# Briefing

EU Legislation in Progress

European Parliament

CONTENTS




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Fourth edition


The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

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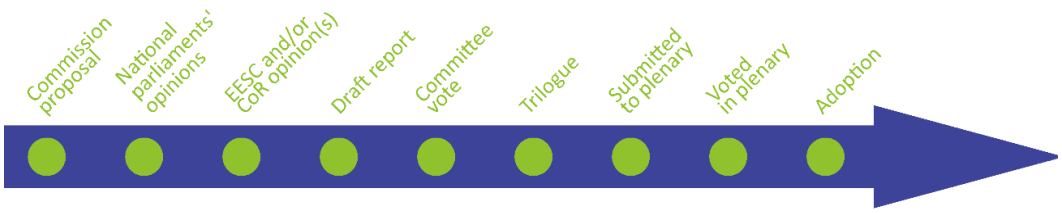
# Protection from dumped and subsidised imports


On 9 November 2016, the European Commission published a proposal for targeted changes to the EU anti-dumping and anti-subsidy regulations. The proposal was a response to the expiry of parts of China's WTO accession protocol in December 2016 and to unfair trade practices from third countries. At the core of the amendments of the anti-dumping regulation was the use for WTO members of prices derived from constructed values in situations where there are 'substantial market distortions' in the country of export under investigation. This approach replaces the 'analogue country methodology' which was previously applied to non-market economies (NMEs) under EU law and remains in place for non-WTO members. The amendments to the anti-subsidy regulation insert due process and transparency provisions required to capture subsidies identified only in the course of anti-subsidy probes.


| **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union.** | |
|---|---|
| COM(2016) 721 of 9.11.2016, 2016/0351(COD), Ordinary legislative procedure (Parliament and Council on equal footing – formerly 'co-decision') | |
| Committee responsible: | International Trade (INTA) |
| Rapporteur: | Salvatore Cicu (EPP, Italy) |
| Shadow rapporteurs: | Alessia Mosca (S&D, Italy); Sander Loones (ECR, Belgium); Alexander Graf Lambsdorff (ALDE, Germany); Helmut Scholz (GUE/NGL, Germany); Yannick Jadot (Greens/EFA, France); David Borrelli (EFDD, Italy); Matteo Salvini (ENF, Italy) |
| Procedure completed. | Regulation (EU) 2017/2321<br>OJ L 338, 19.12.2017, pp. 1-7 |





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## Introduction

On 9 November 2016, the European Commission adopted a proposal for targeted changes to the EU's main trade defence instruments (TDIs), the anti-dumping (AD) and anti-subsidy (AS) regulations,[1] with a view to strengthening their effectiveness to remedy unfair trade practices of third countries.[2] The AD amendments have been mandated by the expiry in December 2016 of parts of China's protocol of accession to the World Trade Organization (WTO), and the need for the EU to ensure continued compliance of EU legislation with WTO law and its effectiveness for tackling the realities of the international trade environment, including price-distorting over-capacity in certain sectors such as steel.

Although the EU uses trade defence instruments (TDIs) less than many other jurisdictions, and only 0.21 % of EU imports are affected, protection against dumped and subsidised imports from China has been vital for a range of EU industries. China has been by far the main target of AD duties imposed by the EU. By October 2016, definitive AD duties against more than 50 different Chinese products were in place. AD duties against Chinese products concern mainly the aluminium, bicycles, cement, chemicals, ceramics, glass, paper, solar panels and steel industries. In most of them China has accumulated massive over-capacity, i.e. excessive production in relation to demand.

## Context

When China joined the WTO in December 2001 transitional arrangements were included in China's accession protocol to take into account the legal and economic particularities of China's transition economy.[3] These China-specific arrangements have enabled WTO members, among others, to deviate from the general rules set out in the WTO Anti-dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures in their relations with China.

Section 15 of China's accession protocol, on price comparability, has allowed WTO members to treat China as a non-market economy (NME) for the purposes of AD investigations and to use an NME methodology of calculating dumping for imports from China. This NME methodology disregards Chinese domestic prices and costs considered as distorted and unreliable as a result of state influence in the economy, unless individual Chinese exporters can prove that they operate under market conditions.

