



Brussels, 9.11.2016
SWD(2016) 370 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

**Possible change in the calculation methodology of dumping regarding
the People's Republic of China
(and other non-market economies)**

Accompanying the document

**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 final}

{SWD(2016) 371 final}

{SWD(2016) 372 final}

Table of Contents

INTRODUCTION4

1. THE FUNCTIONING OF THE CURRENT EU TDI SYSTEM5

2. PROBLEM DEFINITION: WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?.....7

 2.1. Risks to the continued effectiveness of the EU’s TDI in relation to China.....8

 2.2. Importance of maintaining a mutually beneficial relationship with China 11

 2.3. The problem drivers..... 11

 2.4. Problem tree..... 15

 2.5. Identification of the stakeholders: Who is affected by the problem? 17

 2.6. What is the EU dimension of the problem?..... 19

3. WHY SHOULD THE EU ACT?20

4. OBJECTIVES: WHAT SHOULD BE ACHIEVED?20

 4.1. General objectives21

 4.2. Specific objectives21

 4.3. Consistency with other EU policies.....21

5. POLICY OPTIONS: WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES.....22

 5.1. Identifying the policy options23

 5.2. Description of the Policy Options23

6. IMPACT ANALYSIS.....26

 6.1. Impacts of Policy Option 1 – “Baseline”.....30

 6.2. Impacts of Policy Option 233

 6.3. Impacts of Policy Option 340

7. COMPARISON OF POLICY OPTIONS43

 7.1. How do policy options compare?43

 7.2. Preferred Option44

8. MONITORING AND EVALUATION: How would actual impacts be monitored and evaluated?45

 8.1. Monitoring46

 8.2. Evaluation.....47

Annex 1 : Procedural information48

Annex 2 : Stakeholder consultation51

Annex 2.1: Report – Stakeholder conference.....62

Annex 2.2: Report – Social Partner meeting.....71

Annex 3: Who is affected by the change in anti-dumping methodology and how?.....72

Annex 4: Analytical models used73

Annex 5: Section 15 – China’s Protocol of Accession to the WTO.....76

Annex 6: Legal context of other WTO members79

Annex 7: TDI modernisation -LDR.....83

Annex 8: Independent Economic study - Confidential draft report.....86

INTRODUCTION

Trade is an essential element in the pursuit of economic growth. In the aftermath of the economic crisis, free trade is a key factor in order to seize the opportunities that the global economy has to offer. However, in order for all stakeholders to be able to benefit from these opportunities, trade has to be based on fair conditions, i.e. not dumped or subsidised.

In cases where fair trading conditions have been compromised by trade distortive practices such as dumping or subsidisation, trade defence instruments ('TDI') may be used, in order to restore a level playing field.

The World Trade Organisation ('WTO') provides the legal framework for the TDI. In particular, specific rules are laid down in the WTO Anti-dumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures¹. Under WTO rules, anti-dumping or anti-subsidy measures, generally in the form of additional tariffs, can be imposed on products from third countries, if an investigation demonstrates that these products are dumped/subsidised and causing injury to the domestic industry. Regarding non-market economy ('NME') countries such as the People's Republic of China ('China')², a *specific methodology* may be applied to calculate the dumping margin. Specific provisions have been included to that effect in the Accession Protocols to the WTO of certain such NME countries.

The WTO members must ensure that their national laws and practice are consistent with the WTO agreements, which are not directly applicable. In this respect, WTO rules leave some room for additional rules to be developed. Therefore, provisions in the national legislations regarding TDI, including the provisions on how to treat China and other NME countries, differ among WTO members. In the EU, the rules for the functioning of TDI are contained in the Basic Anti-dumping Regulation³ and the Basic Anti-subsidy Regulation⁴.

When China joined the WTO in December 2001, an arrangement concerning 'price comparability in determining subsidies and dumping' was introduced in Section 15 of the Protocol of Accession of China to the WTO. Some of the provisions included in Section 15 will expire in December 2016.

According to the current EU TDI legislation, it is mandatory to use a *specific methodology* when calculating dumping regarding China and other NME countries. Therefore, there is a need to analyse any possible impact of the expiry of certain provisions of Section 15 on the EU trade defence instruments and in particular on the methodology to be used with regard to the calculation of dumping in cases involving China. Furthermore, there is a need to assess any impact of a possible change in methodology on the EU economy, and in particular on jobs, as a result of this expiry and/or any change in methodology.

¹ The EU safeguard instrument is not subject to this Impact Assessment.

² Centralised command economies such as Cuba are not relevant to the present discussion.

³ Council Regulation No. 1225/2009 of 30.11.2009.

⁴ Council Regulation No. 597/2009 of 11.6.2009.

The expiry of certain provisions of Section 15 of China's Accession Protocol in December 2016, is the trigger for possible changes in the current specific anti-dumping methodology. However, other countries that are WTO members, and where distortions prevail in the economy, could also be covered by a possible change in methodology⁵.

1. THE FUNCTIONING OF THE CURRENT EU TDI SYSTEM

In the EU's TDI system, the initiation of investigations is normally based on complaints prepared by EU industry, which must contain sufficient *prima facie* evidence of the existence of dumping or subsidisation in the exporting country, and of injury suffered by the EU industry as a result. If the relevant criteria for initiation are met, an investigation is initiated.

Dumping takes place when a product is exported at a price lower than its "normal value". The normal value is the price of a product when sold on the domestic market of the exporting country. If the domestic price cannot or should not be used (e.g. if it is not in the ordinary course of trade), normal value is "constructed" on the basis of cost of production, or it is based on the export price to third countries.

Domestic prices and costs are normally driven by market forces and hence reflect the actual market situation in a certain country/sector. This is why the existence and magnitude of dumping for those countries is normally based on a comparison of the export prices with actual domestic prices and costs in the exporting country. This is called the '**the standard methodology**' as set out in the WTO Anti-dumping Agreement.

The EU Basic AD Regulation lists NME countries and economies in transition, such as China⁵, that do not or do not yet completely operate under normal market economy circumstances. In such cases, domestic prices and costs do not necessarily reflect market forces because of State interference in the economy. Such prices and costs are therefore normally considered as unreliable.

The current EU legislation mandates the investigating authority to disregard domestic prices and costs in these countries and to use the "**analogue country methodology**". This means that in AD investigation concerning imports of a product originating in China or other NME countries, the prices and costs of these countries are disregarded, and prices and costs data from another country, that is a market economy (a so called 'analogue country') is used to establish normal value. This normal value is compared with the export prices of the Chinese products under investigation for the determination of the dumping margin. Since data from another market economy country are used, the problem of non-market distortions in the exporting country is not an issue under the analogue country methodology.

⁵ The following countries are subject to a specific methodology under the current Basic AD Regulation: Vietnam and Tajikistan (who also have specific provisions in their Accession Protocols to the WTO) and Albania, Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Mongolia and Kazakhstan (WTO members) and Belarus, North Korea, Turkmenistan and Uzbekistan (non-WTO members).

The analogue country methodology is also used by other WTO members, such as Japan, but there are also other *specific methodologies* e.g. based on production factors, as used by the US (please see section 2.3.2. and annex 6 for more details regarding methodologies and legislation of other WTO members).

Individual Chinese exporting producers (as well as those of other NME countries listed in the Basic AD Regulation that are WTO members) have the possibility to demonstrate that they operate under market economy conditions. If they provide conclusive evidence to this end, the normal value for such exporting producers may be based on their own costs and prices (so called “market economy treatment” or MET)⁶.

The EU Basic AD Regulation also provides for the use of other methodologies to establish normal value in cases where a so-called “*particular market situation*” exists. In such cases, prices and costs are adjusted in order to allow for a fair comparison.

For NME countries, as explained above, the analogue country methodology is mandatory according to the current EU legislation. Hence, a change in the use of the analogue country methodology vis-à-vis NME countries would necessitate a legislative change in the form of an amendment to the Basic AD Regulation.

TDI modernisation

In 2011, the Commission launched the modernisation of the EU’s TDI, in order to further improve certain areas that have been identified by stakeholders and by the Commission services in the use and practice of the instruments. An external evaluation completed in 2012⁷ also identified certain issues in this regard. That exercise led to a communication⁸ and a legislative proposal⁹ adopted by the Commission in April 2013.

The main goal of the TDI modernisation proposal is to enhance transparency, effectiveness and efficiency of the system for the benefit of all stakeholders. Specific elements of the modernisation include providing information prior to the imposition of provisional measures, reducing the duration of investigations, easier access to TDI for SME’s, or the partial non-application of the lesser duty rule in cases of raw material distortions (LDR). The latter LDR element has prevented the Council from reaching a position on the TDI modernisation proposal.

What is the LDR? On the basis of the findings in an investigation and in accordance with the WTO agreements and the EU legislation and practice, the amount of dumping or subsidisation, and the level of injury are calculated to determine the level of anti-dumping (‘AD’)/anti-subsidy (‘AS’) measures, if any. An AD/AS duty can never be higher than the

⁶ In the five year period from 2006 to 2010, 173 applications for MET were received and 37 were granted, in the five year period from 2011 to 2015, 75 applications were received and 4 were granted.

⁷ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=786>

⁸ COM(2013) 191 final of 10.04.2013.

⁹ COM(2013) 192 final of 10.04.2013.

dumping/subsidy margin but it must be lower (at the level of the injury margin), if a lower duty is sufficient to eliminate the injury suffered by the EU industry. This principle is called the “lesser duty rule” and while it is not mandatory under WTO rules, its application is mandatory under EU legislation.

Therefore, the TDI modernisation proposal and a possible amendment to the dumping calculation methodology are different concepts. The proposed changes to the LDR under the TDI modernisation proposal do not address or affect the calculation of the dumping margin.

The Commission has set out further elements for TDI modernisation in the Steel Communication.¹⁰ The Commission, the EP and the European Council have called for a swift completion of the work on TDI modernization. (Please find more details regarding TDI modernisation and the lesser duty rule in annex 7).

2. PROBLEM DEFINITION: WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?

Following the expiry of certain provisions of China’s Protocol of Accession to the WTO¹¹ a change in methodology may be required. Without recourse to the analogue country methodology, the EU’s TDI may not be as effective in relation to imports from that country (and other NME countries with distortions in their economies). In addition, the wider economic relationship with China needs to be considered (see sections 2.1 and 2.2 below).

Moreover, the opacity of NME countries not only has an influence on costs and prices but creates capacities and/or overcapacities that would not exist in a market economy. Such capacities may have a negative impact on competitors in market economies and other markets. Effective TDI must be able to address such situations.

This impact assessment focuses on China because certain provisions of China’s Protocol of Accession to the WTO expire in December 2016. Furthermore, China is by far the country most subject to EU TD investigations and measures, and thus also most relevant regarding the economic impact that any change in methodology would have. Currently, the EU has more than 50 trade defence measures in force regarding Chinese imports and one regarding imports from Vietnam. However, other NME countries are also covered by a possible change in the anti-dumping methodology.

In the public consultation a vast majority of stakeholders stated that they are familiar with the provisions of Section 15 of China’s Protocol of Accession to the WTO and that they are aware that certain provisions of that section will expire in December 2016. Almost all respondents are aware that this expiry may result in a change in methodology when calculating dumping in cases regarding China. Please see also section 6 and annex 2 for more details regarding the public consultation.

¹⁰ ec.europa.eu/DocsRoom/documents/15947/attachments/1/translations/en/.../native

¹¹ Section 15 of China’s Protocol of Accession is attached in annex 5.

2.1. Risks to the continued effectiveness of the EU's TDI in relation to China

The current EU's TDI, as described above (see section 1) normally effectively offset any injury caused by dumped/subsidized imports from China¹². There is a need to ensure that any methodology chosen in response to the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO, is able to ensure the continued effectiveness of the EU's TDI.

2.1.1. Insufficient remedy for EU producers exposed to unfair competition from China and other NME countries

(a) Risks of using the standard methodology

Chinese authorities still exercise a significant influence on the economy, e.g. through five-year plans and the leading role of state-owned enterprises that do not always operate according to market forces. Indeed, in China, the determination of sales prices or costs of production (such as e.g. credit costs, raw materials or energy used in the production of a product) often does not follow normal market forces (see section 2.3.3 below). Because of this factor, a Chinese "normal value" established on the basis of such distorted prices or costs is not comparable to a normal value in a market economy without such influence, especially for the purposes of measuring the impact on competitors operating in international trade or in a market economy.

Thus, dumping margins calculated according to the standard methodology would on a regular basis significantly understate the actual level of dumping (unless it would be determined that there is a "particular market" situation, justifying rejection of such data in favour of data from a third country). Hence, the dumping margin calculated on that basis would not reflect the full magnitude of actual dumping. This, in turn, would frustrate the very purpose and object of the Basic AD Regulation, which is to allow a duty to be imposed that is sufficiently high, to offset the injurious dumping.

Furthermore, dumping margins of Chinese exporters based on the standard methodology would in many cases be below the injury margin, which reflects the actual level of injury suffered by the EU industry as a result of the actual level of dumping (and what the European industry needs in order to redress the situation resulting from unfair trade). However, WTO rules provide that the level of duty may never be higher than the dumping margin calculated.

Therefore, in many AD cases involving China, the level of the duty would be based on the lower dumping margin, which would be insufficient to offset the injury caused to the EU

¹² "Evaluation of the European Union's Trade Defence Instruments" (Contract No. SI2.581682), Evaluation Study 27
February 2012.

industry by the actual level of dumping. This would have important consequences for the effectiveness of the AD instrument, which may no longer be able to restore a level playing field in trade between China and the EU.

Many stakeholders consider the low duty levels, if based on the standard methodology, as a fundamental problem. In the public consultation a vast majority of respondents considered that using the standard methodology would result in fewer AD investigations and would have an impact on the effectiveness of the TDI.

The problem is amplified by the uncertainty relating to the position that other WTO Members, such as the US or Japan, may take in respect of the expiry of certain provisions of China's WTO Accession Protocol. If they decide not to change their methodology, when calculating the dumping margin in cases involving China (as from December 2016), duty levels imposed would in many cases be higher than those of the EU, if the EU were to apply the standard methodology. As a consequence, excess volumes may be more easily diverted to the EU, as long as the EU has lower duty levels in place, than other WTO Members such as the US or Japan.

Furthermore, EU industries are confronted with unfair competition from China because its industry is not subject to the same risks and constraints as investors in market economies.

In NME and economies in transition, investment decisions are often not driven by market forces, but based on broader planning by the various levels of the State. Specifically, China operates a complex system of plans at all levels of the government, often broken down to individual sectors. Thus, industries are created and sectors developed that may not exist, if it were not for the strategic investments and planning by the State. In short, such industries are not exposed (or significantly less so) to the risks associated with start-up phases or the subsequent execution of the investment projects. Therefore, they can offer goods at lower prices than private market investors and hence sell higher volumes, as they are not subject to the same constraints and risks. This sustained support from the State also allows domestic companies to engage in long term dumping and for enormous overcapacities to be built up.

Under such circumstances, the standard methodology set out in the EU Basic AD Regulation does not necessarily take into account any benefits to the Chinese producers from such strategic investments, which may cause additional trade distortions.

In the public consultation a large majority of respondents considered that they compete with products subject to trade distortive measures in China. This shows the importance of providing an effective remedy against such practices. Some stakeholders also claimed that because the EU is one of the most open economies in the world, the effectiveness of TDI is even more important than in other countries, which have other means of defence, such as high import tariffs, very high AD/AS duty levels, or other obstacles to trade.

(b) Anti-subsidy duties do not reflect the full amount of subsidisation

During anti-subsidy investigations a calculation is made, based on the applicable specific legal provisions, of the exact magnitude of subsidisation, by the exporting country and injury to EU industry.

One critical problem in relation to China is the opacity of the subsidisation schemes. Such schemes are not always defined through published legislation. In addition, China has so far failed to comply with its obligation to notify its subsidy schemes to the WTO. Therefore, the AS instrument is more difficult to use for complainants than the AD instrument, resulting in fewer AS complaints and investigations, and often also in lower duties. For instance, in order to impose an AS duty, it must be demonstrated that the subsidy is specific to an enterprise or industry or group of enterprises or industries.

Furthermore, under current rules, essentially only the subsidy schemes identified by the EU industry in the complaint can be investigated during the subsequent investigation by the Commission services. Any subsidy schemes that are discovered by the investigating team in the course of the investigation, which were either unknown to the EU industry at the time of lodging the complaint, or, which are entirely new schemes, are difficult to countervail because their legal status may not be clear in the EU's law.

Thus, any benefit derived by Chinese exporters from a subsidy scheme that was not identified in the complaint might not be reflected in the amount of the countervailing duty imposed by the EU.

2.1.2. Risks for the stability and continued effectiveness of existing measures

TD measures are normally imposed for a duration of five years. Before the end of the five year period, industry may request an expiry review during which the continued need for measures is examined. If the investigation shows that dumping/subsidisation and injury will likely continue or recur in the absence of measures, the existing measures will be prolonged for another five year period.

WTO rules and EU legislation also allow for the possibility to request an interim review, if circumstances have changed since the original investigation and the imposition of the original definitive duty. If the relevant criteria are met, an interim review is initiated to determine whether there is a need to modify the original duty level. Such a request for an interim review can in principle be lodged during the five-year period, or together with a possible expiry review.

A possible change in methodology for the calculation of the dumping margin in cases involving China could be considered to constitute a change in circumstances, which merits the initiation of an interim review. Although the expiry of certain provisions of Section 15 constitutes a change in the legal situation, in the Commission's view it does not, in itself, amount to a change in the factual circumstances and thus should not trigger an interim review.

Furthermore, given the significant number of measures in force, a requirement to review all of them simultaneously would be incompatible with the principle of good administration. It

would create uncertainty regarding the continuity of the measures in force and risk the administration's ability to comply with the mandatory deadlines.

2.2. Importance of maintaining a mutually beneficial relationship with China and respond adequately to the expiry of certain provisions of Section 15 of China's WTO Accession Protocol

China expects that following the expiry of certain provisions of Section 15 of its WTO Accession Protocol, the EU will cease to label China a NME and will no longer apply the analogue country methodology in TD investigations concerning products originating in or consigned from China.

China has already hinted that if the use of the analogue country methodology were to be continued as currently provided in the EU legislation, this could have negative repercussions. It could, among others, lead to litigation in the WTO and in the European Court of Justice ('ECJ'), as well as increased TDI activity by China, as has been observed in the past.

