

## New EU anti-dumping methodology JOINT AFEP & CERCLE DE L'INDUSTRIE POSITION PAPER

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**Text concerned:** *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 2016/1036 on the protection against dumped imports from countries not members of the European Union and Regulation (EU) No 2016/1037 on protection against subsidized imports from countries not members of the European Union – COM (2016) 721 final*

**Procedure:** 2016/0351 (COD)

### Context

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- The Commission proposal introduces a new anti-dumping methodology aimed to strengthen the EU's trade defences "to deal with current realities – notably overcapacities – in the international trading environment, while fully respecting the EU's international obligations in the legal framework of the World Trade Organisation (WTO)" (cf. Commission press release).
- Currently, the EU anti-dumping regulation distinguishes between 'transition economies' and 'market economies'. Each status implies a different methodology to calculate anti-dumping duties. For transition economies, they are calculated on the basis of price/cost charged in a third market economy country to determine the 'normal value' of the product suspected to be the subject of dumping ('analogue country method'). For market economies, they are calculated on the basis of price/cost charged in the State concerned, and therefore are generally much lower.
- On 11 December 2016, some provisions in China's Accession Protocol to the WTO authorising other WTO members to apply the analogue country method expired. On 12 December 2016, China launched a complaint at the WTO over the approach used by the US and the EU to calculate anti-dumping measures against Chinese exports. Should the EU no longer apply the analogue country method (and use instead Chinese domestic prices/costs), antidumping duties would dramatically decrease. On the contrary, should the EU continue to apply it, it may be condemned at the WTO. As China's overcapacities issue remains unresolved and even extends to more complex sectors, and state intervention is still high in all economic sectors, there is still a need to maintain adequate protection of European industries against Chinese dumping. It is therefore urgent that the EU reforms its anti-dumping methodology.
- The Commission therefore proposes a country-neutral methodology applicable to all WTO members that aims to take into account significant market distortions.
- In parallel, on 13 December 2016 Member States agreed on a negotiating mandate on the 2013 proposal for the Modernisation of Trade Defence Instruments, which would enable the Commission to start investigations on its own initiative and allow limited deviations from the EU 'lesser duty rule'. Triangles with the Parliament and Commission will start in January 2017.

## **Our general assessment of the Commission proposal: a balanced approach that must grant protection and avoid retaliation**

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1. Afep and Cercle de l'Industrie member companies **welcome the Commission proposal, which demonstrates its determination to find a balanced approach to the debate on China's market economy status**, through deleting any reference to the market economy status and introducing a new country-neutral antidumping methodology.
2. However, **companies need assurance that this methodology is operational and efficient**. Firstly, the Commission must make sure that the methodology is **compliant with WTO law** (in particular with recent case law). Secondly, the methodology must **adequately protect EU producers exposed to unfair trade practices from third countries**, with an appropriate level of anti-dumping duties to restore fair competition for European producers. Thirdly, the Commission should **engage in constructive dialogue with the EU's trade partners to defend the new methodology so that any retaliation against EU exporters is prevented**.

## **Our technical comments about possible improvements to the proposal**

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### **Strengthen the concept of 'significant distortions' (art. 2.6a.(a) & (b))**

3. The concept of **'significant distortions'** introduced in the Commission proposal needs to be **strengthened**. This is the pivotal concept of the new methodology, but it does not have yet a legal basis in international trade law. Consequently, we fear that the EU may expose itself to actions from trade partners at WTO. We nevertheless very much **welcome the list of factors provided in article 2.6a.(b) to identify distortions and its non-exhaustive nature**.
4. The members of Afep and Cercle de l'Industrie consider that **it would be technically and materially difficult for European producers to bear the responsibility to demonstrate the existence of these 'significant distortions'**. Indeed, it would be difficult for individual companies to gather quickly all the required relevant information.

### **Specify the legal value of the 'reports' of the European Commission and their preparation process (art. 2.6a.(c), (d) & (e))**

5. Companies welcome the idea of the Commission to **develop reports to establish the existence of 'significant distortions'**. **The legal value of the reports must be clarified, stressing that they should be used as a presumption of 'significant distortions'**. Subsequently, in case of significant distortions in the country or in the sector concerned, **the burden of proof should continue to lie with the third country company**, which would have to demonstrate that there is no distortion to apply the standard methodology. EU producers should not be required to provide evidences of distortions in addition to the Commission report. The proposal should therefore specify how the Commission will interact with interested parties in this regard.
6. To **speed up the preparation of country or sector reports** that would establish market distortions, the Commission should **make best use of all pre-existing information**, in particular documentation, reports and decisions on past and current anti-dumping cases and reports on sectors exposed to international competition. For this purpose, it is also absolutely necessary to **ensure that the Commission has sufficient staff and financial resources to perform this task**.

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7. In order to clarify the scope of these reports, we call on the Commission to **refine the definition of a 'sector'** to which reports could refer. We recommend to **take as basis the NACE classification of economic activities**, which is already well-established and recognised.
8. The proposal should **specify that the parties to the investigation have 10 'working days' to comment on the sources** that the Commission intends to use when applying the new methodology in order to allow the economic actors to process information.

#### **Provide a smooth transition from the old to the new methodology (art. 11)**

9. The safeguards put in place in the proposal with regards to existing measures are **adequate and strongly supported by companies**.

#### **Toughen the amendments to the anti-subsidy regulation**

10. Afep and Cercle de l'Industrie member companies welcome the amendments to the anti-subsidy regulation, which are a step forward, but do not modify the basic methodology of anti-subsidies investigations. The members of Afep and Cercle de l'Industrie **observe that anti-subsidy investigations will remain extremely difficult to use them**. The Commission should allocate **sufficient staff and financial resources to anti-subsidy investigations**.

#### **Our related comments on trade defence**

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11. This reform will deliver its full effects **only in conjunction with the implementation of the Modernisation of Trade Defence Instruments reform**. We support the **non-application of the lesser duty rule (LDR)**, which would remove the capping of duties. It would help tackle more effectively dumping, as shown in the US. We therefore call for a **swift conclusion of triologue negotiations on this file**.

#### **Conclusion**

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12. Afep and Cercle de l'Industrie **strongly believe in the benefits of global trade**. Trade is necessary for European business to develop abroad and in the EU. Trade helps deliver growth and jobs in Europe. However, trade can cause economic damages when there are unfair trade practices between parties. **We support adequate defences against unfair trade practices and believe that the EU trade policy will be credible towards EU citizens and trade partners only if these adequate defences are established**. The new EU anti-dumping methodology is a good step in **this direction**.



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#### **About AFEP**

Since 1982, Afep is the association which brings together large companies operating in France. The Association is based in Paris and Brussels. Afep aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. Afep has 115 members. More than 8.5 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, trade, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility.

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#### **About Cercle de l'Industrie**

Based in Paris and Brussels, Cercle de l'Industrie brings together the CEOs of 33 of the largest French industrial companies – state-owned as well as private – along with key political decision-makers close to the right and the left aisles of the French parliament.

Its goal is twofold: to reflect on how industry should tackle challenges in terms of economic growth, sustainable development or technological progress, and to participate in the debates shaping national and European public policies that impact on industry.

Member companies of the Cercle de l'Industrie have a turnover of 865 billion euros and employ 2.7 million people throughout the world.

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