In December 2016, sub-paragraph 15(a)(ii) expired. This change requires WTO members to contemplate amendments to their domestic law to ensure compliance with WTO law. WTO members have chosen

1 Regulation (EU) 2016/1036 of 8 June 2016 on protection against dumped imports from countries that are not members of the European Union (the Basic Anti-Dumping Regulation) and Regulation (EU) 2016/1037 of 8 June 2016 on protection against subsidised imports from countries that are not members of the European Union (the Basic Anti-Subsidy Regulation).
2 This legislative proposal followed a 2013 Commission proposal (COM(2013) 192 final) for the modernisation of the EU's TDIs and became part of the two-pronged Commission approach to strengthen the EU's TDIs. The 2013 TDI modernisation proposal concerns among others the partial removal of the EU's lesser duty rule (LDR) for certain cases of raw material or energy distortions. The LDR caps the level of duties that can be imposed. It is a particularity of EU law which leads to lower AD duties than in other jurisdictions where this rule does not apply and risks to divert dumped goods to the EU. This legislative file passed the first reading in the European Parliament in 2014, but was deadlocked in the Council in the absence of a common position until 13 December 2016.
3 China's WTO accession: 15 years on: Taking, shaking or shaping WTO rules?, G. Grieger, EPRS, December 2016.

very different approaches, in terms of both procedure and substance, to transpose section 15 of China's accession protocol into domestic law.4 Accordingly, their responses to the expiry of 15(a)(ii) may differ substantially.

## Existing situation

The EU has given effect to section 15 through the 'analogue country methodology' for calculating the level of dumping for products originating in China, which is enshrined in Article 2(7) of the EU Basic AD regulation. Normally the dumping margin is calculated by comparing the domestic prices and costs (the 'normal value') in the exporting country with the export prices (dumping margin = normal value – export price). In the context of the analogue country approach, however, the domestic prices are replaced by prices and costs from a third ('analogue' or 'surrogate') market economy country.[5]

Currently, not just China is subject to a non-standard methodology under EU law: other WTO members (Tajikistan and Vietnam), with similar transitional arrangements in their WTO accession protocols, the expiry of which will need to be considered in the future; NMEs and non-WTO members.[6] These countries are listed in Articles 2(7)(a) and 2(7)(b) of the AD regulation and use of the non-standard methodology is mandatory, unless a country is removed from the list under the ordinary legislative procedure.

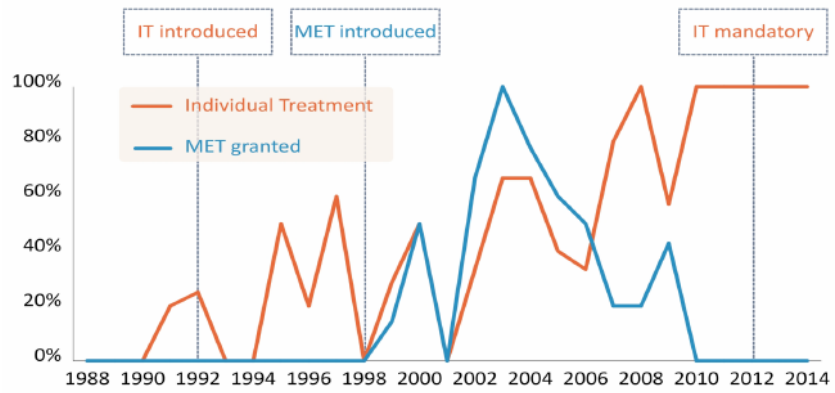
This has created a complex system in which NME exporters may be treated according to three different methods. The standard approach for NME exporters is to compute the dumping margin using prices from an analogue country and individual export prices (individual treatment (IT) approach). Whenever the number of exporters is too big to allow individual treatment, NME exporters not sampled will be attributed a country-wide export price for the calculation of their dumping margin. Finally, for NME exporters from China, Tajikistan, and Vietnam the normal value may be calculated on the basis of domestic prices, if the exporter can prove it complies with the requirements of Article 2(7)(c); this is called market economy treatment (MET).[7]