2.3. The problem drivers

2.3.1. Expiration of certain provisions of Section 15 of China's Accession Protocol to the WTO and a possible change in methodology for the calculation of dumping

When China joined the WTO in December 2001, a transitional arrangement for its accession was introduced in Section 15 of the Protocol of Accession of China to the WTO. Section 15 (a) (ii) included in the Protocol of Accession of China will expire in December 2016.

If, following this expiry, the EU legislation (Article 2.7 of the Basic AD Regulation) would be changed, this will have an impact on future investigations and may also entail changes for measures already in place, at the time of entering into force of a possible change in legislation.

2.3.2. Chinese expectations related to the expiry of certain provisions of Section 15 of China's Accession Protocol to the WTO

With the expiry of these provisions, China expects that the EU will cease to systematically apply the analogue country methodology for anti-dumping purposes. China has voiced its expectations in this regard at several occasions and in various fora. Should this change not be applied, China could pursue this matter by way of WTO litigation.

Although, China has certain concrete expectations, WTO members may react in various ways to the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO.

While the EU is coordinating with its major partners (e.g. US and Japan) regarding anti-dumping methodologies in the light of the expiry of certain provisions of China's Protocol of Accession to the WTO, their positions may evolve. It is important to note that the process to legally implement the change in methodology is significantly different in other countries as compared to the EU. For the EU to amend its trade defence legislation, it will require a Commission proposal through ordinary legislative procedure involving the European Parliament and the Council. This is not the case in other countries and therefore their procedures for changing law or practice are swifter.

It should also be noted that, currently, the EU and US approaches with regard to non-market economies differ in several aspects. In particular, in the EU's basic AD Regulation, the use of the analogue country methodology is *an obligation* regarding China and the other countries specified in that Regulation (Article 2.7(a)). Therefore, as compared to other users of the TDI vis-à-vis China, the EU is in a rather unique position, as the EU legislation mentions China specifically classifying it as a NME country.

The current US legislation provides that the determination of NME status may be made "*with respect to any foreign country at any time*". It is thus not directly relating to China's Accession Protocol, and it is therefore possible that the US's current methodology (based on 'factors of production' selected in an appropriate foreign surrogate country) might also be used after December 2016. There are indications that the US¹³ will not, for the time being, change the methodology for the calculation of the dumping margin in cases involving China.

Japan currently uses criteria similar to the EU to determine market economy conditions. It also has a presumption of NME treatment for China. Japan has a non-legally binding provision in its legislation under which it would consider granting market economy status to China from December 2016. However, Japan has made no official statement saying that it will continue to follow this guideline, and does not seem to support the automatic granting of MES to China from 2016.

Canada had introduced specific provisions in its law in 2002, with regard to China and Vietnam and a deadline, but these provisions were subsequently repealed. Thus, Canada's trade remedy system can continue to take into account whether these countries are operating according to market economy conditions. Any change to Canada's law in this regard does not require an approval by the Parliament.

Many stakeholders emphasised that the EU should coordinate with its major trading partners in order to see how they will react to the expiry of certain provisions of Section 15 of China's Accession Protocol. As explained above, the EU is indeed coordinating with its partners. However, due to the various calculation methodologies used and the different, and, in many cases more flexible legislations in place, there is no "one fit for all" approach and any possible

¹³ No official statements are available from Japan and Canada. The latter country has however changed its law in order to remove the automatic expiry date for treating China as a NME. Australia, New Zealand and South Korea have changed their methodology many years ago in the context of FTA negotiations. Brazil officially granted MES to China in 2004, but still uses the analogue country methodology.

change in methodology must be tailored to the specific needs/legislations of each WTO member concerned. Please see also section 2.1.1 and a more detailed description of the systems of other WTO members in annex 6.

2.3.3. *Pervasive distortions in the Chinese economy*

Section 15 paragraph (d) of China's Accession Protocol allows WTO members to establish, under certain circumstances, that China may become a market economy *before* the end of the 15-year period. Shortly after the accession of China to the WTO, a bilateral process with the EU was established in order to give China the possibility to demonstrate that it is a market economy under EU domestic rules, which comprise five criteria¹⁴. On the basis of a continuous assessment, to date China has not met these five criteria. On the contrary, as assessed in the bilateral process with China until 2011, and also drawing from information gathered in AD and AS investigations carried out in China, a variety of distortions continue to exist. These include differential tax treatment, state interference e.g. in the financial sector, state policies/plans, and a variety of programs at various governmental levels that provide benefits to sectors/companies. While certain similar schemes may also exist in other WTO member countries, the sheer number and cumulative effect of Chinese schemes is unequalled, in particular as concerns the following:

Various programs of tax exemption and reduction exist, these include e.g.: tax credits for the purchase of domestic equipment if a project is consistent with the industrial policy of the government of China, tax reductions if a company is recognised as a “high and new technology enterprise”, VAT exemptions and import tariff rebates for the use of imported equipment. Furthermore, a complex VAT refund system is designed to discourage exports of certain products (e.g. hot or cold rolled steel).

According to the Land Administration Law of China, all land belongs to the people, and cannot be bought or sold. The law sets out the conditions by which land use rights can be sold to businesses by bidding, quotation or auction. However, there is no functioning market for the sale of land use rights and thus often the amount paid for land use rights is below the market rate.

¹⁴ The five criteria are largely based on Article 2.7(c) of the Basic AD Regulation concerning individual market economy treatment determinations in specific investigations, and are the following:

1. a low degree of government influence over the allocation of resources and decisions of enterprises, whether directly or indirectly (e.g. public bodies), for example through the use of state-fixed prices, or discrimination in the tax, trade or currency regimes;
2. an absence of state-induced distortions in the operation of enterprises linked to privatisation and the use of non-market trading or compensation system;
3. the existence and implementation of a transparent and non-discriminatory company law which ensures adequate corporate governance (application of international accounting standards, protection of shareholders, public availability of accurate company information);
4. the existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime;
5. the existence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision.

Furthermore, there are also programs aiming at providing goods, such as electricity or water, for less than an adequate price.

Regarding the Chinese financial sector, fully State-owned banks with a board of directors dominated by the government of China hold the highest market share and are the predominant players in the Chinese financial market. State-owned banks are subject to legal rules which require them, inter alia, to carry out their loan business according to the needs of the national economy, provide credit support to encouraged projects or give priority to the development of high and new technology industries. Preferential loans and financial contributions in the form of debt for equity swaps, equity infusions, or disguised grants in the form of unpaid dividends are common practice.

Besides the obvious advantage that Chinese producers benefit from through these various schemes, distortive practices also led to intensive capacity building and enormous overcapacities in many sectors such as solar panels, chemicals, aluminium, glass, shipbuilding, paper, ceramics, melamine, cement or steel as well as high value added industries such as automotive or semi-conductors.

The overcapacity is also caused by local protectionism and the fragmentation of industries that is driven by local interests, low input prices due to government policies and a fiscal system that encourages local governments to attract excessive investment. China had for many years massive fiscal stimulus package including an unprecedentedly large lending programme. It targeted infrastructure investment, with the government-encouraged lending surge resulting mainly in the expansion of Chinese State-owned enterprises' production capacity. This stimulus package poured credit into increasingly economically non-viable projects and increased direct and indirect subsidies to investment and manufacturing. While these policies boosted the economy in the short term, in the medium term they have led to macro-economic imbalances and distorted global markets.

Furthermore, the Chinese economy rebalances from an investment and industry driven growth model towards services. Therefore, also industries, such as non-ferrous metals, that have so far supplied mainly the domestic market, have a very strong incentive to dump their excessive and heavily subsidized production abroad, as it can be seen currently in case of steel.

2.3.4. Current provisions do not adequately deal with distortions in the Chinese economy

The standard methodology (Articles 2.3 and 2.5 in the EU's Basic AD Regulation) foresees the need to deal with distorted prices/costs but only as punctual distortions in an otherwise normally functioning economy of market factors. Thus, it is not a means to deal with economy-wide distortions, except insofar as they are demonstrated to impact specific costs. These provisions could only be used to respond to such distortions on a case-by-case basis, and it would no longer be possible to systematically have recourse to the analogue country methodology with respect to China.

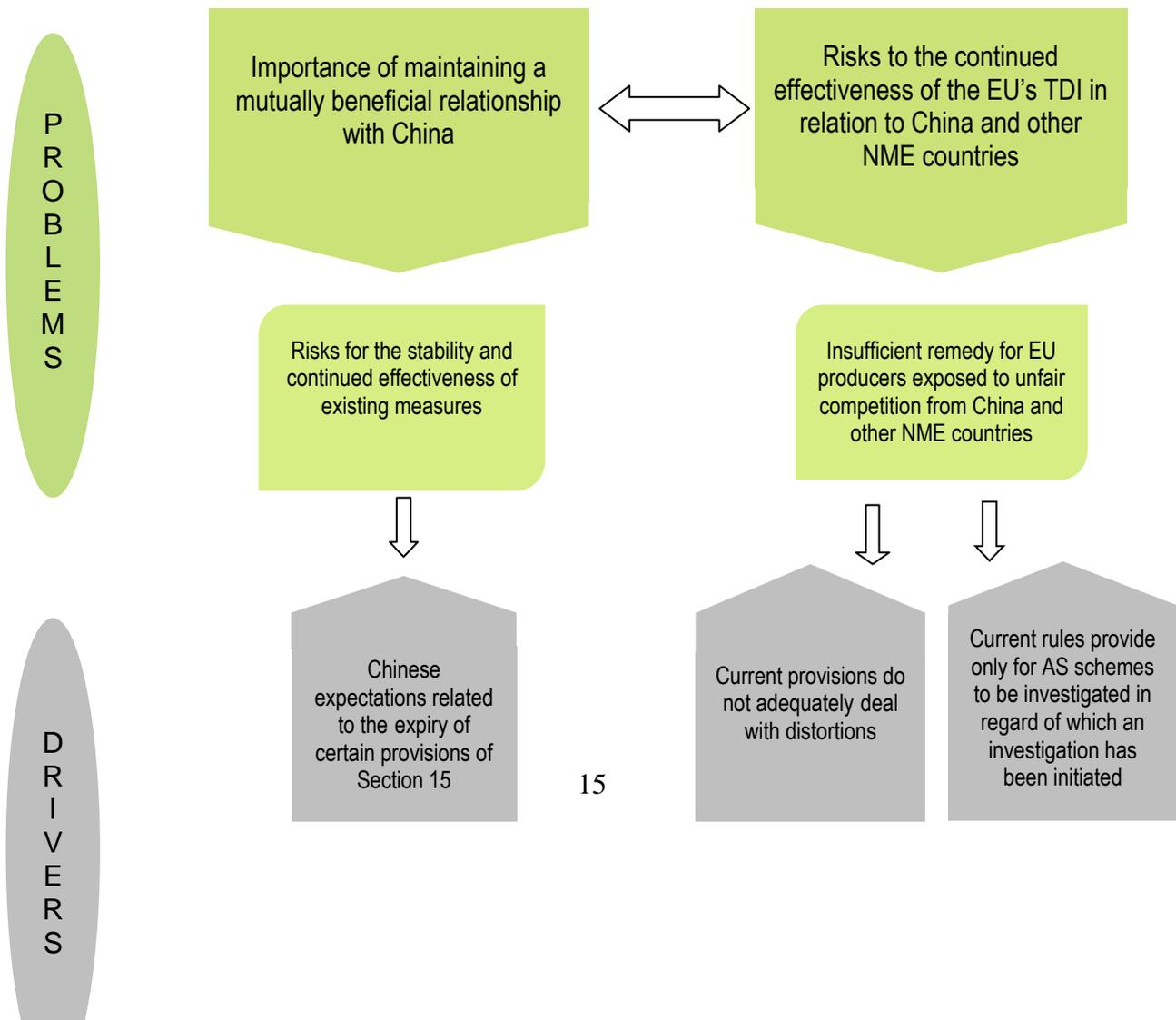
2.3.5. *Current rules provide only for AS schemes to be investigated in regard of which an investigation has been initiated*

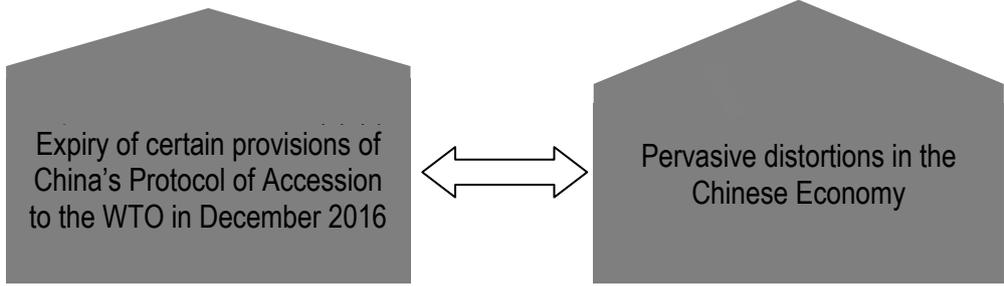
Distortions in China regarding raw materials or energy, or distortions regarding domestic and export prices are omnipresent. Some of these distortions constitute subsidies. These distortions are proliferating and new subsidy schemes are created regularly.

However, under current rules, normally, only AS programs and schemes that have been identified

in the complaint have been investigated during an investigation. New schemes that are not known to the EU industry at the time of lodging a complaint can only be taken into account in the calculation of the final duty level, if the complainant extends the complaint and a new notice of initiation is published (please see also sections 2.1.1. and 2.3.3 for more details regarding subsidies).

2.4. Problem tree





2.5. Identification of the stakeholders: Who is affected by the problem?

2.5.1. EU industry

The EU industry is affected by trade defence action in three respects.

First, the most important EU sectors benefitting today from TD investigations and measures involving China are the steel industry, the chemical industry, but also more specialised sectors such as the ceramics industry, the solar panel industry or the bicycle industry, to name only a few. These sectors compete today with dumped and subsidized imports from China and they seek relief from the negative consequences of such imports by filing AD and AS complaints.

However, it is likely that further sectors, such as cement, aluminium, paper or glass, or high value added industries such as automotive or semi-conductors (as identified by stakeholders) become concerned, or more intensively affected, in the future. This is the case in particular for those sectors where, as in the case of steel, important overcapacities exist. Furthermore, China's 13th five year plan focuses on changes in China's society and the Chinese economy. Thus, nurturing strategic industries such as environmental, biotechnology, IT, smart manufacturing, high-tech equipment, and new energy industries together with support and upgrading of traditional industries are a priority. Regarding exports, the plan focuses on upgrading China's position in global value chains by cultivating strengths in technology, standards, brands, quality and service. The potential for overcapacities developing in those sectors is therefore not negligible.

Second, trade defence investigations and measures also affect European industries that use the products subject to investigation/measures as an input for their own manufacturing activities. These downstream user industries are not very keen on AD/AS measures because they typically result in higher input prices (either because AD or AS duties have to be paid, or because the EU industry benefitting from measures has increased its prices, or because it is simply costly to switch to sources of supply in other third countries). Examples are users of coated steel, or installers of solar panels who, once a TD measure is in place, have to pay higher prices for the imported product they use, or switch to other sources of supply, which are also higher priced. However, in many cases actual price increases are significantly lower than the level of the duty imposed, either because the product is also available from other sources, or, because the share of input under duties represents a minor component of the product.

Third, in general, the industry upstream of the product under measures benefits from TD measures. Indeed, the EU industry benefitting from the measures will maintain or even increase their output and thus, the demand for the upstream product using EU inputs is preserved (e.g. kali mines benefit from AD measures on ammonium nitrate).

2.5.2. Importers, traders, wholesalers, retailers

This group of importers, traders, wholesalers and retailers represents the link between producers (in the EU or outside) and the industrial user or consumer. In fact, it is one of the EU's largest non-financial business sectors creating 10 million jobs and accounting for over 22% of all turnover generated.

While traders typically source both abroad and domestically, importers only source abroad. However, their situation is similar as importers usually also have several sources of supply at their disposal, including some that are not subject to AD/AS duties. In general, this sector is against TD measures, as they claim that an AD/AS duty can often not be reflected in prices and thus reduces their margin. Furthermore, changing sources of supply (to avoid suppliers that are subject to AD/AS duties) is time consuming and costly.

However, in certain circumstances importers and traders are not against measures since they benefit from a continued source of supply in the EU. In particular in sectors such as metals, they trade both the EU manufactured and imported steel. The share of imported metals is however only about 13% (2015). These intermediate companies provide additional processing and services.

2.5.3. *SME's*

SME's represent the back-bone of the EU's economy accounting for 67% of total employment in the EU in 2014¹⁵. Almost all SMEs (93%) are micro enterprises employing less than ten people. Micro SME's are normally not directly impacted by TD measures with the exception of some cases such as salmon from Norway or tableware from China.

However, micro SMEs are potential suppliers of industries that compete with the dumped imports or use the dumped imports as intermediate products. They may also themselves use the dumped imports or the EU produced product competing with the dumped imports.

2.5.4. *EU citizens*

EU workers in the sectors concerned benefit from TD measures, since such measures can help improve the situation of an industry or a sector concerned, or even ensure its survival, and thus help preserve or create jobs in the EU. The same is true with regard to workers in upstream sectors, i.e. the suppliers of the Union industry. By contrast, EU workers in downstream sectors may be impacted negatively, because higher input prices may also mean less growth (or even loss of turnover) in such downstream industries and hence also less employment opportunities in downstream sectors.

Potential consumers of the imported dumped products will in some cases have to pay higher prices. However, typically products subject to TD measures are rather destined for the industrial user. Often they cover semi-finished products that are further processed by the down-stream industry in the EU or serve as an input for the finished product. Therefore, in

¹⁵ Source: Annual Report on European SMEs 2014/2015

many cases any AD/AS duty imposed on one input product is absorbed in the total cost of production of the final product and not necessarily, or not fully reflected in the final price for the consumer (e.g. coated steel used to produce washing machines, stainless steel fasteners used in cars, machines, etc., aluminium wheels used for cars, motorbikes).

In rare cases consumer products such as shoes, tableware or bicycles are concerned by AD/AS measures, which might have an impact on the price for the end user. However, the effect of duties in such cases is rather felt at the level of importers and distributors and not by the final consumers. For example, in the case of the anti-dumping investigation on shoes, a duty of 1,60 € was imposed on the average import price of a pair of shoes of 10€. However, it was found in that investigation that the average sales prices of the shoes (including margins for importers, wholesalers and retailers and branding) was 30€ and more, and thus the duty became negligible at the consumer level.

Furthermore, as explained above, products covered by TD measures are narrowly defined and very specific. Therefore, any price increase as a result of a duty is limited to that specific product and does not affect the broader sector (e.g. the duty on tableware does not have an impact on other ceramics products such as tiles or sanitary ware).

