

# Open public consultation regarding the possible change in the methodology to establish dumping/subsidisation in trade defence investigations concerning the Peoples' Republic of China[1]

Fields marked with \* are mandatory.

## Introduction

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Open trade is a recognised engine for growth and job-creation but it requires that fair competition, without distortions, is maintained between domestic and foreign producers. In cases where unfair trade practices distort market conditions, trade defence instruments ('TDI') (anti-dumping and anti-subsidy) may be used to restore fair conditions. TDI are an integral part of the World Trade Organization (WTO) legal framework[2] and have been implemented in the EU legislation with the Basic Anti-dumping Regulation[3] and the Basic Anti-subsidy Regulation[4].

In anti-dumping investigations, under the standard rules, in normal market circumstances, dumping is calculated by comparing the export price of a product exported to the EU with the domestic prices (or, if these are not reliable, with the costs of production) of the same product in the exporting country ("standard dumping methodology").

However, WTO rules provide for special treatment for countries which have a complete or substantially complete monopoly of their trade and where all domestic prices are fixed by the State. In practice, domestic prices and costs in those countries are not used as the basis to compare with export prices because they are considered unreliable owing to pervasive State influence in the economy. Instead, investigating authorities use data from another market economy country (so called 'analogue country') as the basis for calculating dumping margins. This is the so-called Non-Market-Economy methodology.

In the EU legislation, the relevant provisions are included in Article 2.7(a) relating to non-WTO members and Article 2.7(b) relating to former state-trading countries that are now WTO members, which include China, Vietnam, Armenia and Kazakhstan. For these countries normal value shall be determined on the basis of the general rules only if exporters show that they comply with the five criteria listed in subparagraph (c)[5]. If this is not the case, normal value is based on prices or costs in a market economy third country, the so-called analogue country.

When China joined the WTO in 2001, significant distortions in that economy persisted and thus, under Section 15 of China's Protocol of Accession, other WTO members have the possibility not to consider China as a market economy in anti-dumping (AD) (and anti-subsidy (AS)) proceedings. However, certain provisions of Section 15 relating to "Price Comparability in determining Subsidies and Dumping" will expire on 11 December 2016.

There are three basic options that can be considered to follow-up the expiry of the relevant provisions of section 15 of the Accession protocol:

- leaving the EU legislation unchanged;
- changing the anti-dumping methodology for TDI with no additional measures;
- changing the anti-dumping methodology for TDI as part of a package with additional measures.

In the event that China and other WTO members are removed from article 2.7(b) of the basic anti-dumping regulation, the analogue country methodology for calculating dumping margins may no longer be applicable to these countries. This is expected to result, on average, in lower dumping margins, because the standard methodology normally does not take into account the remaining distortions in the Chinese economy and/or other non-market economies. These lower margins may render the EU's TDI less effective, i.e. dumped imports will continue to enter the EU market, which will negatively affect the EU industry in terms of output and may ultimately put jobs at risk. Therefore, the Commission is analysing the various options available, including those to limit any negative impact for the EU economic operators of a possible change in the current TD legislation. As highlighted in the inception impact assessment, published on 10 February 2016, the initiative is not expected to have any social impact beyond employment and a limited impact on the environment. This open public consultation will help the Commission identify the main concerns of stakeholders with regard to the economic consequences of the different policy options and find the most effective ways to lessen any negative impact. The results of the consultation will feed into the Impact Assessment, which the Commission services are currently preparing and will help to shape the position of the Commission with regards to a possible legislative change. In addition to this open online public consultation, the Commission will organise a stakeholder conference and further details will be provided in due course.

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You will find more information on the initiative [here](#).

Questions marked with an asterisk \* are mandatory.

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[1] This issue arises also in relation to other countries in a similar situation

[2] See: [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_e.htm) and [https://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/scm_e.htm)

[3] Council Regulation No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of European

[4] Council Regulation No 597/2009 on protection against subsidised imports from countries not members of the European Community

[5] The five criteria are:

1. decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values;
2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;
3. the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
4. the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms; and
5. exchange rate conversions are carried out at the market rate.

## 1. Information on Respondents

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Please note that this section is mandatory in order for your replies to the questions to be taken into account.

### \* Transparency and confidentiality

To ensure that this public consultation is open and transparent, the report of the consultation will be published on the European Commission's website.