MET creates the lowest dumping duty, but this status has rarely been granted to Chinese exporters (see Figure 1). IT has been granted much more often and has become mandatory following the WTO EC-Fasteners case (DS397) initiated by China. The denial of MET or IT to Chinese exporters and the choice of the analogue country have been the main aspects challenged by Chinese exporters before EU courts and by China at the WTO.[8]

4 Impact Assessment, Possible change in the calculation methodology of dumping regarding the People's Republic of China (and other non-market economies), European Commission, SWD(2016) 370 final, 9 November 2016, p. 12.
5 The main criterion for the selection of the analogue country in the EU is the comparability of production volume of the like product. In the USA it is the comparable level of economic development of the potential analogue country. Empiric research by EPRS has shown that in EU AD probes against Chinese firms the USA ranked first as an analogue country followed by Turkey and India. Calculation of dumping margins: EU and US rules and practices in light of the debate on China's Market Economy Status, In-depth analysis, L. Puccio, EPRS, May 2016, p. 17.
6 Albania, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Mongolia and Kazakhstan (WTO members) and Belarus, North Korea, Turkmenistan and Uzbekistan (non-WTO members). Impact Assessment, op. cit., footnote 5.
7 For more details please see Calculation of dumping margins, op. cit., pp. 16-17.
8 Major EU Anti-dumping cases, G. Grieger, EPRS, May 2016.

China was not subject to AS probes until 2010. Since then AS investigations have been much less frequent than AD investigations (and have often been conducted in parallel). By October 2016, definitive AS duties were in place for five Chinese products. This is mainly due to the opacity of the Chinese subsidisation scheme and the lack of cooperation of the Chinese authorities. In practice the Commission has discovered additional subsidies that were not initially reported by the EU complainant during the investigations. Yet, the current AS regulation does not provide due process and transparency provisions that are required in order to take into account the additional subsidies discovered. Hence, currently AS duties often do not reflect the full amount of subsidisation.

Figure 1 – Percentage of AD probes in which IT and MET were granted to at least one firm per initiation year




Data source: Calculation of dumping margins: EU and US rules and practices in light of the debate on China's Market Economy Status, L. Puccio, EPRS, May 2016, p. 25.

## European Parliament's starting position

In May 2016 the European Parliament adopted a resolution on China's market economy status. The resolution stressed the overwhelming opposition of MEPs to grant MES to China unilaterally as long as it did not meet all five EU criteria. It emphasised that the EU should use a non-standard methodology in AD and AS probes into Chinese imports in determining price comparability, in accordance with and giving full effect to those parts of section 15 which provide room for the application of a non-standard methodology. The European Parliament called on the Commission to submit a proposal along these lines.

## European Council starting position

The European Council conclusions of October 2016 highlighted that unfair trade practices need to be tackled efficiently and robustly. It stressed that the EU's TDIs must be effective in the face of global challenges in order to safeguard European jobs, ensure fair competition in open markets and preserve free trade. Adequate provisions should address situations in which market conditions do not prevail.

# Proposal

## Preparation of the proposal

### Orientation debates

The European Commission conducted two orientation debates. In January 2016 it decided to carry out an impact assessment and a public consultation on the different policy options available. In July 2016, the outcome of the public consultation and the impact assessment were discussed, and the Commission's focus shifted from a country-focused approach to MES to a country-neutral methodology to address situations where market prices do not prevail.

### Public consultation

The public consultation held from February to April 2016 comprised an online consultation and a subsequent stakeholder conference. In addition, various stakeholders submitted position papers. The three options discussed at that stage were guided by the question of whether or not to grant MES to China, and to assess the potential economic, legal and political implications thereof.

**Option 1**, the base-line scenario, would have implied no change of legislation, and would mean to continue to apply the analogue country methodology to China and to decline to grant MES to China.

**Option 2** would have resulted in the removal of China from the list of NMEs in EU legislation (implicitly granting MES to China) and in the application of the standard methodology to China *without* mitigating measures, but relying on available price adjustment tools for market economies within the current regulatory framework.

**Option 3** would have been similar to Option 2, but *with* mitigating measures such as grandfathering of ongoing investigations and further strengthening TDIs.

