



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2016)

## Opinion

### Title

**DG TRADE – Possible change in the calculation methodology of dumping regarding the People’s Republic of China (and other non-market economy countries)**

(version of 20 May 2016)\*

### **(A) Context**

Under World Trade Organisation (WTO) rules, anti-dumping and anti-subsidy measures can be imposed on products from third countries, if an investigation demonstrates that the products are dumped/subsidised and causing injury to the domestic industry. Regarding certain non-market economies (NME) a specific methodology may be applied to calculate the dumping margin. When China joined the WTO in 2001 a transitional arrangement, allowing for such a specific methodology on the ‘price comparability in determining subsidies and dumping’, was included in Section 15 of its Protocol of accession to the WTO. Following the expiry of some of the provisions of Section 15 of this Protocol, this impact assessment report assesses different options regarding the methodology to establish and calculate dumping in trade defence investigations regarding China.

### **(B) Overall opinion: POSITIVE**

**The Board gives a positive opinion, with a recommendation to further improve the report in the following key aspects:**

- 1) The report should better explain the context and clarify the link with the Commission's proposal on the modernisation of the Trade Defense Instruments (TDI) and other related initiatives, for instance the Communication on Steel.**
- 2) The scope and breadth of this initiative should be clarified to explain to what extent the proposal applies only to China or potentially to other countries maintaining pervasive market distortions.**
- 3) The report should better explain how the options would work in practice and the design of the preferred option 3 should be revised in order to clarify that the "lesser duty rule" is not part of the options (see box C).**
- 4) The results of the external study should be qualified by clearly setting out the main assumptions and limitations in the main report.**
- 5) The report should better explain how the options compare in terms of effectiveness, efficiency and coherence and explain the 'scoring' methodology.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**The lead DG shall ensure that these recommendations are duly taken into account in the report prior to launching the interservice consultation.**

**(C) Main recommendations for improvements:**

**(1) Clarify the context and coherence with other initiatives.** The context of this initiative should be better explained, for instance by clarifying whether the expiry of Section 15 of China's protocol of WTO accession gives rise to a specific problem in the EU that needs to be addressed on an ad hoc basis, or whether the issue concerns a wider set of exporting countries maintaining pervasive market distortions that calls for a general need for modernisation of the EU Trade Defense Instruments (TDI). The link to the Commission's existing proposal on the modernisation of the TDI should be better explained. Moreover, the report should better explain the objective of the proposal and the links with other relevant initiatives, in particular with (i) the recent Communication on Steel, given the high relevance of the TDIs for the steel industry and (ii) the EU Strategy on China.

**(2) Clarify the scope.** As mentioned above, the report should clarify the scope of the initiative and also indicate the legislative instruments that would be used (i.e. amendment to the Anti-Dumping and the Anti-Subsidy Regulations). The report should clearly state that the initiative is a significant generic change in approach.

**(3) Better present the options.** The content of the options, in particular of the preferred option 3 should be more clearly described and it should be clarified how it would work in practice, illustrating with a concrete example. In order to improve clarity, given that the provision on "lesser duty rule" (sub-option 3.2) is presented for information, it should not be presented as part of the options. The analysis of its impacts could be presented separately (e.g. in an annex). The remaining content of the sub-option (namely on anti-subsidy) should be merged with sub-option 3.1.

**(4) Improve the analysis of impacts.** Most of the analysis of impacts relies on the external study, which assessed the possible impact on employment of using the standard methodology in anti-dumping cases against China, as opposed to the current methodology (based on analogue country and lesser duty rule) and to the 'hybrid' methodology of option 3. The results of the study rely on a certain number of assumptions and therefore they should be presented with the necessary caveats. They should not be presented as precise figures but rather as ranges of figures, between the lower and the upper-bound. Although the report mentions the trade defence system used in the US, it should also explain what methodology is used by the other major trading blocs, (e.g. Japan, Canada).

**(5) Clearer comparison of the options.** The comparison of the different options should be strengthened and should assess how they perform in terms of effectiveness, efficiency and coherence. The methodology used for the choice of preferred option should be clarified in order to make the final choice more evident. In particular, the report should better explain the 'scoring' methodology used to compare individual options, for example clarifying what score '++' means.

**(D) Procedure and presentation**

The report should better explain upfront how the EU's TDI framework (i) relates to the WTO rules and (ii) works and how it is implemented in practice. The problem tree should be revised and some of the headlines should be relabelled in order to provide a clearer

picture for non-experts. Some of the proposed indicators should be revised in order to be better linked with the objectives (e.g. for the objective "maintaining strong ties with China based on mutual interests"), including for the operational ones (to be defined for the preferred option). The report should provide more detailed information on stakeholders' views in the main report.

<b>(E) RSB scrutiny process</b>	
Reference number	2015/TRADE/027
External expertise used	No
Date of RSB meeting	8 June 2016