The purpose of TD measures is to restore fair trading conditions and not limiting imports. Any issues regarding supply and consumer choice are dealt with in the Union interest test, where the interests of all interested parties are taken into account. Experience gathered in Union interest investigations, has confirmed that in the vast majority of cases, consumers are not or only marginally impacted by TD measures. Consumer safety issues are dealt with under other relevant EU legislation, not TDI.

2.6. What is the EU dimension of the problem?

One way of assessing the importance of trade defence for the EU as a whole, is looking at the trade volume affected by measures as compared to the total trade volume. Out of total EU – China trade, around 2% is subject to measures (or up to 5% when taking into account that trade flows typically decrease after imposition of measures). Given the value of trade affected, any impact of a change in methodology to calculate dumping would have very little or no impact in terms of EU GDP.

A possible overall impact of the existing TDI measures on Chinese products, maybe measured on employment: out of 50 million industrial jobs in the EU, 231 000 jobs (or 0,4%) are directly linked to products currently subject to TD measures regarding China¹⁶.

Yet, the full dimension of the impact of trade defence is not adequately reflected on a macro-economic level. AD and AS measures affect products that are precisely and narrowly defined, and are thus very specific. Hence, TDI have primarily a micro-economic dimension.

¹⁶ This figure is derived from the detailed information which the Commission has gathered in the context of the investigations leading to the current TD measures in place.

However, they can be substantial for a specific industry or a specific sector at a certain point in time, and therefore effective TD measures could be essential to that industry's survival.

An illustrative example of a sector that relies on effective TDI in order to face unfair competition, particularly in the recent past, is the steel sector. The EU steel industry provides around 330,000 jobs in 500 production sites in 24 Member States and generates an annual turnover of around EUR 170 billion, which corresponds to around 1.3% of EU gross domestic product¹⁷. Therefore, in strategic sectors, unfairly traded imports can result in site closures and related job losses, and can be very detrimental to the sector concerned, and also, albeit to a lesser extent, to the EU economy as a whole. Effective TD measures can play role in addressing such situations.

Moreover, some industries benefitting from measures, such as the steel industry, are an important part of European value chains. In certain situations, without TD measures, the production of certain products in the chain could be put at risk. This would also have implications for the industry up- and downstream of these products, and ultimately also negatively affect the top of the chain, i.e. R&D and innovation. For example, the AD measure on coated steel is beneficial for the up-stream products, hot rolled flat steel and cold rolled flat steel, since it ensures its continued demand. In such situations, the AD measure also ensures reliable sources of supply in the EU for the downstream operators, e.g. automotive and white goods industries. More importantly, keeping production of high value added products in the EU, contributes to maintaining R&D and innovation in the EU.

3. WHY SHOULD THE EU ACT?

Under Article 5(3) TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. According to Article 3.1(e) of the Treaty on the Functioning of the European Union (TFEU), the common commercial policy is an exclusive competence of the EU. Article 207 TFEU further states that “measures to protect trade such as those to be taken in the event of dumping or subsidies” shall be based on the uniform principles of the common commercial policy. The subsidiarity principle therefore does not apply. The EU is required to ensure compliance with EU international obligations.

4. OBJECTIVES: WHAT SHOULD BE ACHIEVED?

According to Article 3.5 of the Treaty of the European Union (TEU), in its relations with the wider world the Union shall contribute to free and fair trade¹⁸. According to Articles 2, 3(5),

¹⁷ <http://www.eurofer.org/>

¹⁸ Article 3.5 of the Treaty on the European Union: *"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter"*.

21(1), 21(2) TEU and Article 216(2) TFEU, the EU is founded upon the rule of law and contributes to the observance and development of international law, which binds the EU institutions.

Trade is a key element in the EU's efforts to reduce unemployment. It is a major driver for growth and jobs provided that any negative effects of unfair trade can be effectively counteracted.

4.1. General objectives

- promote free and fair trade (G1);
- increase EU competitiveness and create/preserve EU employment (G2).

4.2. Specific objectives

- deal adequately with the expiry of certain provisions of Section 15 of China's Accession Protocol to the WTO, and taking into account other countries in a similar situation (S1);
- ensure continued effectiveness of the EU's trade defence instruments (S2);
- provide an effective response to the persisting distortions in the Chinese economy and in other NME countries (S3);
- ensure an adequate remedy to offset injury caused by dumped/subsidised, i.e. unfairly traded, imports (S4);
- maintain strong ties with our trading partners and in particular with China, based on mutual interests (S5).

4.3. Consistency with other EU policies

The objectives are fully in line with the principles of the Treaty of the European Union which provide that the EU shall, amongst others, "*promote free and fair trade*" whilst contributing to the observance and development of international law.

Article 206 of the Treaty on the functioning of the European Union: "*By establishing a customs union in accordance with articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign investment, and the lowering of customs and other barriers*".

Article 207 (1) of the Treaty on the functioning of the European Union: "*[...] The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action*".

There is also full compatibility with the goals of the Communication: Trade for all, which pleads for stronger enforcement of the EU's rights¹⁹ and that the EU also needs to stand firm against unfair trade practices through anti-dumping and anti-subsidy measures.

It is also in line with the goals of the EU's 2020 Communication: A strategy for smart, sustainable and inclusive growth, and in particular with its priority to *foster a high-employment economy delivering social and territorial cohesion*²⁰. Furthermore, it also contributes to one of its flagship initiatives: "*An industrial policy for the globalisation era" to improve the business environment, notably for SMEs, and to support the development of a strong and sustainable industrial base able to compete globally*²¹.

The objectives are also in line with the Communication on Trade, Growth, and World Affairs, which advocates with regard to China (the EU's second largest trading partner after the US), for *policies that are more in line with market economy rules and seek to address the sources of the current major imbalances*²².

The objectives are also fully consistent with the first of the ten priorities of the current Commission: *boosting, jobs, growth and investment*²³.

Moreover, the Steel Communication of 16 March 2016²⁴ calls for "*Acting together to strengthen our defences against unfair trade practices.*" It notably emphasises: "The Commission is imposing a record number of trade defence measures to offset the detrimental effect of dumping on Europe's steel industry. The efficiency and effectiveness of our action can however be significantly enhanced, accelerated and further improved if Member States support the Commission's efforts".

Finally, the initiative is fully in line with the EU Strategy on China²⁵ that has as objectives: (i) to increase the effectiveness of the EU as a global actor, in line with the Commission's policy guidelines, as expressed via the EU-China strategic partnership at bilateral and multilateral level; (ii) to define the EU's own interests in its evolving relationship with China; (iii) to propose how those interests can best be promoted, and; (iv) to identify new areas of cooperation with China in an increasingly challenging world²⁶.

5. POLICY OPTIONS: WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES

¹⁹ http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf, page 15

²⁰ COM(2010)2020, p.3.

²¹ COM(2010)2020, p.4.

²² COM(2010)612, p.11

²³ https://ec.europa.eu/priorities/index_en

²⁴ ec.europa.eu/DocsRoom/documents/15947/attachments/1/translations/en/.../native

²⁵ Joint Communication to the European Parliament and the Council "Elements for a new EU strategy on China", JOIN(2016) 30 final

²⁶ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_eeas_006_eu_strategy_china_en.pdf

5.1. Identifying the policy options

In light of the envisaged changes three policy options have been identified, which range from leaving the current legislation and practice unchanged to developing an alternative methodology and provisions to ensure the continued effectiveness of the EU's TDI.

- **Policy Option 1: “Baseline”**- no change, neither in legislation nor in practice;
- **Policy Option 2:** Replacing the NME methodology by the standard methodology;
- **Policy Option 3:** New methodology allowing to effectively capture the non-market distortions coupled with transition periods and a further strengthening of the trade defence instruments.

5.2. Description of the Policy Options

5.2.1. *Policy Option 1 – “Baseline”*

Option 1 would leave the current EU legislation and practice, regarding AD and AS investigations unchanged. The Commission would not make a legislative proposal.

This means that for the calculation of the dumping margin regarding China, the analogue country methodology would continue to be mandatory in all cases concerning China, i.e. data for normal value would continue to be based on prices and costs in a third country that is a market economy (the so-called analogue country). Furthermore, the LDR would continue to be used in all cases (unless the TDI modernisation proposal is adopted) and newly found AS schemes during an investigation would only be reflected in the level of the AS duty imposed if an extended complaint is lodged and a new notice of initiation is published.

While a superficial reading of this option might suggest that it is tantamount to simply maintaining the status quo, this is however not the case. As described in the text of China's Accession Protocol (annex 5), at least certain provisions of the Protocol will expire on 11 December 2016 in any event, and this expiry will ipso facto entail a number of changes, in particular in the legal and political environment as explained in detail in section 6.1.

5.2.2. *Policy Option 2: Replacing the NME methodology by the standard methodology*

Under current rules, for NME countries, the NME methodology is used for the calculation of the dumping margin (normal value is based on costs and prices in another market economy third country, the so-called ‘analogue country’). For NME countries, which are WTO members, such as China, the EU AD legislation provides that producers who can prove that they operate under market economy circumstances, their own costs and prices are used as a basis for the dumping margin calculation.

Under option 2, these rules would no longer apply. Instead, by default, the NME methodology would be replaced solely by the standard methodology for China. This means that Chinese producers' own costs and prices, as found, would systematically be used as a basis for the dumping margin calculation.

This option corresponds to the “automatic granting of market economy status”, as it would mean treating China fully as any other WTO member market economy country. The Commission would make a legislative proposal.

The circumstances in which an exception to the standard methodology would be available on a case by case basis would be those set out in the WTO Anti-dumping Agreement and the EU Basic AD Regulation. There would have to be a particular market situation, and it would have to be demonstrated that Chinese costs should not be used, but rather replaced with data and evidence from a third country.

5.2.3. Policy Option 3: New methodology allowing to capture the non-market distortions coupled with transition periods and further strengthening of the trade defence instruments

In order to ensure the continued effectiveness of the EU's TDI on the one hand, and to adequately deal with the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO on the other hand, an alternative methodology would be developed, coupled with transition periods and substantial strengthening of the trade defence instruments.

Policy option 3 contains three elements. These elements aim at ensuring the continued effectiveness of the TDI, further strengthening them and improving the effectiveness in dealing with subsidies discovered in the course of AS investigations. The Commission would make a legislative proposal.

Dealing with distortions:

Clarify provisions in the EU AD legislation designed to deal with significant distortions affecting prices and/or costs of the exporters in the country of export. These already foresee that, where such distortions create a ‘particular market situation’:

- (a) sales prices in the domestic market of the exporting country are rejected and normal value constructed on the basis of costs, and
- (b) costs of exporters affected by such a ‘particular market situation’ are replaced by costs in another representative market.

The situation that prevails in China, on the basis of the current Chinese socio-economic system, is characterised by economic distortions as compared with the normal functioning of a market economy such as the EU, which affect deeply and systematically the structure of costs and prices in the Chinese economy. It cannot be excluded, however, that a similar situation exists or develops in other countries.

The clarification would specify the basis for establishing situations where such deep economic distortions in the exporting country exist. For instance, relevant criteria could include government policies and involvement affecting costs of production (e.g. raw materials, labour); significant presence of state-owned enterprises distorting free market forces with respect to prices or costs; public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces; or access to finance granted by institutions implementing public policy objectives.

In order to identify such distortions in the exporting country, the Commission may issue a report describing the specific situation concerning these criteria in a certain country and/or sector. It is important to note that the TDI system would remain to be complaint based, i.e. investigations are normally only initiated on the basis of a valid and justified complaint by the EU industry.

All interested parties would have access to the report and have the possibility to comment on the findings therein. This report could become part of a particular investigation by the Commission and would become part of the file of each individual investigation. It could also be a public document. This mechanism would mean that the Commission would effectively assume the burden of proof in determining whether situations of deep distortions would exist.

Concretely, this would allow the EU investigating authority to investigate distortions existing in the whole Chinese economy and/or certain sectors – as well as in other countries in a similar situation. The EU investigating authority may then conclude that it would be necessary to calculate dumping not on the basis of domestic sales prices but on the basis of domestic costs of production (adjusted where necessary by using costs in a third country or international benchmarks).

In case of a finding of pervasive distortions, affecting the entire structure of costs throughout sectors or the economy as a whole, alternative cost sources than those in the exporting country would be used for the determination of normal value.

Many stakeholders have requested that we coordinate closely with our major international partners. While other main users of the instruments globally have different laws and practices, nevertheless this new methodology would bring the EU system closer to that of some of our international partners, including the US.

Transition periods:

It is recalled that TDI measures are normally imposed for a duration of five years, unless they are modified as a result of an interim review before the end of the five year period. Interim reviews can only be carried out if there is a change in circumstances.

Under this option, it would be clarified that the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO does not constitute a change in circumstances, which would merit the initiation of an interim review. Expiry reviews and interim reviews would then be carried out applying the existing principle that, in the absence of a change in factual circumstances, the methodology of the initial investigation is applied. Indeed, in the likely event that circumstances in China have not changed since the original investigation, as

China still does not function as a market economy, the analogue country methodology would be applied in interim reviews and expiry reviews.

Furthermore, existing provisions would be amended to foresee that the initiation of an interim (or newcomer) review linked to the expiry of Section 15 (a) (ii) of China's Accession Protocol to the WTO, can be requested only at the time of initiation of an expiry review. Other interim reviews would not be affected by this constraint.

Amending the AS legislation:

The AS legislation would be amended in order to allow for any new subsidy schemes found in the course of an AS investigation to be investigated, subject to due process. Consequently, new schemes would also be included in the calculation of the final AS duty imposed. Thus, the AS duty imposed would more accurately reflect the actual level of subsidisation benefiting the exporter in the export market. A study on subsidies in China is ongoing and will complement any legislative change.

6. IMPACT ANALYSIS

A thorough analysis was conducted to assess the impact of the different options identified. Then, options 2 and 3 were compared to option 1 – the baseline. The assessment is based on the Commission services' own analysis and practical experience, on the results of the public consultation of stakeholders, the inputs received from a stakeholder conference specifically organised to that effect, and on an independent economic evaluation study.

Public consultation

A public consultation was held on line for ten weeks. In anticipation of a possible large number of replies and in order to ensure an objective and coherent evaluation of the responses received, the on-line consultation contained only closed questions. Furthermore, various stakeholders submitted position papers and comments, either in the framework of the public consultation or separately. In addition and in order to give stakeholders a further opportunity to present their views and have the broadest and most diverse feed-back, the Commission services organised a stakeholder conference, which was attended by around 300 participants. During the debate all stakeholders who so wished intervened. The views expressed represented the whole spectrum of opinions on the subject. The Commission services also organised, a dedicated meeting with the EU social partners.

In the context of the online consultation, almost 5300 replies were received. The analysis of these replies showed that a large number were identical and submitted on behalf of the same entity. These ranged from two to more than 900 identical replies for one entity. The report on the public consultation and the figures indicated in this report counted every reply as an individual one. Please see more details regarding procedure and the consultation strategy in annexes 1 and 2.

Quantitative Models

The quantitative analysis of options 2 and 3 was done by an external team of experts²⁷.

The European Commission provided the authors with estimates of AD tariffs, which would result from a dumping calculation under options 2 and 3 respectively. On this basis, the external experts calculated, for each option, the difference between the AD tariffs under the option at hand and the AD tariff under the baseline scenario, i.e. under the current methodology. This difference provided the input for the remainder of the quantitative analysis.

The external experts then proceeded in four steps:

First, they calculated how a variation in AD tariffs affected the volume of Chinese imports into the EU, and how a change in import volume affected the level of employment in the EU in those industries, which manufacture the products under AD tariffs. On this basis a relationship between a variation in AD tariffs and a variation in employment in the EU was identified.

Secondly, they calculated the impact of a variation of AD tariffs on the EU industry as a whole. To this end, the authors estimated, which additional sectors could become subject to dumping by China in the future.

In a third and fourth step, the external experts calculated the impact of a variation in AD tariffs, not just for those products or sectors currently affected or possibly affected in the future, but also for the related upstream and downstream industries. This additional step gave an estimation of the indirect effects of a variation of AD tariffs on the entire EU economy.

As is the case with all economic analyses, the results are dependent on critical assumptions and are also otherwise subject to a degree of uncertainty. They indicate orders of magnitude to be expected with a reasonable confidence rather than precise predictions to be expected with certainty. For this reason, the external study worked with two sets of parameters throughout, allowing the results to be presented as ranges as opposed to point estimates. Where possible, these ranges of results are presented in sections 6.2 and 6.3. However, where results are broken down to individual sectors and Member States only the upper bound of the estimates is presented to avoid complicating the result tables²⁸.

Overall impacts

Regarding the impact on the **environment**, the starting point is that TD measures affect only a small share of imports from China (less than 2% of total trade or less than 5% when taking

²⁷ The full report of the external study is attached as annex 8 to this IAR.

²⁸ The full range of results is available in annex 8.

into account the reduction of trade due to the measures imposed). Two areas can be distinguished, i.e. production and transport/distribution.

One may argue that while higher AD duties (option 3) may lead to slightly less production in China and slightly more production in the EU, the impact for the environment in the EU is negative. However, since environmental standards are often much higher in the EU than in China, one could also argue that the overall impact of AD duties on the environment is very likely to be positive as evidenced by the fact that 80% of China's industry is still coal based, whereas in the EU 28%. In the public consultation, in relation to option 2, a number of stakeholders expressed the concern that higher production in China for exports to the EU, resulting possibly from lower anti-dumping measures, would have an overall negative impact on the environment, precisely because of the difference in emission standards between the EU and China. Significant imports from China may contribute to climate change, as more goods would be shipped from China to the EU, increasing CO₂ output and thus carbon footprint.

According to some stakeholders, without any measures to reduce pollution from ships, by 2020 shipping will be the biggest single emitter of air pollution in Europe, even surpassing the emissions from all land-based sources together²⁹. It is however very difficult to quantify, the impact of effective TDI on the environment.

As regards **human rights**, they are mainly discussed between the EU and China in the framework of both their political dialogue as well as a specific Human Rights Dialogue.

TD instruments are generally considered as technical instruments. Their scope is limited to restoring fair trading conditions, where these have been compromised by unfair practices such as dumping or subsidisation. The application and use of the instruments does not reach beyond this limited scope. The instruments are guided by technical and factual criteria and should, as far as possible, remain free of political considerations.