*In addition, the contributions and the identification data (name or organisation, but not the contact e-mail address) of the contributors will also be published, unless a contributor has specifically requested not to have their identification data (name and organisation) published by clicking the appropriate box below. Regardless of the option chosen, the contribution may be subject to a request for public access to documents under Regulation 1049/2001[1]*

*[1] (OJ reference)*

- My contribution can be published, including my name or the name of my organisation
- My contribution can be published, but in an anonymous way

### \* Are you registered in the EU's Transparency Register? - Register ID will not be published

*Please note: Organisations, networks, platforms or self-employed individuals engaged in activities aimed at influencing the EU decision making process are expected to register in the Transparency Register. During the analysis of replies to a consultation, contributions from respondents who choose not to register will be treated as individual contributions (unless the contributors are recognized as representative stakeholders through Treaty provisions[1]).*

*[1] European Social Dialogue, Art. 154-155 TFEU*

- Yes

No

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*[1] European Social Dialogue, Art. 154-155 TFEU*

Yes

No

\* What is your registration number?

\* What is your registration number? - not for publication

\* 1.1 Entity name \* (between 1 and 100 characters)

\* 1.1 Entity name (between 1 and 100 characters) - not for publication

\* 1.2 Contact details (address, telephone number, email)\* (between 1 and 270 characters) - not for publication

\* 1.3 Contact Person \* (between 1 and 100 characters)

\* 1.3 Contact Person (between 1 and 100 characters) - not for publication

\* 1.4 What type of stakeholder are you?

- EU producer
- Non-EU producer
- Trade association representing mainly EU producers
- Importer into the EU
- Trade association representing importers into the EU
- User of manufactured products or raw materials for further industrial processing
- EU entity with production facilities in China
- Consumer Organisation
- Trade union/organisation representing trade unions
- NGO
- Government institution
- University
- Law firm or consultancy firm
- Citizen/private individual
- Academic/research institute
- Other

\* 1.5 As applicable: What is your place of residence (if you are answering as a private individual), or where are the headquarters of your organisation situated (if you are answering on behalf of an organisation)?

- In one of the 28 Member States
- China
- USA, Canada
- EFTA country (Norway, Iceland, Liechtenstein, Switzerland)
- Turkey
- Other

\* 1.6 What is your or your organisation's main area/sector of activity/interest? More than one may be indicated. \*

- Farming (crop and animal production), hunting
- Forestry and logging
- Fishing and aquaculture
- Mining
- Production of food products or beverages
- Production of textiles
- Production of ceramic products
- Production of steel products
- Production of leather and related products
- Production of wood and products of wood, including cork
- Production of paper and paper products
- Production of chemicals and chemical products
- Production of pharmaceutical products

- Production of rubber and plastic products
- Production of metal products
- Production of computer, electronic, and optical equipment
- Production of electrical equipment
- Production of machinery and equipment not covered by any other category listed here
- Production of motor vehicles, trailers and semi-trailers or other transport equipment
- Production of furniture
- Other manufacturing
- Construction buildings, other construction activities
- Civil engineering
- Wholesale, retail trade
- Other professional, scientific and technical activities
- Services to buildings and landscape activities
- Other service activities
- Other

1.7 If you are an exporter, what are your top export destinations?(Tick more than one, if appropriate.)

- EU
- China
- India
- Other Asian countries
- USA
- Canada
- Latin America
- Other
- Not applicable

1.8 For EU producers: How much of your production (turnover) is exported outside the EU?

- Less than 10%
- 10-30%
- 30-50%
- More than 50%
- Not applicable

1.9 If you are a company, what is the size of your company?

- Large company (more than 250 employees)
- Medium company (between 50 and 250 employees)
- Small company (between 10 and 50 employees)
- Micro company (less than 10 employees)
- Not applicable

1.10 If you are a trade association/trade union, what is the number of members of your association/trade union?

- 1-25
- 25-100
- 100-500
- More than 500
- Not applicable

1.11 If you are a trade association, approximately how many of your member companies are Small and Medium Enterprises ('SMEs')?( NB.enterprises with up to 250 employees and a turnover of up to 50 million € are considered as SMEs)?

*As defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises Official Journal L 124 of 20.05.2003.*

- Mostly SMEs (more than 75%)
- Partially SMEs (25%-75%)
- Rarely SMEs (less than 25%)
- Not applicable

## 2. Possible implications of the expiration of certain provisions of section 15 of China's WTO accession protocol

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In this section we would like to find out about your views on TDI in general, and relating to a possible change in legislation following the expiration of certain provisions of section 15 of China's WTO accession protocol

\* 2.1 Have you ever participated in an EU trade defence procedure?

- Yes
- No

\* 2.2 Are you familiar with the provisions of section 15 of China's WTO accession protocol and that certain provisions of that section will expire in December 2016?

- Yes
- No

\* 2.3 Are you aware that a change in legislation may result in applying the "standard dumping methodology" for the calculation of dumping margins and no longer the analogue country methodology in AD investigations regarding China and other non-market economy countries?