According to the Commission's impact assessment, participants in the public consultation – the biggest stakeholder group represented was EU manufacturing – expressed conflicting interests in line with their different fields of activity. 85 % of participants were affiliated to the steel industry, almost 4 % to the metal industry, 3 % to the motor vehicle industry and about 2 % to the ceramics industry. Only a few stakeholders privileged option 1 given the legal and political uncertainties linked to it, i.e. the likelihood of option 1 becoming subject to litigation, both before the WTO and EU courts, and of adversely impacting EU-China political relations. EU manufacturers, including upstream producers, then advocated option 3, since they would profit in competition with Chinese producers from mitigation measures which would lead to continued high AD duties. By contrast, EU importers, notably downstream user industries, benefitting from cheap inputs and lower AD duties, preferred option 2.

However, a vast majority of stakeholders claimed that option 3 was insufficient to ensure the continued effectiveness of the EU's TDIs, as it would neither adequately tackle the distortions in China, nor reduce any negative impact of a change in the calculation methodology. Although a large majority of respondents

considered that AS probes should cover all subsidies discovered in an ongoing investigation, many stakeholders were sceptical as to how to tackle distortions in practice.

By mid-2016, the debate shifted away from a focus on MES to a broader approach of addressing over-capacities in China and other NMEs. Option 3 was significantly reshaped to become the Commission proposal released in November 2016.

### Impact assessment

The Commission's impact assessment was carried out in spring 2016 and published in November 2016. It comprises an independent economic assessment of the direct and indirect impact on EU employment resulting from a shift of methodology under the *then* options 2 and 3. It concludes that the revised option 3 concerning a new approach to assessing market distortions was the preferred option, as it meets all general and specific objectives.

The Commission is convinced that option 3 is an adequate approach, i) to tackle the legal change linked to China's accession protocol, ii) to provide an effective response to the distortions in the Chinese economy and in other NMEs, iii) to ensure an adequate remedy to offset injury caused by dumped/subsidised imports, iv) to ensure the continued effectiveness of the EU's TDIs, and v) to maintain strong ties with the EU's major trading partners. It also stresses the advantages of option 3 in terms of its contribution to preserving EU jobs and the EU's competitiveness.

EPRS has undertaken an initial appraisal of the Commission's impact assessment.

## The changes the proposal would bring

### A new approach for capturing 'substantial market distortions'

The distinction between market economies and NMEs for the choice of the calculation methodology would be eliminated, and replaced by a differentiation between WTO members and non-WTO members.

The analogue country methodology would cease to apply to those WTO members currently classified as NMEs. The standard approach, which uses domestic prices and costs, would apply to all WTO members. But, in case of substantial market distortions the Commission would be allowed under Article 2(6a) to construct values based on 'costs of production and sale reflecting undistorted international prices, costs, or benchmarks, or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country'.

Comparing the ways in which the normal value is computed under the analogue country methodology and the constructed value methodology, the constructed value determined under the latter would include international sources of undistorted prices and cost. The new approach may also signify a shift from the main criterion used by the Commission for the selection of the third country, i.e. the production volumes of the like product, to the economic development criterion currently privileged by the USA for AD probes. The approach differs from the existing 'cost adjustment methodology' applied to market economies in

'particular market situations', such as the Russian gas sector under Article 2(5) of the AD regulation in terms of the extent and pervasiveness of the market distortions to be captured.

Several criteria would be considered to determine 'significant market distortions' which may be deemed to exist, inter alia, when reported prices or costs are not the result of free market forces. The proposal sets out a non-exhaustive list of criteria, including i) the widespread presence of enterprises which the state owns or which operate under its control, policy supervision or guidance, ii) the presence of the state in companies allowing interference with respect to prices and costs, iii) public policies or measures discriminating in favour of domestic companies, or otherwise influencing free market forces, and iv) the access to finance granted by institutions implementing public policy objectives.

Given the difficulty EU industry may face in gathering evidence of market distortions in the respective exporting country, the proposal indicates that the Commission may publish reports on specific situations in certain countries based on the criteria set out for 'significant trade distortions'. EU importers would be able to rely on these evidence-based reports in making their case.