As far as the impact on **SMEs** is concerned, SMEs represent an important part of the EU's economy. In 2014 SMEs accounted for 67% of employment (90 million people) and 99% of businesses in the non-financial sector. About three quarters of SMEs are active in five key sectors: wholesale and retail trade, manufacturing, construction, business services and accommodation and food services. SMEs are present at all levels of the value chain as producers, users or importers, retailers/traders.

Although, overall SMEs are recovering from the economic and financial crisis in 2008, their situation varies among Member States and sectors. A more detailed analysis at the Member States level shows that SMEs in only seven countries (AT, BE, DE, MT, LU, SE and UK) have fully recovered in terms of the number of SMEs, value added and employment. In terms of sectors, employment in SMEs in construction and manufacturing were in 2014 still 17% and 11% below 2008 levels.

Employment creation was particularly strong from 2008 to 2014 in knowledge-intensive services. This was the case across all three SME size classes (i.e. micro, small, and medium-

²⁹ <http://www.transportenvironment.org/what-we-do/shipping/air-pollution-ships>

sized firms). In contrast, all of the four types of technology-intensive goods producing sectors (ranging from low technology to high technology) showed net job losses between 2008 and 2013. During this period the less technology-intensive SMEs lost a higher proportion of their jobs than the more technology-intensive SMEs. In 2014, in terms of employment, the goods-producing sectors stagnated.

This shows that the development of economic activities of SMEs reflects that of the EU industry as a whole, i.e. a move from low end to high end manufacturing and from manufacturing to services. Similarly, the SME sectors most likely to be targeted by dumping practices in the future are largely the same ones, as identified for the EU industry as a whole. However, due to their smaller size and fragmentation, SME's tend to be more vulnerable to change than larger enterprises. Therefore, any weakening of the TDI (option 2) can be expected to impact SME's more than larger companies.

Typically, as explained in section 2.5.3, SME's and in particular micro SME's are often not directly affected by TD measures. While, the macro economic impact of TDI is relatively small, TD measures can be crucial for a sector or a region, which is also true for SMEs. For example, the AD measures on bicycles helped maintaining a high end bicycle production in the EU with around 70.000 direct and indirect jobs in 20 Member States. The AD measures on tableware and ceramic tiles were essential for the sector and it is noted that many of the tableware producers are located in regions that are generally less thriving (Sassuolo, Stoke-on-Trent, Castellon, Limoges, Aveiro, Civita Castellana, Saarland). Around 100.000 direct jobs, of which the majority in SMEs, are benefitting directly from measures in the ceramics sector. These measures also helped securing jobs in the upstream (kaolin mines) and downstream industry (ceramics related machinery in Italy).

In general, TD measures affect businesses at various levels of the value chain in different ways. Typically, TDI are not easy instruments for SMEs. For producing SMEs who seek relief from the effects of dumped/subsidised imports, access to TDI is complicated, as data for the Union industry as a whole needs to be compiled. The compilation of meaningful data can be a difficult exercise given that a sector can consist of hundreds of companies spread over many Member States³⁰.

For SMEs in the import, wholesale and retail business, TD measures represent other challenges. When provisional measures are imposed they might need to find new sources of supply either outside the EU (but not subject to the AD duty) or inside the EU because the imports might no longer be competitive once the injurious dumping or subsidization is offset by an AD/AS duty. This type of adaptation comes with a certain cost. Moreover, if this group of economic operators have been negligent in informing themselves about any on-going investigation they might be taken by surprise by the imposition of a duty in relation to goods that have already been ordered or are already being shipped. The companies concerned are obliged to pay the duty on those imports.

³⁰ The Proposal of the Commission to modernise the TDI (COM(2013) 192 final) contains several elements to facilitate access to TDI for SMEs.

While TD measures primarily aim at remedying injury caused to the EU industry by unfair trading practices, user industries can also be confronted with the negative effects of TD measures. Note however that allegations made to this effect in investigations are, after examination, often unfounded overall.

To summarise, it appears that lower AD duties (option 2), are likely to impact SME's more negatively than larger companies. This was confirmed by more than two thirds of respondents in the public consultation. At the same time more than two thirds of companies that responded were large companies with more than 250 employees.

The analysis regarding the **economic and social impacts** is based on an independent economic study (please see annex 8), which covers in particular impacts on employment. These are the economic effects that are best measurable and which also provide a good indication of the social dimension.

It is important to note that the TDI system is complaint based, i.e. investigations are normally only initiated on the basis of a valid and justified complaint by the EU industry, and that AD or AS duties can only be imposed if the findings of a thorough investigation show that the conditions to impose such duties are met. Therefore, it is difficult to predict with certainty what may happen in the future without knowing which complaints may be brought and what the result of the ensuing investigations might be.

In addition, it must be borne in mind that the central parameter in the estimation of the impacts is not the level of tariff that the EU may maintain overall in relation to any given third country. The central parameter is the level of additional duties, beyond the normal tariffs applicable, that may or may not be imposed following an AD/AS investigation.

Sources of Data

The data used in this analysis is based on a variety of sources. The employment data by case and Member State is internal Commission data, which is based on the data collected in the context of AD investigations. The employment currently covered by the measures in force is the one found during the investigations, to be linked to the production of the products under anti-dumping measures.

The data on duty rates is also based on internal Commission data, which is company specific and collected in the course of investigations. Some of this data has also been adjusted so that it can be used in a context, which is different from its original intended goal. Other important sources of data are Eurostat Structural Business Statistics, COMEXT, WIOD and UNSTATS.

6.1. Impacts of Policy Option 1 – “Baseline”

It is important to note that option 1 is not equivalent to the *status quo*. Indeed, certain provisions of China's Accession Protocol will definitely expire on 11 December 2016, which will undoubtedly have an impact, in particular on the legal and political environment.

The current system has the advantage of being well established and well known by all stakeholders concerned. However, the effectiveness of the current system has also shown important limitations.

Duties imposed by the EU, which are often based on the level of the injury margin, are often lower than those imposed by other WTO members, who often do not apply the LDR. This difference in the duty levels can result in trade deflection, the impact of which is however very difficult to quantify.

Regarding the analogue country methodology, in the public consultation, a vast majority of respondents claim that it has been effective in addressing situations where there are significant distortions in costs/prices in the exporting country. Other stakeholders consider that the analogue country methodology is in certain cases too rigid and in other cases it may lead to inflated dumping margins. The impact of both situations is however also very difficult to quantify.

It is recalled that China is the EU's second biggest trading partner with a trade volume of 470 billion € in goods and 50 billion € in services in 2014. In terms of foreign direct investment, China is in 9th position, with 120 billion € EU investments in China in 2012. 3 million jobs are supported by EU exports to China.

China has already signalled on several official occasions that it expects that the EU and all other WTO members stop using of the analogue country methodology, in cases involving China as from December 2016.

Hence, option 1 would most likely be subject to **litigation, both before the WTO** and the European Court of Justice. The result and effects of such litigation cannot currently be known. In terms of procedure, it would most likely mean litigation before a WTO Panel and possibly in front of the Appellate Body. The duration of proceedings in the WTO would typically take three to five years. If the EU were found to be non-compliant in the implementation proceeding, China may then again respond by suspending trade concessions. The purpose of the suspension of concessions is to induce compliance and the level depends on the trade impact. Given the substantial volume of trade between the EU and China, the negative effect for EU companies could be considerable. No detailed analysis can be provided on the impact per Member State or industry as this would depend on the particular requests for suspension of concessions that China would make.

Litigation before the Courts in Luxembourg would depend on how a case is presented. If a case is lodged by one of the privileged applicants (Member States) or via a request for a preliminary ruling, it would go straight to the European Court of Justice and would normally take around 2 to 3 years. If a case arrives at the General Court, litigation via an application e.g. by an exporter seeking the annulment of a regulation imposing an anti-dumping duty, the litigation would last longer (around 4 years) because it would potentially include an appeal. It

should also be noted that, in case of annulment by the ECJ, duties would have to be repaid retroactively.

In any event, it may take several years for the outcome of litigation to be known. However, the legal and political implications of option 1, in particular the uncertainties it will create and their negative impact on the effectiveness of the EU's TDI, are likely to be felt almost immediately after December 2016.

In particular, due to the uncertain legal environment, the EU industry might be discouraged to file complaints, or the effectiveness of the duties imposed could be undermined. In addition, it cannot be excluded that China would decide to target certain important economic interests of the EU, for instance by conducting AD and/or AS investigations on sensitive products, as they have done in the past e.g. with the initiation of an AD/AS investigation concerning wine, in response to the EU's trade defence measures imposed on solar panels. In this context, it is important to note that agricultural exports to China are on the rise. Although, they represent overall a relatively small share of around 6% (in 2015), of total EU agricultural exports³¹, many agricultural commodities are the first export item to China for certain Member States. Hardly any agricultural products originating in China are subject to TDI measures in the EU.

In terms of **economic and social impact** of the baseline option, at the end of 2015, there were 52 AD/AS measures in place on imports originating in China. About 250,000 direct jobs in EU industries benefit from these AD measures. The main industries affected by TDI in terms of employment are ceramics, iron and steel and other mechanical engineering. The main Member States affected by the measures are Italy, Germany, Spain, France, Portugal and Poland, which represent around 80% of total employment affected by AD/AS measures.

While, the baseline option, in the short term, would not as such have direct impacts on the employment and output of the products currently covered by measures, the continued application of the lesser duty rule is likely to have a negative impact on the effectiveness of the measures in the future due to the distorted functioning of the Chinese economy.

There is no consensus among stakeholders on the extent of the legal consequences of the expiry of certain provisions of Section 15 (a) (ii) of China's Protocol of Accession to the WTO on the remainder of that section. Some stakeholders (mainly importers, traders and law firms representing them) are of the view that the remaining subparagraph has no legal effect on its own, and thus it would be prudent to apply the standard methodology in cases involving China. By contrast, the vast majority of stakeholders consider that the remaining subparagraph does not contain an obligation to use the standard methodology. There is no consensus among the latter, whether the analogue country methodology or any other methodology (except for the standard methodology) should be used.

However, many stakeholders have insisted that whatever option is taken in response to the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO, it needs to be legally sound.

³¹ http://ec.europa.eu/agriculture/trade-analysis/monitoring-agri-food-trade/2015-12_en.pdf

As regards the **political dimension**, most industry stakeholders are aware of the problem and favour a solution that avoids a deterioration of the relationship with China, but at the same time ensures effective TDI.

6.2. Impacts of Policy Option 2

As indicated above, this option would entail treating China as any other WTO market economy. It would consist in the automatic recognition that China operates under market economy conditions. Chinese prices and costs would be used, unless one of the exceptions (identified in section 5.2.2) would apply.

In the public consultation, many stakeholders considered that the expiry of certain provisions of Section 15 of China's WTO Accession Protocol does not imply any automaticity in changing the calculation methodology. They consider that the EU methodology should not be changed until China has fulfilled all the five criteria.

An overwhelming majority of respondents considered that option 2 would result in fewer anti-dumping investigations and have a negative effect on the effectiveness of the EU TDI system. Except for importers, a vast majority of respondents considered using the standard methodology would have a negative impact on businesses and citizens. An overwhelming majority of respondents considered that this option would be very detrimental on the employment situation in the EU.

On the other hand, a number of categories of respondents to the public consultation, namely importers, wholesalers, retailers and downstream users are in favour of this option. They would pay lower prices for the imported product, which would be beneficial for their activity. Stakeholders concerned claim that, for example, the AD measures on solar panels have had a negative impact on the downstream industry, i.e. the installers of solar panels. Some stakeholders claim that in the stainless steel fasteners and in the satsumas cases, the dumping margins calculated were inflated because they were based on a normal value in an analogue country.

However, in terms of **effectiveness**, option 2 would significantly weaken the TDI. Using the standard methodology would result in lower duty levels and most likely also in fewer AD investigations. In addition, the significant negative **economic and social impact** of option 2 on the EU industry, as described below, would by far outweigh any gains for traders and downstream users.

To estimate the economic and social impact of option 2, DG Trade commissioned an external study, which assesses the possible **impact on employment** of using the standard methodology in AD cases against China, as opposed to the current NME methodology (based on an analogue country). In estimating the impact of this option, it is assumed that the standard methodology using Chinese prices and costs fully applies. The study focuses on employment effects. It uses econometric analysis on the basis of a representative sample of recent AD investigations concerning China (please find more details regarding the calculation model used in annex 4).

At the outset, it should be noted that it is very difficult to estimate the possible effects of a change in methodology on the results of future AD investigations. Indeed, dumping calculations are complex and are based on actual trade transactions or on a construction of a price on the basis of costs of production. Such data may vary across investigations and over time.

As mentioned in the beginning of section 6, to estimate the effects of a change in methodology, DG Trade recalculated in a representative sample of past AD cases, the dumping margins that would have been achieved when using the standard methodology. Such recalculation found that using the standard methodology in AD cases against China would reduce the level of AD measures on average by 30 percentage points as compared to the NME methodology.³² As a result, based on the available empirical evidence, gross import prices of imported products from China that are currently subject to AD measures would on average be 20 percent lower, if the duty were calculated using the standard methodology.

It should be noted that this approach was exclusively based on Chinese prices or costs. It did not take into the account the possibility to use alternative data, should a “particular market situation” have been found. The lower AD duties on Chinese imports are estimated to result in lower prices of the imported Chinese products for EU users and consumers.

Chinese imports of the products concerned by AD investigations would be expected to increase between 18 and 28 percent if the standard methodology were used and would substitute for sales of the EU import-competing industries (and/or imports from competing third countries). These would therefore suffer both, in terms of employment and in terms of output.

The analysis was based on a step-by-step approach. It first examined the impact of lower tariffs on import levels for the products concerned. Then it examined the impact of these changing import levels on sectorial employment in the EU. The results are based on the observation and econometric analysis of import prices and quantities from China and employment in the related sectors in the past.

In subsequent steps, the disappearance of the deterring effect of the current NME methodology, on bilateral imports and sectorial employment, was assessed in the short and long term. Based on how sectors have been affected in the past by dumping in bilateral trade relations other than EU-China, probabilities of new economic sectors being subject to dumping in the future were established.

The results of the analysis show that the short term direct effects of using the standard methodology, on EU sectors currently affected by injurious dumping from China, could potentially put between 49,700 and 73,700 jobs at risk. This estimate is based on two important assumptions, (1) the same products as now are affected by TDI in the short term, (2) the share of Chinese imports affected by TDI is 2.5%, based on the historical average.

³² This average reduction is a combination of lower AD duties in some cases (where the investigation would still conclude Chinese firms are dumping) and elimination of AD duties altogether in other cases.

In the long term, potential losses could be in the range of 117,800 to 175,600 jobs. These are potential job losses that might result from a weaker AD instrument, which may not be able to protect industries suffering from Chinese dumping. This is based on the assumption that, in the future, dumping could also take place in sectors where the EU has currently no TD measures in force against imports from China. The corresponding sectorial distribution is inferred on current third country (US) cases against China and current EU cases against other countries, which seemed the most reliable approach. While existing overcapacities in China and sectors identified in the five year plans, may give an indication of products that may be dumped in the future, there are many other factors (such as evolution of regional demand, consumption patterns or price of raw materials), that have to be taken into account and that may lead to an AD/AS complaint. Therefore, industries' behaviour as observed by AD/AS complaints seems more indicative as a basis for future TD action. A further assumption is that the long term share of Chinese imports affected by AD measures would be in the order of nearly 6%, which compares reasonably with a theoretical long term upper bound established in literature.

In a final step the consultants investigated indirect effects on upstream and downstream sectors. Calculating upstream and downstream effects for the lower of their two estimates on long-run direct effects lead to an overall indirect effect of 8,500 to 26,200 potential job losses. Thus, the overall potential job losses would range between 126,300 and 201,800 in the long run.

The following table summarizes the potential long-term effects on EU employment of using the standard methodology that the external study found:

Table 1: Range of the number of jobs potentially put at risk in the EU as a result of a change in the calculation methodology regarding China towards the standard method, long-run

	Lower bound	Upper bound
Direct effects	-117,800	-175,600
Indirect upstream effects	-36,900	- 54,600
Indirect downstream effects	+28,400	+28,400
Total effect	-126,300	-201,800

Source: Assessment of the economic impact of changing the methodology for calculating normal value in trade defence investigations against China. 21 December 2015

In an additional part of the study, the results are broken down by Member State ('MS') and by sector to detect possible concentrations in certain industries and regions. To this end, again

two scenarios, short-run and long-run, are run using two alternative sets of parameter estimates which sketch a lower and upper bound. The results are fully consistent with the aggregate analysis, i.e. adding up over MS or sectors will yield the overall results discussed above.

Although the breakdown calculations have been performed for all combinations, this report only presents and discusses those of the most far reaching scenario, i.e. the long-term upper bound. Although the effects in the different scenarios and under the different parameters are not proportional, the ranking of MS is not strongly affected over the scenarios.³³

Table 2 below shows the breakdown of these scenario effects by MS. Unsurprisingly, the most strongly affected MS in terms of total job losses is Germany, it being the largest MS in terms of employment in general and industrial employment in particular. The country is simulated to be affected by up to 45.000 potential job losses, 42,000 of which would be in firms directly affected by Chinese dumping.

In order to put the total effects into perspective the right hand column of Table 2 relates them to overall employment in the MS. Under this relative view, the MS most strongly affected would be the Czech Republic, with potential jobs at risk corresponding to 0.15% of the country's total employment. Other MS relatively strongly affected are Poland, Romania, Slovenia and Slovakia with potential jobs at risk equivalent to 0.12 – 0.14% of the overall employment in these MS.

³³ Out of 27 MS investigated, 12 remain the exact same rank over all combinations of scenarios and parameters. Belgium changes ranks strongest, between being the 14th most strongly affected and the 18th most strongly affected, i.e. showing a span over four ranks. All other MS have a span of three or less. The ranking of sectors is somewhat stronger affected, though. The data is based on the WIOD database, which was a research project from 2009-2012. At that time it was decided to cover the 27 EU Member States and 13 other major economies in the world. Croatia joined the EU in 2013 and was thus not covered.