- Yes
- No

\* 2.4 In your view, would this change to using the "standard dumping methodology" result in fewer AD investigations?

- Yes

- No
- I don't know

\*2.5 In your view, would this change to using the "standard dumping methodology" impact on the effectiveness of the EU's TDI?

- Yes
- No
- I don't know

\*2.6 If you are answering on behalf of a business enterprise, in your view, what impact would this change to using the "standard dumping methodology" have on your activity?

- Negative
- Positive
- I don't know

\*2.7 If you are answering on behalf of a business enterprise, in your view, what impact would this change to using the "standard dumping methodology" have on jobs in your enterprise?

- Create jobs
- No significant impact on the number of jobs
- Put jobs at risk
- I don't know

\*2.8 If you are answering on behalf of a business enterprise, in your view, what impact would this change to using the "standard dumping methodology" have on jobs in your sector in the EU?

- Create jobs
- No significant impact on the number of jobs
- Put jobs at risk
- I don't know

\*2.9 In your view, the effects of this change to using the "standard dumping methodology" on the job situation in the EU could be:

- Very beneficial
- Somewhat beneficial
- Neutral
- Detrimental
- Very detrimental
- I don't know

\*2.10 In your view, the effects of this change to using the "standard dumping methodology" for European business could be :

- Very beneficial
- Somewhat beneficial

- Neutral
- Detrimental
- Very detrimental
- I don't know

\* 2.11 In your view, the effects of this change to using the "standard dumping methodology" on industrial users and consumers in the EU of products potentially subject to AD measures could be:

- Very beneficial
- Somewhat beneficial
- Neutral
- Detrimental
- Very detrimental
- I don't know

\* 2.12 In your view, the effects of this change to using the "standard dumping methodology" for the EU economy as a whole could be:

- Very beneficial
- Somewhat beneficial
- Neutral
- Detrimental
- Very detrimental
- I don't know

\* 2.13 In your view, how could this change to using the "standard dumping methodology" impact on the environment?

- Negative
- Positive
- I don't know

\* 2.14 In your view, how could this change to using the "standard dumping methodology" impact on investment decisions by your enterprise?

- Negative
- Positive
- I don't know

\* 2.15 In your view, will SME's be affected positively/negatively by this change to using the "standard dumping methodology"?

- Positively
- Negatively
- I don't know

\* 2.16 In your view, will SME's be more or less affected by this change to using the "standard dumping methodology" than larger companies?

- More
- Less
- Equally
- I don't know

### 3. Additional measures

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In order to lessen any negative effect of a change in legislation with regard to the application of the analogue country methodology, when calculating the dumping margin (subsidy margin), there are a number of measures which could be introduced in the EU legislation, could be envisaged.

#### 3.1 Definitive AD measures already in force remain in force

In order to ensure an orderly administrative transition to a new calculation methodology (and to reduce any negative effects), one possibility would be to limit any change in methodology to new cases. Thus, definitive AD measures already in place, at the time of the change, would remain unaffected for a certain period of time ('grandfathering').

\* 3.1.1 Is one of the products that you produce/trade subject to an AD measure?

- Yes
- No

\* 3.1.2 Is more than one product that you produce/trade subject to AD measures?

- Yes
- No

\* 3.1.3 What is the average remaining duration of these measures?

- 5 years
- 3 to 5 years
- 1 to 3 years

\* 3.1.4 What is the level of duty in place?

- 0 to 10%
- 10 to 30%
- Above 30%

\* 3.1.5 Was the duty calculated on the basis of the injury margin or the dumping margin?

- Injury margin
- Dumping margin

\*

3.1.6 Have the measures in place been effective in eliminating the injury your company had suffered from dumped imports?

- Yes
- No
- Partially
- Answer 1
- Answer 2

\* 3.1.7 In your view, will exempting existing measures in force from the application of the "standard dumping methodology" be effective in order to lessen any negative impact for the EU economy?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.1.8 In your view will exempting existing measures in force from the application of the "standard dumping methodology" be effective in order to lessen any negative impact on the job situation in the EU?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.1.9 In your view, will exempting existing measures in force from the application of the "standard dumping methodology" be effective in order to lessen any negative impact on users and consumers in the EU?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

### **3.2 Dealing with significant distortions**

Significant distortions affecting costs/prices of exporters in the country of export may exist (e.g. enterprises which operate under the ownership, control or guidance of the authorities of the exporting country; state presence in firms allowing the state to interfere with respect to prices or costs; public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces; access to finance granted by institutions implementing public policy objectives).

