

New alternative anti-dumping methodology European jobs safeguarded against unfair trade practices!

When China joined the World Trade Organisation (WTO) in December 2001, a transitional arrangement for its accession allowed for the treatment of China as a non-market economy (NME) in anti-dumping proceedings. China's current NME status offers the possibility to systematically use prices of a comparable analogue country rather than domestic prices (which are often artificially low due to state intervention) to compute the dumping margin (the standard dumping margin is the difference between domestic price and export price). The use of NME methodologies is described in Section 15 of the Chinese WTO Accession Protocol, but some of the provisions expired on 11 December 2016 (after 15 years).

ETUC and industriAll European Trade Union were of the opinion that the expiry of these provisions could in no way lead to the conclusion that in future, the standard dumping procedure should be applied in the case of China. However, for China it was self-evident that it should be considered to be a market economy in anti-dumping procedures from 11/12/2016 on. Also, the Commission was at first willing to grant market economy status to China. Indeed, for the Commission, this was just an administrative procedure: transposing the change in an international treaty into European law. Finally, the Commission under the pressure of public opinion decided to postpone the decisions, start a stakeholder consultation and conduct an impact assessment on so-called "mitigating measures". Consequently, China lodged a complaint against the EU at the WTO (this case is ongoing).

According to an analysis by the University of Leuven, based on very cautious assumptions, MES would have put 202,000 jobs at risk in the EU, especially in sectors such as steel, aluminium, chemicals, machinery or ceramics. It would allow China to continue to export its overcapacities to Europe at dumping prices, thereby in fact exporting its own restructurings. Indeed, granting market economy status to China would have meant that it would become almost impossible to bring up an anti-dumping case in a large number of industrial sectors.

To express their concerns thousands of steel workers from across Europe came two times to Brussels in 2016 to protest against this 'licence to dump' for China.

After many debates, hearings and consultations, a breakthrough was reached in the so-called trilogue between the institutions.

The main elements of the compromise proposal are:

- The non-standard, analogue methodology will continue to be applied to countries that are not members of the WTO while for WTO-members that play by the rules, the standard methodology will be used (as before)
- However, for WTO-members, characterised by a substantial distortion due to state intervention in the economy, a new alternative methodology will be used. The new methodology will make it possible to take undistorted (higher) prices/ costs from other markets to replace (distorted) internal prices in the calculation of the dumping margin
- Criteria for defining substantial distortions are based on the existing EU definition of a market economy (in general the level of state interference in the economy)

- To support industry in delivering the burden of proof of price and cost distortions, the Commission will produce reports on countries and sectors. These reports will be integrated in the file of each investigation. The Commission will also collect the necessary data for reconstructing the 'normal' prices/ costs. In this way, any additional burden for industry will be avoided
- The non-respect of core labour and environmental standards will be considered as a substantial distortion. This is an important achievement as it means that social and environmental dumping will, for the first time, become a criterion in trade defence. The fact that 'wages are distorted' (e.g. in case wages are not resulting from free bargaining between employers and employees) will also be considered as a substantial distortion
- Transparency on dumping procedures will be increased. Trade unions will be able to offer indications of the existence of distortions. Furthermore, the European Parliament will receive an annual report about the application of the new methodology and will also have the opportunity to invite the Commission for ad hoc meetings

However, a number of questions remain. For instance, the Commission has a lot of discretion as to deciding when distortions are substantial enough to trigger the use of the alternative methodology. The same holds for the non-respect of core labour and environmental standards. In both cases, no thresholds have been defined.

The procedure will also become more complex as there will no longer be any automaticity in applying international prices to all costs/ prices. The proof has to be delivered that a cost/ price is distorted and only distorted costs/ prices can be adjusted. Although the Commission promises to support the industry in this, it still has to be shown in practice if the Commission really has the capacity to do so (human resources, cost of external consultants, lack of transparency in third countries). Especially for smaller industries (or sectors dominated by SMEs) the procedure risks to become much more complicated.

Nevertheless, industriAll Europe and the ETUC are happy with the final outcome. Indeed, the new alternative methodology does not grant market economy status to China and can be used in anti-dumping cases against all WTO-members that fail to respect international treaties and standards.

'Fair trade is at the core of our demands; we can no longer accept that unfair trade practices result in further erosion of Europe's industrial base and that European workers lose their jobs because state subsidies allow countries to dump their products on our markets', Luis Colunga, Deputy General Secretary of industriAll Europe said.

'This is clear progress - it is the first time in history that non-respect of labour rights can be legally challenged in trade defence. We can finally fight against the fact that social and environmental dumping in some countries is destroying quality jobs in the EU', said Liina Carr, Confederal Secretary of the ETUC.

Therefore, the ETUC and industriAll Europe want to thank the European Parliament and all those that contributed to achieve this result and calls on all MEPs to give the green light to this much-awaited reform.

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