Table 2: Upper-bound, long-run estimates of jobs potentially put at risk by EU MS as a result of a change in method towards the standard methodology

	Direct Effect	Indirect upstream Effect	Indirect downstream Effect	Total effect	in %of total employment
Austria	-3 491	-1 124	582	-4 033	-0.09%
Belgium	-2 797	-806	460	-3 143	-0.07%
Bulgaria	-2 641	-947	372	-3 215	-0.09%
Cyprus	-138	-56	21	-173	-0.05%
Czech Rep.	-7 074	-2 045	1 236	-7 883	-0.15%
Germany	-41 663	-10 291	7 262	-44 692	-0.10%
Denmark	-1 642	-481	261	-1 862	-0.07%
Greece	-1 682	-981	295	-2 368	-0.06%
Spain	-11 529	-3 509	1 738	-13 299	-0.07%
Estonia	-508	-191	74	-625	-0.10%
Finland	-1 901	-577	283	-2 195	-0.09%
France	-17 033	-4 925	2 704	-19 254	-0.07%
United Kingdom	-15 226	-4 272	2 352	-17 146	-0.06%
Hungary	-4 184	-1 279	775	-4 689	-0.11%
Ireland	-1 037	-350	174	-1 214	-0.06%
Italy	-23 459	-6 389	3 324	-26 523	-0.11%
Lithuania	-908	-369	114	-1 163	-0.09%
Luxemburg	-67	-25	11	-81	-0.02%
Latvia	-577	-245	72	-751	-0.09%
Malta	-109	-30	16	-123	-0.07%
Netherlands	-3 913	-1 155	568	-4 500	-0.05%
Poland	-16 481	-6 769	2 538	-20 712	-0.13%
Portugal	-3 574	-1 155	471	-4 258	-0.09%
Romania	-7 375	-4 578	1 550	-10 403	-0.12%
Slovakia	-2 701	-841	497	-3 044	-0.14%
Slovenia	-1 081	-390	198	-1 273	-0.14%
Sweden	-2 806	-829	460	-3 175	-0.07%
Total	-175 597	-54 608	28 407	-201 797	-0.09%

Source: Consultants' simulations, Eurostat [lfsi_grt_a], own calculations.

Results for Croatia, for which there are no individual data available in the World Input Output Database, could not be quantified in the analysis.

Employment in the industrial sector, which may serve as a rough indicator of vulnerability is about 27% of total employment and is somewhat higher than the EU 28 average with about 22%. It is however significantly lower than industrial employment in the Czech Republic (37%) where the above analysis found the strongest effects.

Under the simplifying assumption of a linear relationship between employment in the manufacturing sector and impacts in terms of jobs potentially at risk, about 1 700 persons or 0.11% of total employment could be affected by option 2 in Croatia.

Table 3: Share of employment in the manufacturing sector in Croatia and selected EU MS, 1 000 persons and share of total, 2014.

	All Activities	Share of Manufacturing
European Union (28 countries)	226 604.5	21.9 %
Czech Republic	5 109.2	36.8 %
<u>Croatia</u>	<u>1 575.0</u>	<u>26.9 %</u>
Poland	15 731.0	30.2 %
Romania	8 637.8	28.6 %
Slovenia	929.6	29.3 %
Slovakia	2 223.2	31.1 %

Source: Eurostat [lfsi_grt_a], own calculations.

Table 4 below shows a breakdown of the effects of the most far-reaching scenario by sector of the WIOD³⁴ classification. The most strongly affected sector would be the "basic and fabricated metals" sector, of which the steel sector forms an important part. This position, as the sector where jobs would be potentially most at risk is stable over all simulations. Potential jobs at risk would reach about 43.000, equivalent to about 3.7% of total employment in the sector in 2015.³⁵ The second and third most affected sectors are the "manufacturing nec" sectors covering manufacturing activities not covered in the other rows of table 4 and the "electrical and optical machinery" sectors with about 21,000 jobs potentially at risk in each one of these sectors.

Table 4 displays only the effect on tradable goods sectors. That does not mean that the non-tradable sectors have been ignored and with them a potential source for significant employment effects. The negative upstream effect found for those was, however, by an order of magnitude smaller than those for even the least affected tradable sectors, which is why the non-tradable sector has eventually been excluded from the analysis.

³⁴ World Input Output Database: <http://www.wiod.org/>

³⁵ Eurostat [lfsq_egan22d]. Note that reasonably precise sectorial mapping between WIOD (World Input-Output Database) and the NACE classification (Statistical classification of economic activities in the European Community) used by Eurostat is possible for this sector but not necessarily for all others.

Table 4: Upper-bound, long-run estimates of jobs potentially put at risk by WIOD sector as a result of a change in method towards the standard methodology

	Direct Effects	Indirect upstream Effects	Indirect downstream Effects	Total effect
1-5 Agriculture	-1 591	-11 566	2 106	-11 051
10-14 Mining	-402	-2 360	47	-2 716
15-16 Food products	-16 073	-2 246	2 140	-16 179
17-18 Textiles	-2 375	-768	243	-2 900
19 Leather & footwear	-1 934	-274	22	-2 186
20 Wood products	-7 653	-2 381	137	-9 898
21-22 Paper products	-7 111	-1 739	389	-8 460
23 Oil products	-1 163	-205	73	-1 295
24 Chemicals	-11 866	-2 751	1 561	-13 056
25 Rubber & plastics	-12 725	-2 953	549	-15 129
26 Non-metallic minerals	-12 387	-1 920	259	-14 048
27-28 Basic & fabricated metals	-35 912	-14 179	7 279	-42 811
29 Machinery	-21 178	-2 842	3 376	-20 644
30-33 Electrical & optical equip.	-10 282	-2 118	3 591	-8 809
34-35 Transport equipment	-14 570	-2 692	5 636	-11 626
36 Manufacturing NEC	-18 374	-3 616	999	-20 991
Total	-175 597	-54 608	28 407	-201 797

Source: Consultants' simulations, Eurostat [lfsi_grt_a], own calculations.

With regards to the wider macro-economic impacts, no sufficiently meaningful economic forecast is possible. First of all, there is considerable dispute in the economic literature as to the knock-on effects that any job lost would have on the wider economy. Secondly, the impact will vary widely across Member States and sectors, not only depending on their exposure to dumping, which has been discussed above, but also on the current macroeconomic climate of the Member State.

Therefore, under the current circumstances, it is not possible to draw conclusions on the effect of a change in the methodology of the calculation of the dumping margin on GDP or other main macro-economic multipliers.

It is also noted that a study (Scott and Jiang, 2015)³⁶ found employment effects amounting to between 1.7 and 3.5 million job losses. The study is, however, based on the underlying assumption that the entirety of imported goods from China will be affected by dumping behaviour and would be entering the EU market at prices 30% below their current level. This assumption is not realistic and leads to an over-inflated effect on employment.

³⁶ <http://www.epi.org/publication/eu-jobs-at-risk>.

6.3. Impacts of Policy Option 3

Option 3 consists of three elements which aim at ensuring the continued effectiveness of the TDI and further strengthening them.

The first element of option 3 is a new calculation methodology that would allow for alternative approaches in order to effectively deal with distortions, as a replacement of the analogue country methodology. Such approach would also remedy any limitations experienced with the analogue country methodology in certain cases, such as its rigidity.

An additional element is transition periods, which would ensure the continued effectiveness of measures already in place, in the short and medium term. AD measures would be maintained at their current level and hence the current jobs preserved. Its impact essentially depends on the length of the transition period and/or the expiration of the measure.

Finally, a third element would look at improving the effectiveness in dealing with subsidies discovered in the course of AS investigations.

The **economic and social** impact of option 3 was assessed on the basis of the same methodology as for option 2. Hence, the starting point was a recalculation of the dumping margins that would have been achieved, when using the alternative calculation methodology proposed under option 3 in a representative sample of past AD cases.

The recalculation assumed that in all circumstances prices or costs in the exporting country could not be used, given the significant distortions present. Such recalculation found that using this alternative methodology, the level of AD measures would, on average, be 3.86 percentage points lower as compared to the NME methodology i.e. 35% vs. 39% respectively.

On the basis of this finding, the same four step approach as for the estimate of option 2 was followed. The results are shown in table 5 below. As a consequence of a much smaller difference in AD duties compared to the current methodology – which can actually be considered as almost negligible - , the associated number of jobs potentially put at risk is significantly smaller. In the long run, the number of jobs which may potentially put at risk would be about 15,000 to 25,000.

Table 5: Range of the number of jobs potentially put at risk in the EU as a result of changing the calculation methodology regarding China, long-run (first element of option 3)

	Lower bound	Upper bound
Direct effects	-15,200	-22,600
Indirect upstream effects	-4,700	-7,000
Indirect downstream effects	+4,600	+4,600
Total effect	-15,300	-25,100

Source: Assessment of the economic impact of changing the methodology for calculating normal value in trade defence investigations against China. 21 December 2015

Table 6 below shows the breakdown of the results for the upper-bound by Member State. The order in which employment in the MS is affected in relative terms is almost identical to option 2.

Table 6: Upper-bound, long-run estimates of jobs potentially put at risk by EU MS as a result of a change in method towards a new methodology (first element of option 3)

	Direct Effect	Indirect upstream Effect	Indirect downstream Effect	Total effect	in % of total employment
Austria	- 449	- 145	94	- 500	-0.01%
Belgium	- 360	- 104	74	- 390	-0.01%
Bulgaria	- 340	- 122	60	- 402	-0.01%
Cyprus	- 18	- 7	3	- 22	-0.01%
Czech Rep.	- 911	- 263	199	- 974	-0.02%
Germany	-5 362	-1 324	1 171	-5 516	-0.01%
Denmark	- 211	- 62	42	- 231	-0.01%
Greece	- 217	- 126	47	- 296	-0.01%
Spain	-1 484	- 452	280	-1 656	-0.01%
Estonia	- 65	- 25	12	- 78	-0.01%
Finland	- 245	- 74	46	- 273	-0.01%
France	-2 192	- 634	436	-2 391	-0.01%
United Kingdom	-1 960	- 550	379	-2 130	-0.01%
Hungary	- 539	- 165	125	- 578	-0.01%
Ireland	- 134	- 45	28	- 151	-0.01%
Italy	-3 019	- 822	536	-3 306	-0.01%
Lithuania	- 117	- 48	18	- 146	-0.01%
Luxemburg	- 9	- 3	2	- 10	0.00%
Latvia	- 74	- 32	12	- 94	-0.01%
Malta	- 14	- 4	3	- 15	-0.01%
Netherlands	- 504	- 149	92	- 561	-0.01%
Poland	-2 121	- 872	409	-2 584	-0.02%
Portugal	- 460	- 149	76	- 533	-0.01%
Romania	- 949	- 590	250	-1 289	-0.01%
Slovakia	- 348	- 108	80	- 376	-0.02%
Slovenia	- 139	- 50	32	- 157	-0.02%
Sweden	- 361	- 107	74	- 394	-0.01%
Total	-22 601	-7 031	4 579	-25 052	-0.01%

Source: Consultants' simulations, Eurostat [lfsi_grt_a], own calculations.

A rough approximation of the results to Croatia yields about 200 jobs potentially at risk in the country under option 3.1, corresponding to about 0.01% of total employment.

Regarding the second element of option 3, the transition periods, their impact needs to be assessed from a timing point of view. The actual impact on potential jobs at stake is very difficult to quantify. Currently, there are around 50 AD/AS measures in place with regard to Chinese imports. Option 3 would ensure that these measures stay in force for the remainder of the duration initially foreseen and at the duty levels initially imposed. Option 3 would thus help avoiding that any change in the calculation methodology affects measures in place.

Without this element a significant number of interim reviews may be requested by exporters concerned after December 2016 on the sole grounds that the new calculation methodology could yield a different mathematical result and therefore duty level. Although, any economic

or social impact is difficult to quantify, as the outcome of such interim reviews is unpredictable, the industries/sectors concerned would definitely be impacted by the uncertainty created in the market.

The complementary importance of this element is significant, as in the public consultation stakeholders specified that 60% of their measures in force had an average remaining duration of 3 to 5 years and 32% an average remaining duration of 1 to 3 years.

Regarding the third element of option 3, the AS element, it is recalled that due to the complexity and opacity of the Chinese AS schemes, it is very difficult for complainants to identify the relevant schemes at complaints stage and thus AS investigations and AS duties are much less frequent than AD investigations and AD measures. Furthermore, for the same reasons, AS duty levels are typically much lower than AD duty levels.

Therefore, any impact of this element is expected to be rather small and impossible to quantify. AS investigations (as AD investigations) are complaint driven and it is thus impossible to predict how many AS complaints will be lodged in the future. It is even more difficult to predict, what schemes and how many would be discovered during those investigations.

Hence, even though the impact of the anti-subsidy element, when analysed in isolation maybe of little consequence, the importance of this element lies in its complementarity with the other elements of this option. In the public consultation a large majority of respondents considered that an AS investigation should cover all subsidies found in an ongoing investigation.

However, a vast majority of stakeholders also claimed, on the basis of the information available at the time of the public consultation, that the elements presented under option 3 are in their view insufficient to ensure the continued effectiveness of the EU's TDI. In the public consultation a large majority of stakeholders considered that the elements presented under option 3 would not be effective, neither in adequately tackling the distortions in China, nor, a fortiori, in reducing any negative impact of a change in the calculation methodology. However, following the results of the public consultation and the work on the impact assessment, option 3 has evolved and has been strengthened in many respects.

Some stakeholders referred to other options that should be explored such as a sectorial approach or price baskets. While, the reports on the Chinese economy foreseen under option 3 (section 5.2.3) may identify different levels of State interference or distortions in various sectors, any amendment to the EU TDI legislation would apply horizontally to all sectors and industries. Thus the continued effectiveness of the TDI is ensured, as it is impossible to predict in which sectors AD/AS complaints maybe lodged in the future. This approach is also in line with the WTO principle of non-discrimination.

In cases where significant distortions are found, option 3 would allow for the full adjustment of costs on the basis of costs in a third country or international benchmarks.

Many stakeholders are also sceptical as to how to deal in practice with distortions (other than by applying the analogue country methodology) and as to the feasibility of the AS element, given the opacity of Chinese subsidy schemes and lack of cooperation. Therefore, many

stakeholders insisted that any alternative calculation methodology must provide for the possibility of not using Chinese prices and costs as a basis.

In this context it is highlighted, that of the various individual elements of option 3, each address different specific problems of an alternative calculation methodology, and each one contributes its share to the overall effectiveness of the TDI. Thus, the effectiveness of option 3 needs to be assessed on the basis of all elements of this option in combination.

Therefore, any potential negative effects on jobs of option 3 should normally be limited, given the fact that the AD duties calculated under option 3 are roughly at the same level as those reached under the current methodology. Whereas, it has been demonstrated that lower anti-dumping duties (option 2) may put a significant number of jobs at risk.

On this basis, it should be concluded that option 3, i.e. a change in methodology, transition periods and strengthened anti-subsidy provisions, **should normally have a neutral effect on jobs, i.e. maintain the existing employment levels**

7. COMPARISON OF POLICY OPTIONS

7.1. How do policy options compare?

In light of the findings of the impact assessment process, the policy options have been compared in order to evaluate, which option best contributes to address the problems identified and best meets the objectives set out. The various options have been compared in terms of their effectiveness, efficiency and coherence with overarching policy objectives, while taking into account any positive and negative impacts.

Policy option 1

Policy option 1 is the “no change” option, meaning that the current system would remain in place. It would partially meet the general objectives and also partially the specific objectives except for S1. The impact on effectiveness and the economic and social impact of the option itself would not be so significant. However, even though, option 1 is the no change option, the legal environment will definitely change (Section 15 (a) (ii) included in the Protocol of Accession of China will expire in December 2016). Due to this “outside” change, the legal and political implications are likely to be considerable. As a consequence, there may be economic implications too (e.g. from measures taken by China), which are impossible to predict, let alone quantify at this stage.

Therefore, policy option 1 cannot be considered as a “classic” baseline option. No change, would in this case not mean status quo, but a likely deterioration of the situation in many respects. This is reflected in the rating in the table below as “-“ (and not 0, as is more commonly used for the base line option).

Policy option 2

Policy option 2 would contribute to free trade, but at conditions less fair than today (G1). It would not increase EU competitiveness, but put a significant number of jobs in the EU at risk (G2). It would deal with the expiry of certain provisions of Section 15 (S1) and not compromise the relationship with China (S5). However, it would fare very negatively with regard to S2, S3 and S4, as it would not provide an effective response to the many distortions in China (or other NME countries), resulting in insufficient duty levels to offset injury, and thus weaken the EU's TDI.

In terms of overall efficiency, option 2 would mean in-effective results in many TD investigations, with the same resources employed and very little coherence with overarching EU policy objectives.

Policy option 3

Policy option 3 (all three elements combined) would meet the general objectives and also provide significant contributions to the specific objectives.

It would contribute significantly to promoting free and fair trade (G1) and to increasing competitiveness and creating/preserving jobs in the EU (G2). It would adequately deal with the expiry of certain provisions of Section 15 (S1) and appropriately take into consideration the relationship with China (S5). It would also ensure the continued effectiveness of the EU's TDI (S2). The new calculation methodology would provide effective response to the many distortions in China (S3) and thus be able to adequately offset injury caused by dumped (subsidised imports) (S4). The economic and social impact is estimated to be neutral overall as explained in Tables 5-8.

In terms of effectiveness of the TD measures imposed, policy option 3 would achieve similar results as the current system in place

7.2. Preferred Option

In summary, option 3 (the three elements combined) appears best placed in adequately addressing the problems identified and meeting the objectives set out.

As compared to the baseline option, it ensures that the expiry of certain provisions of Section 15 of China's Accession Protocol to the WTO is adequately dealt with, while at the same time ensuring the continued effectiveness of the EU's TDI and also further strengthening them. Its social and economic impacts are considered neutral.

In terms of overall efficiency, option 3 is by far the best placed of the three options, as the baseline option would certainly suffer significantly from legal uncertainty and/or legal action, which will be unlikely with option 3. The resources employed would be comparable to those of the current system. In case of a positive outcome of the modernisation the EU's TDI would be further improved (more effective TDI measures with the same resources employed).

Furthermore, option 3 contributes significantly to the overarching EU policy objectives, in particular it contributes to preserving jobs in the EU and to helping EU industry to remain competitive.

In the table below the various options are rated according to how they meet the objectives and compare to the baseline option. The baseline option is rated “-“, because it is not a classic no change option (as explained above). “- -“ means that the score is worse than that of the baseline option. Positive scores range from + to +++, the latter being the best score.

CRITERIA	Option 1	Option 2	Option 3
General objectives	-	+	++
Promote free and fair trade (G1)	-	+	++
Increase EU competitiveness and create/preserve EU employment (G2)	-	--	++
Specific objectives	-	+	+++
Deal adequately with the expiry of certain provisions of Section 15, and taking into account other countries in a similar situation (S1)	-	+	++
Ensure continued effectiveness of the EU’s trade defence instruments (S2)	-	--	+++
Provide effective response to the many distortions in the Chinese economy and in other NME countries (S3)	-	--	++
Ensure adequate remedy to offset injury caused by dumped/subsidised imports (S4)	-	--	++
Maintain strong ties with our trading partners including China, based on mutual interests (S5)	-	++	+++
Overall effectiveness	-	+	+++
Efficiency (time and resources spent in relation to estimated effectiveness)*	-	--	++
Coherence with overarching EU policy objectives	-	--	+++

* Please see more details regarding overall effectiveness in annex 3.