The presence of such distortions could render the existing costs and/or prices in the country non-representative. Existing rules could be strengthened and /or new rules introduced to deal with such distortions, whereby costs and prices of the exporter would be rejected and the normal value constructed on the basis of costs in another representative country.

3.2.1 What are the main raw materials used in the product you produce/trade?

- Steel
- Aluminium
- Electricity
- Oil
- Gas
- Chemicals
- Other

3.2.2 Is the product you produce/trade and/or the raw material(s) from which it is produced subject to trade distortive measures in the exporting country concerned?

- Yes
- No

\* 3.2.3 If yes please explain which trade distortive measures are involved?

- State interference on prices or costs
- Preferential access to finance
- Differential tax treatment
- State policies/plans
- Local content requirement
- Export restrictions
- Export taxes
- Dual pricing
- Other

\* 3.2.4 In your view, is a duty level based on the analogue country methodology effective in addressing situations where there are significant distortions in costs/prices of producers in exporting countries?

- Yes
- No
- Partially
- I don't know

\* 3.2.5 In your view, should the existing rules be strengthened or new rules introduced to allow the rejection of costs/prices of an exporter if significant distortions are found for the costs /prices of the exporter concerned (in the event that the analogue country methodology will no longer be applicable)?

- Yes
- No
- I don't know

\*

3.2.6 In your view, would the strengthening of existing rules or the introduction of new rules allow the EU to effectively deal with distortions in AD investigations and dumping margin calculations?

- Yes
- No
- I don't know

\* 3.2.7 In your view, would the strengthening of existing rules or the introduction of new rules be effective in reducing any negative impact on the EU economy that might arise as a result of significant distortions present in the costs/prices of producers in the exporting market?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.2.8 In your view, would the strengthening of existing rules or the introduction of new rules be effective in reducing any negative impact on the job situation in the EU that might arise as a result of significant distortions present in the exporting market?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.2.9 In your view, would the strengthening of existing rules or the introduction of new rules be effective in reducing any negative impact on users and consumers in the EU that might arise as a result of significant distortions present in the exporting market?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

### **3.3 Non-application of the lesser duty rule ('LDR')**

The LDR keeps an AD/AS duty within the limit strictly necessary to prevent injury to EU industry by imposing a duty at a lower level than the margin of dumping, as long as the AD/AS duty imposed is adequate to remove the injury. Application of the LDR is a possibility which is recommended under WTO rules; but it is not an obligatory requirement. In the EU TD system, the LDR is applied consistently in all cases. Another way of reducing the negative effects on the EU economy resulting from a change in legislation regarding application of the analogue country methodology would therefore be not applying the LDR in cases where there are significant market distortions in the exporting country.

3.3.1 In your view, should the LDR no longer be applied in AD/AS investigations where significant cost/price distortions in the exporting country have an impact on a product under investigation?

- Yes
- No
- I don't know

\* 3.3.2 In your view, could the non-application of the LDR in situations where there are significant cost/price distortions in the exporting country be an effective way of reducing any negative impact on the EU economy that might arise as a result of a possible change in dumping methodology?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.3.3 In your view, could the non-application of the LDR in situations where there are significant cost/price distortions be an effective way of reducing any negative impact on the job situation in the EU that might arise as a result of a possible change in dumping methodology?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

\* 3.3.4 In your view, could the non-application of the LDR in situations where there are significant cost/price distortions be an effective way of reducing any negative impact on users and consumers in the EU that might arise as a result of a possible change in dumping methodology?

- Very effective
- Somewhat effective
- Neutral
- Negative
- I don't know

#### **3.4 Amending the anti-subsidy legislation**

Under current disciplines, anti-subsidy investigations are normally limited to the subsidy schemes clearly identified in the complaint lodged by the EU industry. This limitation may in some cases prevent the investigation from properly examining the full magnitude of subsidisation prevailing in the exporting country under investigation; in particular, when the subsidy regime operating in the exporting country is not transparent.

One possibility would thus be to expand anti-subsidy investigations to cover all other subsidy schemes found in the course of an ongoing investigation.

3.4.1 In your view, should AS investigations be limited to the subsidy schemes clearly identified in the complaint lodged by an EU industry? Or should it cover all other subsidy schemes found in the course of an ongoing investigation?

- The investigation should be limited to subsidy schemes identified in the complaint
- The investigation should cover all subsidies found in the course of an ongoing investigation
- I don't know

\* 3.4.2 Anti-dumping and anti-subsidy investigations can be launched in parallel on the same product from the same source. In your view, would the inclusion of other subsidy schemes found in the course of an AS investigation help reduce the negative effects of a possible change in the dumping methodology in a parallel anti-dumping investigation concerning the same product?

- Yes
- Partially
- No
- I don't know