The analogue country methodology would continue to apply to non-WTO members, with normal value for imports from them being determined 'on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the EU' under Article 2(7) as amended.

Although the European Commission has emphasised – including in the second consideration of the proposal – that the amendments to the AD regulation would not be tantamount to granting market economy status (MES) to any NMEs, the proposal nonetheless eliminates the market economy criteria in Article 2(7), as NME status is abandoned.[9] The proposal also entails a reversal of the burden of proof, whereby it is up to the Commission to prove the existence of market distortions allowing for the application of the alternative method, i.e. the use of the constructed value.

### Transition arrangements

The new approach would only apply to AD cases initiated upon entry into force of the amended provisions. Ongoing AD investigations at that time would be governed by the current system. The Commission considers that the introduction of the new approach does not constitute sufficient grounds to review existing AD measures. Under the new Articles 11(3) and 11(4) of the AD regulation, requests to review the methodology would only be introduced when an expiry review of the measure is initiated.

9 The EU has defined five criteria which NMEs must fulfil to be granted MES for the purposes of AD probes which are reflected in Article 2(7)(c) of the AD regulation. Meeting them would have allowed China's shift to MES in line with sub-paragraph 15(d) of its accession protocol. However, China has so far fulfilled only one of the five criteria.

### Anti-subsidy investigations

When additional subsidies are identified in the course of AS investigations the Commission would offer additional consultations with the exporting country and invite interested parties to comment, in order to meet due process and transparency requirements. If the additional subsidies are not covered by the notice of initiation, the latter would be amended and published.

### China's response to the Commission proposal

China welcomed that the proposal would abolish the NME list, but criticised that it would introduce a market-distortions clause which would amount to prolonging the analogue country methodology under a new label. On 12 December 2016, one day after the expiry of sub-paragraph 15(a)(ii), China requested WTO consultations with the EU (DS516) and the USA (DS515) over the continued differential treatment of Chinese imports as regards the determination of normal value in their respective domestic laws.[10] On 9 March 2017, China requested the establishment of a panel, and at its meeting of 3 April 2017, the Dispute Settlement Body (DSB) established that panel. Following China's request on 29 June 2017 to determine the composition of the panel, that was done on 10 July 2017. The panel informed the DSB that it expected to issue its final report to the parties not earlier than the second half of 2018. In November 2017, the USA submitted a third-party brief in support of the EU.

10 Some legal scholars share this position and highlight the EU's narrow scope to sanction price distortions as a result of state interference under the WTO Anti-Dumping Agreement. 'Replacing the Non-Market Economy Methodology: Is the European Union's Alternative Approach Justified Under the World Trade Organization Anti-dumping Agreement?', S. Noël and W. Zhou, *Global Trade and Customs Law*, vol. 11, issue 11/12, 2016.

# Views

## Advisory committees

On 29 March 2017, the European Economic and Social Committee (EESC) (rapporteur: Christian Bäumler, Workers – Group II, Germany; and co-rapporteur: Andrés Barceló Delgado, Employers – Group I, Spain) adopted its opinion on the Commission's proposal.

The EESC supports the Commission's proposal to change the calculation methodology so that a non-standard methodology can be used in the event of significant trade distortions. It reaffirms its 2016 opinion on preserving sustainable jobs and growth in the steel industry according to which the standard methodology should not be used in AD and AS investigations into Chinese imports, for as long as China fails to meet the EU's five MES criteria. It suggests that respect of international labour standards as set out in the core conventions of the International Labour Organization (ILO) and of multilateral environmental agreements (MEAs) also be considered, since violations of minimum labour and environmental standards can also contribute to distorting competition with EU companies.

The opinion notes that there is room for improving the proposal in terms of the effectiveness and practicability of the AD investigation process (legal status, feasibility and pertinence of the proposed reports), and particularly with regard to the burden of proof, which should not be shifted onto EU industry. It emphasises that the AD complaints procedure must also be accessible for small and medium-sized enterprises (SMEs). Given that China's complaint against the EU at the WTO also makes reference to the Commission's proposal, the opinion suggests that the compatibility of the new approach with WTO rules be carefully assessed.