8. MONITORING AND EVALUATION: How would actual impacts be monitored and evaluated?

The effectiveness of the changes introduced to the current EU's TDI by this initiative should be subject to monitoring and evaluation.

8.1. Monitoring

The table below gives an overview of the objectives tackled and a set of indicators to monitor the effectiveness of the proposed changes. They may be supplemented by other indicators found suitable for monitoring the changes introduced.

Objectives	Indicators	Sources of information
Ensure continued effectiveness of TDI	<ul style="list-style-type: none"> - number of investigations initiated - number of measures imposed - number of investigations initiated against China - number of measures imposed against China - analysis of trade flows before and after entry into force 	DG TRADE, EUROSTAT
Provide effective response to the many distortions in the Chinese and other NME countries	<ul style="list-style-type: none"> - existence of distortions - evolution of the regulatory environment in China 	DG TRADE
Ensure adequate remedy to offset injury caused by dumped/subsidised imports	<ul style="list-style-type: none"> - number of expiry reviews initiated - number of interim reviews initiated (by EU industry) 	DG TRADE
Maintain strong ties with our trading partners including China based on mutual interests	<ul style="list-style-type: none"> - development of trade flows - development of investment flows 	DG TRADE, EUROSTAT
Operational objectives relating to preferred option 3:		
Developing a new methodology that adequately reflects the actual magnitude of dumping	<ul style="list-style-type: none"> - average level of duties imposed - number of duties imposed at the level of the dumping margin - number of duties imposed at the level of the injury margin 	DG TRADE
Establish transition periods	<ul style="list-style-type: none"> - number of interim review requests (by exporting producers) related to the change in methodology received /refused 	DG TRADE
Amending AS provisions	<ul style="list-style-type: none"> - number of AS investigations initiated - number of AS measures imposed - level of AS duties imposed 	DG TRADE

8.2. Evaluation

The Commission should undertake an intermediate evaluation of its new initiative five years after its entry into force. This evaluation should assess the actual economic, social, and environmental impacts and evaluate its efficiency and effectiveness, and the extent to which its results are consistent with the objectives. The evaluation results will be used for decision-making needs on the future policy, and for amendments to the regulatory framework, if appropriate. The Commission will communicate the evaluation results to the European Parliament and the Council.

Annex 1

PROCEDURAL INFORMATION

DG Chef de file: SecGen/ DG TRADE

Agenda planning/work program reference: [2016/TRADE/002](#)

Organisation and timing:

The **first meeting of the inter service steering group (ISG)** took place on 4 February 2016. The following DGs participate in the ISG: TRADE, AGRI, SJ, BUDG, COMP, ECFINF, EMPL, ENER, ENV, GROW, OLAF, TAXUD, EEAS, JUST.

In the first meeting the inception impact assessment (IIA), the questionnaire for the public consultation and the consultation strategy were finalised. The IIA was published on 10 February 2016 and the public consultation (PC) was launched on the same day. The PC was on line for ten weeks until 20 April 2016.

In total, three meetings of the ISG were held.

The meeting with the **Regulatory Scrutiny Board (RSB)** was held on 8 June 2016 (reference number: 2015/TRADE/027. The main comments received from the board (as indicated in the table below) were assessed and the IAR modified accordingly.

RSBs recommendations	Modifications of the IAR
(B) 1. Better explain context and clarify link to TDI modernisation and Steel Communication	reflected on pages 4, 5, 6,7 and 22
2. Explain the scope with regard to China and other countries	reflected on pages 5 and footnote 5
3. Better explain options	reflected on pages 24,25,
4. Qualify external study	text added on pages 27, 28
5. Better explain comparison of options	Text added on pages 45, 46 and table on page 46
(C) 1. Explain context and clarify link to TDI modernisation, Steel communication, EU strategy on China	text was added and modified on pages 4, 5, 6,7 page 22, 23
2. Clarify the scope of the initiative	explanation added on page 5 and footnote 5, page 7

3. Better explain the options, Clarify the issue of the LDR, merge sub-options	Text was added on pages 24, 25 the LDR was better explained on page 7 and its impact analysed in annex 7. sub-options 3.1 and 3.2 were merged
4. Improve analysis of impact Explain methodology of other countries	section added page 27, 28 explanation added on pages 12 and 13 and in annex 6
5. Clearer comparison of the options	text was added on pages 45 and 46, the methodology and scoring better explained in table on page 46
(D) Better explain the link to WTO rules Problem tree Evaluation indicators Indicators regarding option 3 More information regarding stakeholders' views.	added in Introduction on page 4 the problem tree was simplified and certain headings clarified, page 16 indicators were revised as appropriate, table page 47 and 48 operational objectives and corresponding indicators were added in table on page 49 additional information regarding stakeholders' views was added on pages 10, 31, 34, 43, 44

Evidence and sources of information:

As a starting point, information and experience of DG TRADE in trade defence matters was used in order to identify the problems, set the objectives and define the various options. This can be information that has been collected in the framework of trade defence investigations and/or received from stakeholders. Information and data from other DGs such as AGRI or GROW have also been used. Statistical data from Commissions internal data bases, from EUROSTAT, Eurostat Structural Business Statistics, COMEXT, UNSTATS, WIOD and NACE have also been consulted.

Furthermore, an important additional source of information provided the stakeholder consultation (annex 2).

As regards the economic and social impacts, an external study has been commissioned by the Commission (annex 8).

Annex 2

Results of the open public consultation regarding the possible change in the methodology to establish dumping/subsidisation in trade defence investigations concerning the Peoples' Republic of China³⁷

I. Introduction

In the framework of the present Impact Assessment, the Commission consulted stakeholders in line with the consultation strategy published together with the Inception Impact Assessment (http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154259.pdf).

More specifically, stakeholders were consulted as follows:

- by means of an online consultation, open from 12 February to 20 April 2016 and in which any person/entity could participate;
- in a stakeholder conference organized on 17 March 2016, to which approximately 300 participants attended;
- in a consultation meeting with social partners on 15 April 2016, i.e. with the representatives of Trade Unions and Employers' associations which are members of the European Social Dialogue).

II. Stakeholder conference

The report of the Stakeholder conference is attached as Annex 2.1.

III. Consultation meeting with social partners

The report of the Consultation meeting is attached as Annex 2.2.

IV. Online consultation

The online consultation was based on a questionnaire published on the EUSurvey platform (<https://ec.europa.eu/eusurvey/home/welcome>).

In addition to replying to the online questionnaire, a number of stakeholders provided the Commission with additional submissions, directly or indirectly related to the online consultations. These submissions also fed into the Impact Assessment process and are reflected below.

The following categories of submissions can be distinguished:

- replies to the online questionnaire: in total, 5273 responses were submitted,
- e-mails and letters expressing concerns about certain aspects of the online consultation: in total, 116 such submissions were registered³⁸; to a significant number of such

³⁷ This issue arises also in relation to other countries in a similar situation

submissions the online questionnaire was attached in a format where the respective respondents added their comments to the questions contained in the questionnaire,

- *e-mails and letters commenting on various substantive aspects* of a possible change of methodology to establish dumping/subsidisation in trade defence investigations concerning China. In total, 48 such submissions were registered³⁹,
- *position papers* (a number of stakeholders submitted more elaborate comments on various substantive aspects of a possible change of methodology; even though a number of such papers was submitted well before the beginning of the public consultation, the Commission takes the views expressed in these submissions into account. In total, 19 submissions of this type were registered.

IV.1 Replies to the online questionnaire

As for the replies to the online questionnaire, it should be noted that a number of entities provided more than one reply. More specifically, the following entities, all of which indicated production of steel products as their main area of activity, submitted each more than 100 replies:

Celsa Huta Ostrowiec	954
Compañía Española de Laminación S.L.	427
CELSA STEEL UK LTD	353
Nervacero	162
BRC Ltd	120
Total:	2016

The following entities, all of which indicated production of steel products as their main area of activity, submitted each between 50 and 99 replies:

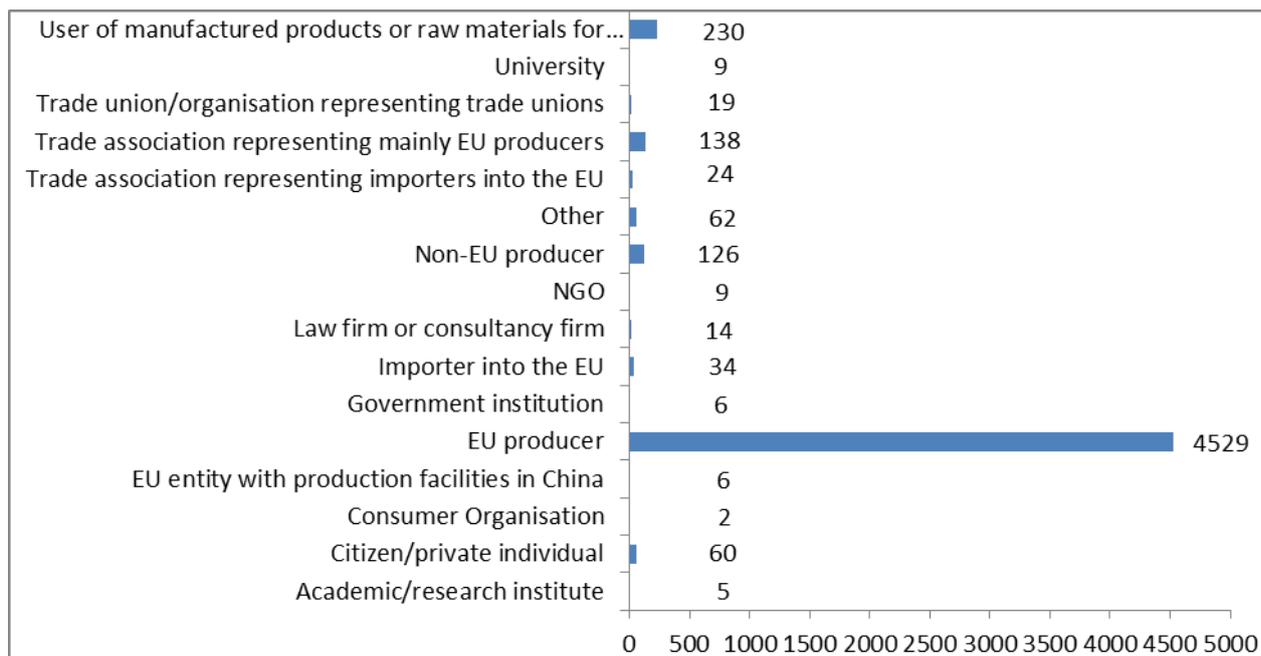
Rom Group Ltd	75
GLOBAL STEEL WIRE SA (GRUPO CELSA)	72
Express Reinforcements Ltd	65
Global Steel Special Products S.A.U (Celsa Group)	63
Global steel Wire	58
BRC Newport	53
Total:	386

Approximately 200 additional respondents provided between 2 and 49 replies on behalf of their respective entities.

In view of the above, it is pointed out that among the 5273 replies received, some 3960 (approximately 75%) were not unique but were delivered together with one or more – typically identical – replies submitted on behalf of the same legal entity. The following types of stakeholders participated in the online consultation:

³⁸ Another 4 submissions were delivered after the end of the public consultation

³⁹ Another submission was delivered after the end of the public consultation



The EU producers and their trade associations therefore represent 88,5% of all replies (including the abovementioned duplications). The user of manufactured products or raw materials submitted 4,36% of all replies, followed by non-EU producers with 2,39% of replies⁴⁰. The number of replies submitted by other types of stakeholders remained below 1% of the total sum of replies.

The respondents indicated the following as their main areas of activity⁴¹:

Production of steel products	4497	85,28%
Production of metal products	209	3,96%
Production of motor vehicles, trailers and semi-trailers or other transport equipment	158	3%
Production of ceramic products	117	2,22%
Wholesale, retail trade	91	1,73%
Production of chemicals and chemical products	87	1,65%
Other manufacturing	84	1,59%
Other service activities	82	1,56%
Other	502	9,52%
Total:	5827	110,51%

Among respondents which indicated to be a company, the participation to the consultation in terms of size of undertakings is as follows⁴²:

⁴⁰ 1,2% of replies were submitted by producers from China, 1% by producers from EFTA countries, replies from other countries counted for less than 1% of the replies.

⁴¹ Since respondents could indicate more than one area of activity in the online questionnaire, the results add to more than 100%.

⁴² Corrected for duplications, the result would be 519 large company respondents, 270 medium ones, 165 small companies and 49 micro-companies

Large company (more than 250 employees)	3526
Medium company (between 50 and 250 employees)	1099
Small company (between 10 and 50 employees)	167
Micro company (less than 10 employees)	53
Total companies:	4845
Not applicable / no answer	428

A very large majority of respondents (89,9%) indicated that they have previously participated in an EU trade defence procedure⁴³ and virtually all respondents (97,5%) confirm that they are familiar with the provisions of Section 15 of China's protocol of accession to the WTO.

IV.1.1. Application of the “standard dumping methodology” (option 2)

Virtually all respondents (98,8%) confirmed that they are aware that a change in the EU legislation may result in applying the "standard dumping methodology" for the calculation of dumping margins and no longer the analogue country methodology.

(95,3% of respondents takes the view that using the "standard dumping methodology would result in fewer anti-dumping investigations. The breakdown among respondents is as follows: 98% of EU producers and their associations, 50% of importers to the EU and their associations, 60% of non-EU producers, 96% of users of manufactured products, 82% of citizens, 84% of other respondents.

Similarly, almost all respondents (96,5% in total; 99% of EU producers and their associations, 50% of importers to the EU and their associations, 61% of non-EU producers, 97% of users of manufactured products, 90% of citizens, 61% of other respondents) consider that using the "standard dumping methodology" would have impact on the effectiveness of EU' trade defence instrument.

Among respondents replying on behalf of a business enterprise, a large majority considers that the use of the "standard dumping methodology" would have a negative impact on their activity (95% in total; 98% of EU producers and their associations, 53% of importers to the EU and their associations, 60% of non-EU producers, 96% of users of manufactured products, 75% of citizens, 58% of other respondents).

Similarly, 94% of all respondents consider that such change in methodology would put jobs at risk (97% of EU producers and their associations, 59% of non-EU producers, 95% of users of manufactured products, 72% of citizens and 80% of other respondents).

⁴³ 91,1% of all respondents confirm that currently more than one product which they produce or trade is subject to anti-dumping measures. For one product, this is the case for 93,3% respondents. The level of duty in place is between 10 and 30% for the vast majority of respondents (84,6%) and it was calculated on the basis of injury margin in most cases (83,5%). The majority of respondents (58,2%) indicated that the measures currently in place are partially effective in eliminating the injury they suffered, 30,9% consider the measures from which they currently benefit as effective in eliminating the injury.

However, among importers to the EU and their associations 38% take the view that such change would put jobs at risk whereas 36% consider jobs could be created⁴⁴. Extending the question on the job situation in the entire EU, 94,2% of all respondents⁴⁵ consider a possible change to using the "standard dumping methodology" as very detrimental. However, while an overwhelming majority (97%) of EU producers and their associations see such change as potentially very detrimental, 46% of importers to the EU and their association assess such change as beneficial, with 41% of importers considering the change detrimental to the job situation in Europe.

In order to get a better understanding of the stakeholders' view with respect to option 2, the Commission further enquired about the perceived effects of using the "standard dumping methodology"

- on business in Europe: this option would be very detrimental according to 94,2% of all respondents, 97% of EU producers and their associations, 57% of non-EU producers, 94% of users of manufactured products, 78% of citizens and 56% of other respondents. On the other hand, 57% of EU importers and their associations consider the effect beneficial with 42% seeing it as detrimental;
- on industrial users and consumers in the EU of products potentially subject to anti-dumping measures: this option would be very detrimental according to 93% of all respondents, 96% of EU producers and their associations, 56% of non-EU producers, 95% of users of manufactured products, 73% of citizens; on the other hand, 55% of EU importers and their associations consider the effect beneficial with 38% seeing it as detrimental, among other respondents, 52% see the effect as detrimental and 41% as beneficial);
- on the EU economy as a whole. This would be very detrimental according to 93,4% of all respondents, 97% of EU producers and their associations, 56% of non-EU producers, 94% of users of manufactured products, 80% of citizens and 60% of other respondents; on the other hand, 50% of EU importers and their associations consider the effect beneficial with 42% seeing it as detrimental);
- on the environment. This option would be negative according to 95,6% of all respondents, 98% of EU producers and their associations, 59% of non-EU producers, 96% of users of manufactured products, 90% of citizens and 57% of other respondents; among EU importers and their associations, the largest portion of 43% does not know whether the effects would be positive or negative);
- on investment decisions by the respective respondent: this option would have a negative effect according to 95% of all respondents, 98% of EU producers and their associations, 58% of non-EU producers, 96% of users of manufactured products; among EU importers and their associations, 50% consider such effect as positive and 41% as negative;
- on effects on SME's: the impact of this option would be negative according to 95% of all respondents, 98% of EU producers and their associations, 60% of non-EU producers, 97%

⁴⁴ Similar replies were submitted when expanding the question on the respective sector in which the relevant undertaking is active (96% respondents consider jobs would be put at risk in their sector; only among importers to the EU and their associations, 40% are of the opinion that such change in methodology could create jobs in the sector whereas 43% see jobs potentially put at risk)

⁴⁵ 58% of non-EU producers, 96% of users of manufactured products, 82% of citizens and 57% of other respondents consider the change as potentially very detrimental.

