that a methodology 'that is not based on...domestic prices or costs in China' can be used unlike cases where 'the producers under investigation can clearly show that market economy conditions prevail in the industry (under investigation)'.

Background document:

[industriAll Europe's Congress motion on MES China, June 2016.](#)