The Committee of the Regions decided not to draft a formal opinion.

## National parliaments

Since the proposal is based on Article 207(2) TFEU which concerns the common commercial policy, an area of exclusive EU competence as defined in Article 3 TFEU, it is not subject to a subsidiarity check by national parliaments. Proposals in the area of exclusive EU competence are nevertheless transmitted to national Parliaments as part of the informal political dialogue which allows for an exchange of views on proposals between national Parliaments, the European Parliament and the European Commission. A number of chambers have looked at the proposal.

## Stakeholders' and academic views[11]

Representatives from EU industries (AEGIS Europe) have criticised the proposal as having fallen short of expectations, and as 'neither robust nor future-proof'. They have taken issue with the proposed elimination of the distinction between market economies and NMEs and the five market economy criteria enshrined in Article 2(7)(c) of the AD regulation, highlighting the diverging positions of the USA and Japan on the issue.[12] They have called on the European Parliament and the Council to adopt amendments 'to avoid the de facto granting of MES via the back door', despite China's non-fulfilment of four of these criteria. Stakeholders are also worried about the shift of the burden of proof, which they find creates a greater workload and additional insecurity for EU companies.

Prior to the proposal's publication legal analysts had raised concern about its WTO compliance.[13] After its release, trade lawyers have argued that the new approach including the denial of review may expose the EU to legal challenges before the WTO.

After the adoption of the new regulation, the European Steel Association emphasised the benefits that the new mechanisms will provide to European businesses and jobs.

However trade lawyers have remained sceptical as to whether the new EU approach to AD cases could be said to be non-discriminatory and WTO-compliant. They have particular issues with the vagueness of key concepts such as 'significant distortions' which they believe would lend themselves to discretionary application, as well as with the reference to social and environmental standards. Moreover, they feel it is doubtful that the application of the new rules will be consistent with the WTO Anti-dumping Agreement in light of the WTO Appellate Body's decision in DS473: *European Union – Anti-Dumping Measures on Biodiesel from Argentina* of 26 October 2016.[14]

11 This section aims to give a sense of the debate on the issues surrounding the legislative file and cannot provide an exhaustive account of all the different views expressed. Additional information can be found in related briefings listed under References below.

12 In the WTO's Committee on Anti-Dumping Practices on 27 October 2016 the USA stated that 'contrary to China's assertion, the language in the Protocol does not require members to stop using the analogue country methodology in AD investigations.'

13 W. Zhou and A. Percival, 'Panel Report on EU-Biodiesel: A Glass Half Full? – Implications for the Rising Issue of "Particular Market Situation"', *The Chinese Journal of Global Governance*, 2, 2016, pp. 142-163.

14 A. Suse, 'Old Wine in a New Bottle: The EU's Response to the Expiry of Section 15(a)(ii) of China's WTO Protocol of Accession', *Journal of International Economic Law*, vol. 20, issue 4, 1 December 2017, pp. 951–977; R. Antonini, 'A 'MES' to be adjusted: past and future treatment of Chinese imports in EU anti-dumping investigations', *Global Trade and Customs Journal*, vol. 13, issue 3, 2018, pp. 79-94.

## Legislative process

The Foreign Affairs Council of 11 November 2016 took note of the proposal for a new AD methodology and agreed to work on it in a speedy manner. On 11 May 2017, the Foreign Affairs Council took stock of work on a new methodology for assessing market distortions resulting from state intervention in third countries. It endorsed a mandate for negotiations with the European Parliament which EU ambassadors had approved on 3 May 2017. The Council called on the Parliament to rapidly adopt its negotiating position, so that an agreement can be reached and the regulation applied well before the end of 2017.

In its capacity as co-legislator, the European Parliament prepared a position on the proposal under the ordinary legislative procedure. The Committee for International Trade (INTA) was responsible for drafting this position. It has nominated Salvatore Cicu (EPP, Italy) as rapporteur. Jerzy Buzek (EPP, Poland) was the rapporteur for the opinion of the Committee on Industry, Research and Energy (ITRE) and Gilles Libreton (EFN, France) for the opinion of the Legal Affairs Committee (JURI).