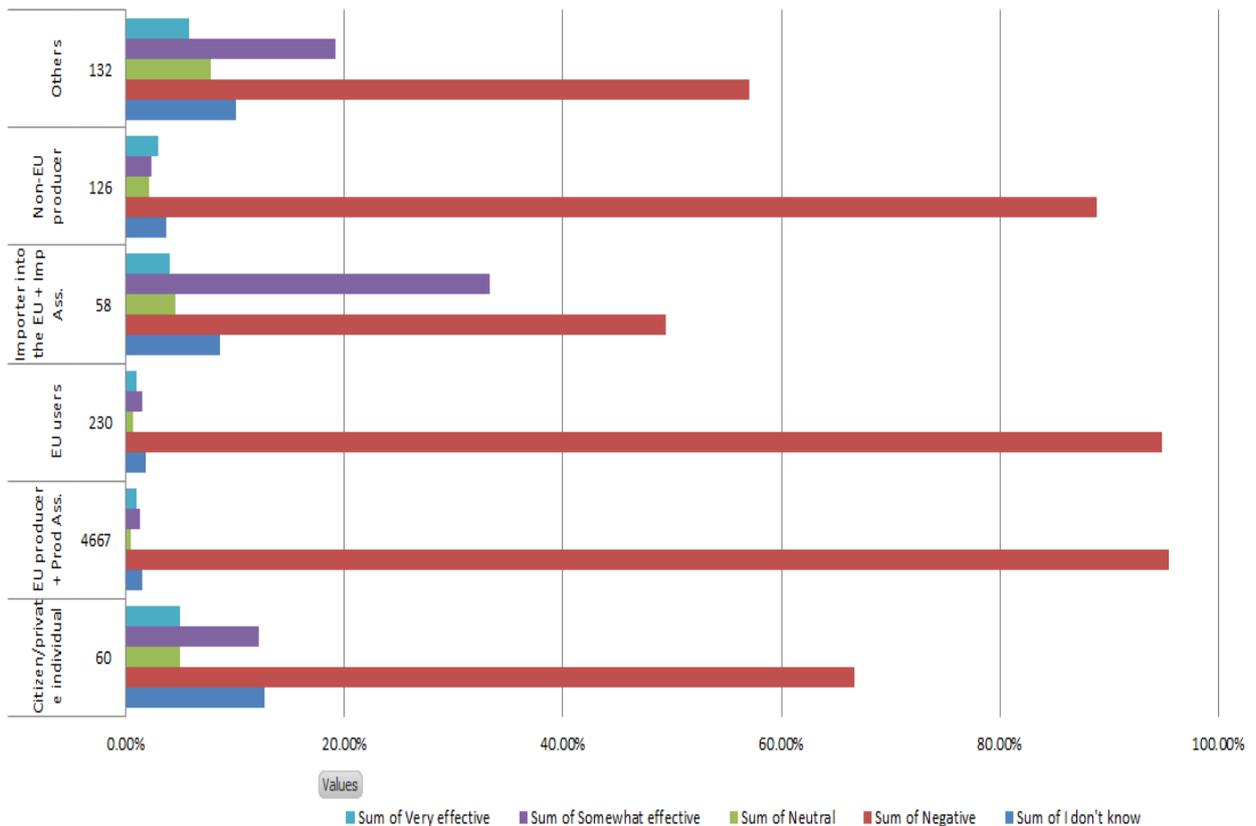
of users of manufactured products, 87% of citizens and 60% of other respondents; among EU importers and their associations, 50% consider the effect as potentially positive, with 45% seeing it as negative).

- Finally, a clear majority of respondents considered that SME's would be affected more than large companies by such change in methodology. This view was held by 71,1% of all respondents⁴⁶, 71% of EU producers and their associations, 72% of EU importers and their associations, 56% of non-EU producers, 96% of users of manufactured products, 77% of citizens and 55% of other respondents).

IV.1.2 Alternative methods to calculate dumping – option 3

With regard to the possibility to “grandfather” existing measures (option 3.1.), 93,5% of the respondents considers that exempting existing measures from the application of the "standard dumping methodology" would not be effective in lessening its negative impact on the EU economy, on the job situation in the EU, as well as on users and consumers.

**Will exempting existing measures in force
be effective in order to lessen any negative impact for the EU economy, on the job
situation in the EU and on users and consumers in the EU?**

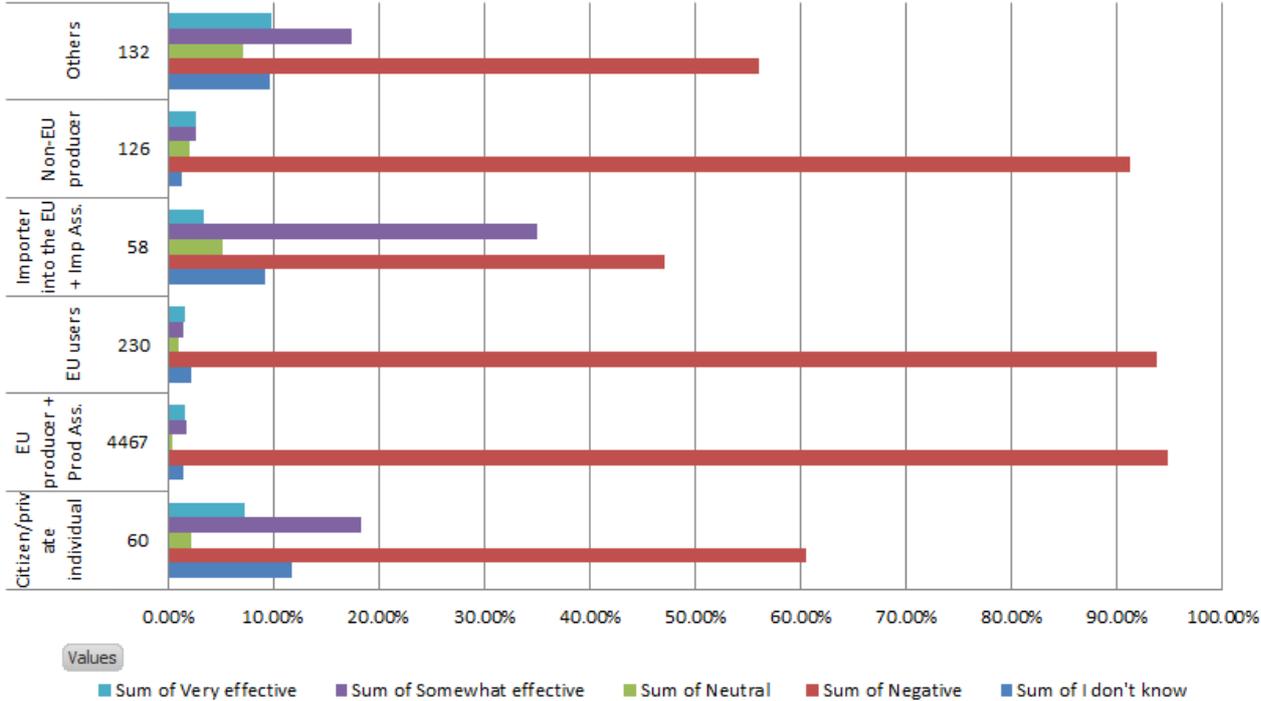


⁴⁶ With 26,5% of respondents taking the view the effect would be equal for SME's and larger companies.

With regard to the strengthening of the existing rules, 95,6% supported this idea, which is based on the possibility to reject costs or prices in case of significant distortions.

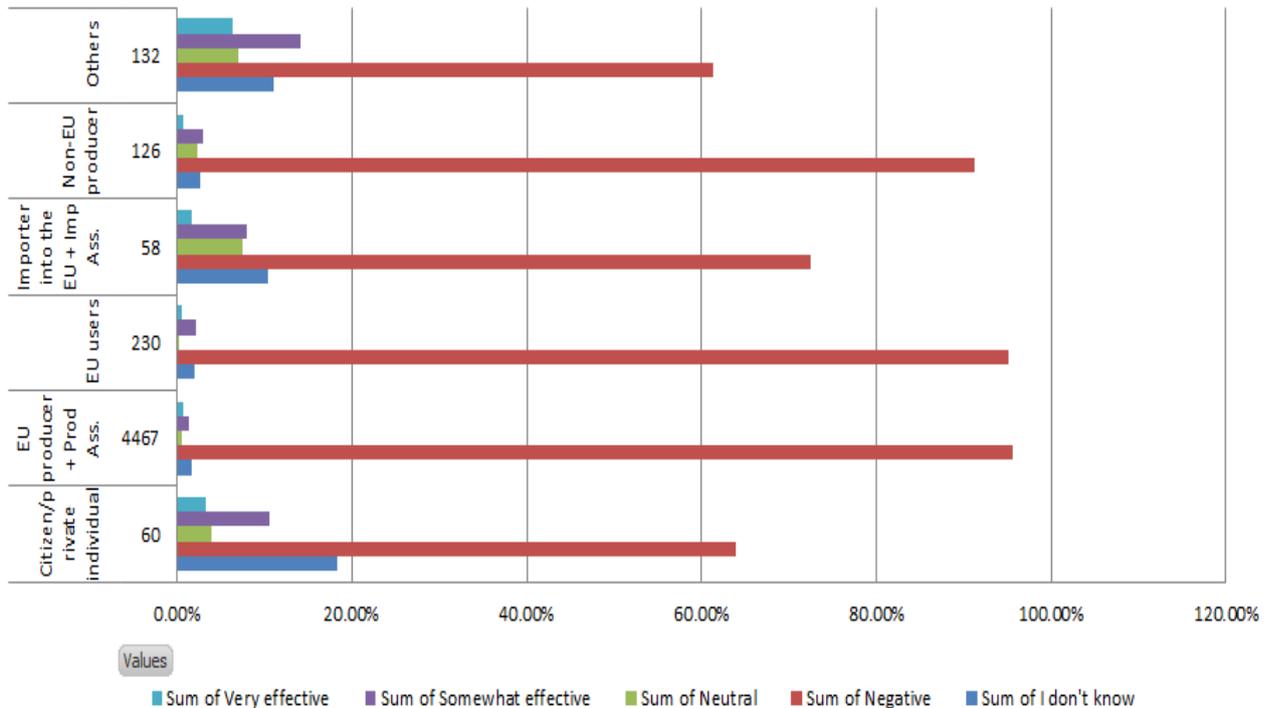
However, at the same time, a vast majority of respondents (88,3%) takes the position that strengthening of existing rules or introducing new rules would not allow the EU to effectively deal with distortions in anti-dumping investigations and dumping margin calculations. In that respect, 92,8% of respondents submit that strengthening of existing rules or introducing new rules would not be effective in reducing any negative impact resulting from significant distortions of costs/prices in the exporting market on the on the EU economy, on the job situation in the EU, as well as on users and consumers.

Would the strengthening of existing rules or the introduction of new rules be effective in reducing any negative impact on the EU economy, on the job situation in the EU and on users and consumers in the EU that might arise as a result of significant dist



Concerning the application of the lesser duty rule, an issue falling in the remit of the TDI modernisation proposal, 95,3% of respondents express the view that the lesser duty rule should no longer be applied in anti-dumping/anti-subsidy investigations where there are significant cost/price distortions in the exporting country. At the same time, 94% of the respondents submits that the non-application of the lesser duty rule in situations of significant distortions of costs/prices in the exporting market would not be an effective way of reducing any negative impact on the on the EU economy, on the job situation in the EU, as well as on users and consumers.

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, on the job situation in the EU and on the users and consu



Finally, 95,4% of all respondents takes the position that anti-subsidy investigation should in future cover all subsidies found in the course of an ongoing investigation. However, 60% of respondents consider that inclusion of subsidy schemes found in the course of an investigation would not reduce the negative effects of a possible change of methodology in a parallel anti-dumping investigation. At the same time, 35,5% consider that such inclusion would partially help to reduce the negative effect.

IV.2. E-mails and letters expressing concerns about certain aspects of the online consultation

A number of stakeholders submitted their position by means of an identical template e-mail, enclosing the reply to the on-line questionnaire and additional comments. There were 116 such documents.

In these replies, stakeholders took a negative stance with regard to a possible change in the methodology of dumping calculation towards the application of the “standard methodology”, emphasising the high stakes for the respective industries as well as expressing concerns that the EU's anti-dumping system would be rendered ineffective by such a change of methodology. In turn, this would result in a negative impact on EU jobs, growth, investments, innovations and SMEs.

The stakeholders also expressed criticism with regard to the public consultation. They objected to the fact that the online questionnaire only contains closed-end questions. They alleged that the baseline option – is presented in the questionnaire in a way that it leads to its rejection upfront. They also objected to the fact that there are only three options for consideration in the questionnaire and that stakeholders cannot comment on the results and underlying methodology of the economic study which is being carried out by independent economic experts. In view of the above alleged shortcomings of the online consultation, a number of stakeholders chose to include additional comments in their questionnaire submissions to illustrate their points of view.

These additional comments noted amongst others that unfair trade practices could result in China gaining a dominant position in the EU, increasing EU dependency on imports and worsening the trade balance with China. This would create product shortages and a consequent lack of competitive choice for EU consumers and fewer alternative sources for EU importers. There would also be price increases for consumers. They also put forward that there would be a risk of losing know-how, erosion of research and innovation and a decline in quality products available on the market, whilst prices would rise. Furthermore, a continuation in the outsourcing of production of goods outside the EU could threaten the compliance with EU standards on quality, safety, labour rights, intellectual property rights, as well as with specific legislation such as the REACH framework.

It was also noted that the significant imports from China would contribute to climate change, as more goods would be shipped from China to the EU, increasing CO₂ output. The increasing imports would thus increase carbon footprint. Chinese environmental legislation is not yet as strict as in the EU, causing further damage to the environment. Finally, fewer investments would be made by the EU industry as that there would be no longer any sufficient protection from unfair competition, and SMEs would find it even harder to make use of the EU's trade defence system. SMEs are not well-equipped with resources to face unfair trade and many would be forced to shut down in the face of increased unfair trade.

The stakeholders further submit that the "standard methodology" would be disastrous for the effectiveness of the trade defence system. In their view, the anti-dumping instrument is the only efficient trade defence tool that is readily available. The anti-subsidy instrument is not viable given the lack of transparency on the Chinese side. Moreover, the anti-subsidy instrument is already hard to access for SMEs and they will be even less likely to make use of the trade defence instrument if the methodology was to be changed.

IV.3. E-mails and letters commenting on various substantive aspects

A number of stakeholders chose to present their views on specific aspects of the issue by submitting additional e-mails and letters going beyond the structure of the online questionnaire. There were 48 such documents.

Among these stakeholders, 12 expressed themselves in favour of changing the methodology. They took the view that new jobs would be created in the EU and that the change would have a beneficial effect on SME's and the EU industry in general. Others submitted that it was important to avoid a strain in trade relations with China and that, consequently, the change in methodology would be the right course of action. One submission noted that the situation in each sector needs to be assessed on its own merit rather than on a country-wide basis and noted that a change in methodology on a sectorial basis could achieve this.

36 stakeholders took a negative stance towards a possible change of methodology highlighted that several hundreds of thousands or millions of jobs would be at risk if the EU would change the methodology, some indicating that China cannot be considered a market economy given the five technical criteria and that a change in methodology could have adverse consequences for the EU industry and economy as a whole, as there would be no level playing field. A number of stakeholders expressed their concern about the survival of their particular industry in the face of a surge of cheap imports on the EU market if the methodology was to be changed. According to these stakeholders, EU producers would face unfair conditions and their market shares would be severely reduced.

IV.4. Position papers

A number of stakeholders expressed their views on the possible change of methodology in dedicated position papers. There were 19 such submissions. Whilst many voice their concerns on the potential effect of a change towards the “standard methodology” could have on the industry and the future effectiveness of trade defence instruments, others also point out that not changing the methodology could have a negative effect on the relationship between the EU and China.

Those in favour of changing the methodology argue there is a clear commitment to grant MES in China's Accession Protocol to the WTO. According to these stakeholders, good trade relations with China are necessary for the EU's economy. The potential damage resulting from not changing the methodology needs to be taken into account. Changing the methodology would not lead to the EU not being in position to defend itself against unfair trading practices from China.

Those taking a more neutral position call for legal clarification on whether the EU is legally bound by international law to change the methodology. If there is no binding obligation, they note, the EU's decision should be linked to the fulfilment of the technical criteria for market economy as currently laid down in the relevant trade defence legislation.

The majority of position papers take a stand against a possible change in methodology. A number of stakeholders argue that Article 15(a)(ii) of the China's Accession Protocol to the WTO does not entail an automatic acknowledgement of market economy status and that the EU should not do so until China can prove beyond reasonable doubt that it fulfils the necessary criteria to be considered a market economy. Some point out the fact that China has not provided any new information since 2011 on its progress toward becoming a market

economy and call for an assessment by the EU of the current status of these five criteria in China.

Many contend a unilateral decision of the EU to change the methodology would have severe consequences for growth, employment, investment, job creation and manufacturing. It would render trade defence instruments less effective, leaving the EU industry defenceless, its survival threatened. Some note that a decision on this issue should be taken with the EU's key trading partners and point out that among those partners there is no agreement to the end that Article 15(a)(ii) of China's Accession Protocol to the WTO would automatically entails granting of market economy status.

Annex 2.1

Stakeholder Conference - report

EXECUTIVE SUMMARY

DG Trade organised a stakeholder conference in the framework of the Impact Assessment being carried out by the European Commission regarding a possible change in the methodology to establish dumping in trade defence investigations concerning the People's Republic of China ('China').

The aim of the conference was to allow stakeholders to be heard and exchange views on this important issue of the EU's trade defence system. All the elements brought forward during the conference will serve the Commission services as an important additional source of information to be taken into account in the Impact Assessment.

The conference was attended by around 300 participants and around 30 speakers, representing a large variety of stakeholders, intervened. Commissioner Malmström gave an introductory speech followed by questions and answers. The conference was chaired by L. Rubinacci (Director, Directorate H, DG Trade).

The stakeholder representation was overall balanced and included EU producers and producer associations, EU importers, traders, users and their associations, MEPs, trade unions, the Chinese mission and chamber of commerce, and lawyers. The views expressed were balanced and covered the most relevant issues at stake in view of a possible change of methodology, in particular:

Some stakeholders were of the opinion that following the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO, the EU had a legal obligation to change the methodology, when calculating the dumping margin in cases involving China (mainly the Chinese mission, lawyers, traders). By not changing the methodology the EU would be in breach of its WTO obligations and thus liable to legal challenges. Other stakeholders (mostly Union producers and some lawyers) did not think that that was the case.

Some stakeholders were of the opinion that the current EU TDI system worked well and nothing should be changed in order to ensure its continued effectiveness. Others, however, claimed that due to the lesser duty rule, duty levels currently applied were insufficient in certain cases, and put EU industry at a competitive disadvantage, as compared to competitors in other countries, who do not apply the lesser duty rule.

Some stakeholders claimed that applying the standard methodology would create significant problems especially for Union producers. Dumping margins and duty levels calculated on the basis of prices and costs in China would be too low in order to offset the injury caused to the EU industry by dumped imports from China, in particular due to the various distortions existing in the Chinese market. A very concrete threat of injury, due to the significant overcapacities of Chinese industries in many sectors, was also highlighted in this context.