A first exchange of views took place in the INTA meeting of 24 January 2017. In preparation of the draft report, INTA organised a hearing on EU trade defence instruments on 28 February 2017. In the INTA meeting of 4 May 2017, Salvatore Cicu presented his draft report.

In his explanatory statement the rapporteur identified two major issues in the Commission proposal which require further clarification:

> the meaning of 'significant distortions' and the criteria to define this; and

> the nature and the content of the Commission reports which are set to serve as a basis for EU industry to underpin its claims.

Accordingly, the rapporteur's amendments to the Commission proposal, as well as amendments tabled by other INTA members by 18 May 2017, focus on clarifying the scope of the term 'significant distortions'. MEPs have gathered a broad range of criteria, including for example the exporting country's adherence to and compliance with multilateral environmental agreements (MEAs) and core conventions of the International Labour Organization (ILO), to complement the succinct non-exhaustive list proposed by the Commission. Furthermore, an amendment was introduced whereby exporting producers would have to prove that their prices and costs were undistorted.

As for the Commission's reports, the amendments to the Commission proposal seek to make mandatory the provision by the Commission of timely (in respect of the entry into force of the regulations as amended) and regularly updated country-wide or, if relevant, sector-specific evidence-based reports, notably on countries which are the subject of a large number of AD and AS investigations. Furthermore, the amendments cover the monitoring role of the European Parliament as regards these reports, as well as the input of EU stakeholders to them.

The ITRE Committee opinion, drafted by Jerzy Buzek, broadly emphasises the same issues. In addition, it highlights, for example, the need for the EU to coordinate with major trading partners before and during investigations, suggesting a comparative follow-up on the anti-dumping calculation with the EU's major

trading partners. On 30 May 2017, the ITRE opinion was adopted with 30 votes in favour, 21 against and 5 abstentions.

The JURI committee did not adopt the draft opinion prepared by Gilles Libreton who had advocated the rejection of the Commission proposal, given its 'legal ambiguity and the lack of a recent evaluation of China on the basis of the five technical criteria under EU law for the granting of market economy status' (MES). On 28 February 2017, the draft opinion was rejected by 20 votes against, 3 votes in favour and no abstentions.

The INTA committee adopted its report on 20 June 2017. The amendments to the Commission proposal were approved by 33 votes to 3, with 2 abstentions. Based on the INTA report, MEPs also voted to enter into trilogue with the Council and the Commission. At the fourth trilogue meeting on 3 October 2017, the delegations of the three institutions agreed on a provisional text, accompanied by three Commission draft declarations and a letter.

The provisional agreement incorporates some of Parliament's amendments including: the addition of new criteria to the non-exhaustive list proposed by the Commission to determine 'significant distortions', for example situations when 'wage costs are distorted' or when bankruptcy, corporate or property laws are applied in a discriminatory manner or inadequately enforced. The definition of significant distortion recalls some of the criteria established by the Commission to grant market economy status (MES).

Parliament's amendments as regards compliance with social and environmental standards will be taken into account, to the extent that when an appropriate representative country has to be chosen to construct undistorted costs and prices, 'preference shall be given, where appropriate, to countries with an adequate level of social and environmental protection'.

In line with Parliament's call, no additional burden of proof was put on EU industry. In line with WTO law, the burden to prove the existence of distorted costs for each producer remains on the European Commission.

The provisional agreement furthermore addresses the particular concerns of SMEs. EU industry and trade unions may give inputs. And as for the Commission reports on which EU industry may rely when filing a complaint, their production and their regular updating is conditional on the Commission's assessment of 'well-founded indications of the possible existence of significant distortions'.

The agreed text was approved during the INTA meeting of 12 October 2017, by 31 votes to 2, with 5 abstentions. The first-reading plenary vote on the agreed text took place on 15 November 2017. Parliament backed the deal by 554 votes to 48, with 80 abstentions.

On 4 December 2017, the Council approved the new rules to help protect the EU against unfair trade practices. Regulation (EU) 2017/2321 entered into force on 20 December 2017.

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http://epthinktank.eu (blog)