Other stakeholders were of the opinion that the current methodology (based on an analogue country) was inappropriate, as depending on which analogue country is used, dumping margins can vary significantly. Furthermore, in many cases, the proxy used is one producer in one country, which often does not reflect the situation in the export market concerned and leads to inflated dumping margins.

Regarding the various elements of option three (grandfathering, dealing with distortions, anti-subsidy element) many stakeholders needed clarification and were concerned about its legality and feasibility in practice.

The Commission listened to all the arguments, replied to questions and clarified certain issues. However, many questions could not be answered at this stage, because the Impact Assessment, to which the conference provides important input, is still ongoing. Only at the end of that process, the answers to all the questions will be available and the best possible way forward will be defined.

INDIVIDUAL INTERVENTIONS

Commissioner Malmström's speech focused on the need for the EU to take a decision as to how to react to the expiry of certain provisions of Section 15 of China's Protocol of Accession to the WTO. She recalled the main options: (i) do nothing, (ii) change the calculation methodology, or, (iii) change the methodology in combination with accompanying measures. She reminded participants that every option has consequences and costs. Doing nothing could lead to friction with China, disputes and resulting uncertainty. By doing nothing the EU would hand over its democratic rights to act to a Panel in Geneva. Changing the methodology would have costs for producers but also benefits for importers and users.

Questions put to Commissioner Malmström centred around the legal consequences of options 1 and 3, the consequences of the Biodiesel ruling, the EU should coordinate with other WTO members (e.g. US) before taking a decision, the link between TDI modernisation and market economy status ('MES') China, if any, and the steel communication, the very low AD measures imposed by the EU as compared to other users (e.g. US).

Industry and industry associations

AEGIS Europe explained that AEGIS represents 30 EU manufacturers and associations with a turnover of around 500 billion. Granting MES would render the TDI ineffective and result in job losses in the range of 300.000. China does not play by the rules since, of the five MES criteria, only one has been fulfilled. This is reflected in the high number of measures (80% of measures in force worldwide concern China). The burden of proof to show that it is a market economy is on China. There is no legal obligation to grant MES because article 15(d) remains in force. The EU needs to coordinate with the US. Any methodology using Chinese prices and costs would result in no dumping margins. AS will not solve the problem as subsidy schemes are not transparent and often not specific.

BUSINESSEUROPE recalled the position paper of December 2015 and that Businesseurope's position is balanced given the various interests it represents. Businesseurope highlighted that WTO and EU rules must be respected and that the expiry of certain sections of China's Accession Protocol does not lead to an automatic granting of MES. The Impact Assessment needs to take into account the real situation in China. The EU should coordinate with the US and Japan to avoid any trade divergence. The TDI in place are effective mechanisms to defend the competitiveness of EU industry, MES has a great potential to negatively affect this. The relationship with China is complex and a balanced approach is necessary.

EUROFER advocated for a general move to increase the effectiveness of trade defence. Eurofer underlined the massive overcapacities in China (in steel 400 mill tonnes, which correspond to twice EU consumption) and that Chinese prices are below variable costs. This is the direct result of the Chinese planned economy and subsidisation. The EU is suffering most from this development as imports from China increased by 140% since 2013 and prices decreased by 50%. Other partners have steel import tariffs and minimum import prices in place (India) or very high trade defence measures (US). Consequently, these factors combined with the lesser duty rule and the little impact of AS cases, the EU industry suffers from a significant competitive disadvantage. If MES were granted dumping margins would be very low and often lower than the injury margin, thus the removal of the lesser duty rule ('LDR') would become irrelevant.

Cerame-Unie explained that Cerame-Unie represents around 200.000 direct jobs of which around 100.000 relate to products currently covered by AD measures. Around one third of the EU production is exported. 80% of producing companies are SMEs. Main products are sanitary ware, tableware, wall and floor tiles and refractories. Ceram-Unie said that it is not only the direct jobs that have to be taken into account but also indirect jobs and the whole EU value chain, e.g. there are 6000 jobs in Italy related only to ceramic machinery. In the table ware case, the AD duties also helped saving the kaolin producers (raw material in the ceramics production) in Portugal. Between 2004 and 2011 the Chinese market share of tableware in the EU had increased from 22% to 67%. Following the imposition of the AD duty, import volumes decreased from 60 million to 20 million. The ceramics industry has still important clusters in the EU, in particular in Italy, the UK and France. Research and design are very important in the sector as the EU is the world leader in quality and durable ceramic products. Cerame-Unie urged not to weaken the instruments.

Federation of German Industries BDI considered that MES China is a tricky issue since the interests of all need to be taken into account. BDI asked that the Commission share its legal assessment with stakeholders. In case there is no legal obligation to grant MES in December 2016, it should be granted on the basis of the five criteria. China should urgently deal with its overcapacities. Close cooperation with the US is important and a common position should be reached in the context of the G7. BDI is working on a position paper. Regarding the various options, in their view option 1 bears a high risk of a trade conflict and option 2 would weaken TDI. The WTO compatibility of option 3 is doubtful and it also contains several practical problems, i.e. grandfathering is a short term solution, the LDR will become irrelevant and concerning AS, cooperation from China would be needed. BDI asked the Commission to look

for more ideas than those on the table, e.g. sector solutions or a price basket instead of the analogue country methodology.

Confederation of the European Bicycle Industry highlighted that in 2015 total EU consumption was 20 million bicycles, 12 million of which were produced in the EU. The bicycle industry is the largest employer of the green industries in the EU with around 70.000 direct and indirect jobs in 20 Member States. In this context the Confederation recalled that according to an Italian study a bicycle produced in China generates up to 123 kg more CO₂ than a bicycle produced in the EU. This is due to the combined effect of the CO₂ emissions of the aluminium and steel production and maritime transport. Due to the EU's deficit in the trade balance with China, 60% of containers go back to China empty. Furthermore, the Confederation reminded that TDI aim at restoring a level playing field and not at protecting an industry. In China the bicycle industry benefits from 5 year plans, which leads to huge overcapacity. Without AD duties there would be no more bicycle production in the EU. Once the industry disappears, R&D and high value added activities will also disappear.

ESTA European Steel Tube Association pointed to the problem of the enormous over capacities in China. Capacity utilisation rate of 66% in China is not viable. China agrees to tackle overcapacity on crude steel but not downstream. The five MES criteria remain relevant. Duties in the EU are too low due to the LDR and the too low target profit (3 to 5%). AS duties are largely insufficient.

Fedil Business Federation Luxembourg underlined that MES is a very important issue for the LU steel industry, which is the largest employer in LU (2000 jobs). MES should be granted in accordance with WTO and EU rules, i.e. on the basis of the five MES criteria. The Impact Assessment should not only analyse the economic impact but also the social and environmental impacts. It is estimated that CO₂ emissions would increase by 43% if MES were granted. Coordination with US and others is important. If EU were to grant MES unilaterally TTIP may be put in danger.

Eurometaux represents the non-ferrous metal industry, which accounts for around 500.000 jobs and which is part of a strong value chain covering 3 million jobs in total. Eurometaux pointed to China's overcapacities in many sectors (aluminium, copper, tin) due to State industrial policy. Granting MES would mean a license to dump. Eurometaux considered the "mitigating" measures of option 3 a smoke screen. Euromataux called for free, but fair, trade and for the modernisation of TDI in order to ensure adequate measures.

A3M, alliance of minerals, ores and metals defended similar interests as Eurometaux. A3M represents 400 companies and 80.000 jobs (SMEs and international companies). A3M explained that the French Minister Macron launched a strong initiative and welcomes the steel communication. A3M hoped that the Commission and Member States will find a solution soon and invited the Commission to liaise with the EP. The steel industry is not an industry from the past but for the future.

Polish Steel Association considered that there is no legal obligation to grant MES. Final interpretation is up to the WTO DSB. The Polish steel industry has made significant investments and restructured, which would be wasted if MES were granted. The granting of MES should be rules based, but it should not be granted for political reasons. Competiveness

vis-à-vis US, Japan or Canada needs to be taken into account. Granting MES unilaterally would result in significant trade deflection from these countries to the EU. The Association was critical regarding the public consultation because it only suggests 3 options and sceptical about the effectiveness of option 3. In particular, the relevance of the LDR depends on whether it is considered in relation to MES or not. The Association reminded that AS margins in past AS cases were almost always lower than the injury margin.

DE Steel, German Steel Federation agreed with Eurofer and AEGIS. DE Steel is the biggest steel producer in the EU with 25% of total production and an important link to different value chains in various countries. German exports are steel intensive goods and represent more than half of the jobs in Germany. An export oriented industry as this is in favour of open and fair markets. Therefore, affective TDI is important. There is no legal obligation to grant MES. Coordination with US is important as granting MES unilaterally would mean significant disadvantages for the EU industry.

Czech Steel Association is a member of Eurofer and fully supports Eurofer. MES should only be granted if China meets the five criteria. Steel consumption is at the top of the list of products consumed. The Association reminded that the EU was founded on “coal and steel”.

EMPA, European Melamine Producers Association explained that melamine is a chemical used e.g. in laminate flooring or worktops. The AD duty of 65% will expire in May 2016. The US has an AD duty of 500% in place. The Association emphasised the overcapacity in China which results in a capacity utilisation rate of 55%. Furthermore, the production in China is still coal based. The Association considered that the 3 options suggested by the Commission were very narrow and further options should be provided. Regarding option 3, using Chinese prices and costs would lead to very low or 0 dumping margins and huge import volumes. The distortions are so widespread that it would be impossible to tackle them with cost adjustments.

Fertilizers Europe fully supports AEGIS. Fertilizers Europe reminded that trade defence is about international trade justice. It was created in order to protect EU industry and to avoid another 1930's situation. If no solution is found now, there will be more problems in the future. The analogue country methodology or cost adjustments seek to establish a ‘normal’ value. Cost adjustments are also applied in market economy countries. The burden of proof that it is a market economy lies with China. Fertilizers Europe reminded of TDI modernisation, is in favour of faster measures and a higher target profit. The LDR proposal would have no significance if MES were granted.

Importers, traders, users and their associations

Foreign Trade Association reminded that retailers, importers and distributors in the EU rely on imports, *inter alia*, from China. The use of the analogue country methodology leads to artificially high dumping margins and AD duties. The international obligation regarding MES China is clear and must lead to the abolition of the analogue country methodology. While referring to concerns raised by some stakeholders in this regard, he reminded that there are options to offset any negative consequences of granting MES (some of which could be affected by the Biodiesel report). Treating China as a market economy will not result in a

flood of imports and the impact on jobs and the social impact will be much lower than claimed by some.

EuroCommerce explained that EuroCommerce represents 30 million people, 6 million companies, one job out of seven in the EU. In a rules-based trading system the legal obligation is clear. The intent of China's Protocol of Accession to the WTO is to use the market economy methodology as of December 2016. The five MES criteria become irrelevant. The EU has means to ensure effective TDI. A proposal should be adopted as soon as possible in order to avoid WTO disputes. The analogue country methodology leads to distorted dumping margins. Free trade must work in both directions and a trade war must be avoided. TDI severely affect downstream industry and have negative effects on welfare (users and consumers), which must be taken into account.

FRUCOM recalled the experience of the canned mandarins case of 2007. Due to the analogue country methodology the duties were artificially high (higher than in the complaint). The calculation was not transparent and the process unpredictable. FRUCOM is in favour of granting MES.

WACKER Chemie AG explained that Wacker produces polysilicon, a key raw material in the solar supply chain. It is a company with global presence (around 80% of its sales are outside Germany, and around 17.000 employees). Wacker considered that trade disputes are hurdles that cause damage to all involved. Confrontation is not the way forward. The EU can still apply TDI after granting MES. The analogue country methodology results in highly inflated dumping margins. MES will not destroy jobs in the EU. Not granting MES will increase prices for users and tax payers. Good relations with China are essential. How can we expect China to play by the rules if the EU does not? The steel issue needs to be dealt with separately and should not cloud the issue of MES. Wacker called for de-escalation of the situation in view of the big progress that China has already made.

Solar Power Europe recalled that Solar Power Europe has been promoting solar energy for the past 30 years. It represents 137 members of which 8 are Chinese. Solar Power Europe referred to the solar panel case and reminded that, by using India (one small non-competitive company) as analogue country, the normal value was inflated. The whole value chain needs to be looked at. The fear of the consequences of granting MES is exaggerated. Jobs would not be lost, but to the contrary, in the solar sector 54.000 jobs could be created by 2020. The EU has already granted MES to Russia and there was no flood of imports then. Solar Power Europe called for a robust Union interest test, as 95% of the EU solar industry is hostage of a tiny part of upstream industry.

European Fastener Distributors Association (EFDA) considered that the analogue country methodology leads to unreasonable results. The duty of 85% was based on India as analogue country and was repealed following a WTO ruling. Such high duties close the market to Chinese imports, which goes against the EU's plea for a level playing field. Granting MES would avoid inappropriate measures.

NEVIB, Dutch Association of importers of fasteners recalled that 7 years ago the sector was taken by surprise with the imposition of a very high duty, and later again, when the duty was repealed. These ups and downs create too much uncertainty in the market. NEVIB agrees

that when there is dumping it needs to be tackled. NEVIB is in favour of change, in order to improve transparency, predictability and appropriateness of measures.

Lawyers

NTCM strongly criticised the consultation process as not being in line with the Commission's better regulation rules, calling it a charade. The current methodology has to be changed. The Commission's proposed package is incoherent and inconsistent. It cannot grant MES on one hand and move away from Chinese costs and prices on the other.

Van Bael & Bellis recalled that it was always clear that certain provisions of Section 15 would expire after 15 years. Option 3 has many WTO problems: grandfathering is incompatible with the prospective system, which is based on an investigation period in the past. That is why there is the possibility of refund and review. Regarding cost adjustments, the answer will be provided by the report in the case Biodiesel Argentina. The LDR is about injury and not about dumping and removing it can therefore not substitute for low dumping margins. The LDR is a sound feature of the EU TDI system in order not to impose duties in excess of injury. The proposal to investigate unidentified subsidies is WTO inconsistent.

Fieldfisher LLP reminded that MES is about a change in the methodology when calculating dumping in relation to China. Fieldfisher considered that the public consultation is oriented towards option 3. Fieldfisher asked what the legal obligation is, regarding the expiry of certain provisions of Section 15, if any. The US has negotiated this position in 1999 and full meaning should be given to the remains of section 15. If the EU were to grant MES, what would be the relevance of the five MES criteria?

HFW recalled the Commission position in this regard in the Fasteners dispute (2010) and expressed by Commissioner De Gucht (2013), where it was made clear that MES would be granted in 2016. HFW recalled that there are no clear criteria of what is a market economy and evoked that under certain circumstances the Netherlands and Belgium could also be considered as non-market economies.

DS Avocats who represents Chinese exporters in Canadian investigations recalled the Canadian system, where the domestic industry has to make an allegation of distortions in the complaint. Once the complaint is accepted the burden shifts to the exporter. The determination whether non-market conditions prevail, or not, depends on the product. The approach is an industry by industry approach on a micro and not a macro level (e.g. the aluminium sector is considered to operate under non-market economy conditions).

Philippe&Partners considered that the legal obligation is clear and cannot be subject to stakeholders' vote. The EU cannot give in to commercial protectionism. The Commission needs to do more work in order to be able to use adjusted costs in case of distortions. Not granting MES equals inadmissible discrimination vis-à-vis China.

Others

Ms. Inmaculada Rodríguez-Piñero (MEP) criticised the public consultation as being biased towards granting MES and that it did not contain any open questions. S&D is opposed to granting MES unilaterally. The EU should coordinate with other WTO members as they all face the same issue. China is not a market economy and MES should be granted only on the basis of compliance with the five MES criteria. Furthermore, she iterated that in EU AD investigations it takes too long to impose provisional measures (unlike e. g. in the US or Brazil). The LDR should be eliminated as it puts EU industry at a competitive disadvantage as compared to other users of TDI who impose higher duties. She urged the Commission and the Member States to conclude the modernisation process.

Mr. Andres Barceló (EESC/UNESID) considered that granting MES would have a serious impact on EU jobs. He pointed to the significant Chinese overcapacities in many sectors such as glass, paper or steel, which China has acknowledged and which can, in the short term, only be addressed with effective TDI. He highlighted that the EU market was very open with the lowest duty levels (e.g. on the same product EU 16%, US 266%). He warned against trading goods for jobs. An industry exiting a market takes also other high value added activities such as R&D with it. He expressed his disappointment over the lack of transparency regarding the economic study commissioned by the EU. He concluded by inviting stakeholders to a hearing in the EESC on 5 April 2016.

IndustrieALL European Trade Union made a distinction between modernising and dismantling TDI. He welcomed the Steel Communication but highlighted that without a dumping margin, TDI becomes meaningless. IndustrieALL was very concerned about the future of the EU industry. The EU should avoid losing its industrial base to China. After granting MES, sectors such as steel, aluminium, glass or cement could be lost to China, which would reach a monopoly position and then impose its prices and standards. This would also have significant negative consequences for the environment (Chinese industry being much more polluting than the EU industry). The employment impact can be estimated between the maximalist Scott study and the minimalist Commission study, but would, in any event, be significant, with consequences for the EU social model. In this context, IndustrieALL mentioned that China signed up to only four of the eight International Labour Organisation (ILO) conventions. Moreover, if MES were granted, China would have no incentive to further reform its economy.

Chinese Mission to the EU considered that granting MES, following the expiry of certain provisions of Section 15, is a separate issue from whether China is a market economy or not. The EU must fulfil its obligations and terminate the analogue country methodology by December 2016; otherwise the EU would be in breach of WTO rules. Not granting MES would be a step back in the EU's promotion of free trade.

China Council for the Promotion of International Trade insisted that MES is a purely technical issue related to the determination of normal value. There are no WTO rules how to determine a market economy. Certain provisions of Section 15 will expire in December 2016 and that has clear consequences. The EU has to comply with its WTO obligations and not use the analogue country methodology after December 2016. China should not be discriminated against, otherwise China will go to the WTO. By not changing the methodology the EU will endanger the EU/China relationship in particular regarding investments (e.g. in the car

industry) or EU/China negotiations. The expiry of certain provisions of Section 15 is the right time to change the methodology.

China Chamber of International Commerce EU Representative office explained that the legal obligation arising from the expiry of certain provisions of Section 15 is clear. The EU can no longer apply the analogue country methodology after December 2016. The Fasteners ruling is decisive.

Annex 2.2

Consultation meeting with social partners - report

On 15 April 2016, the Commission services organised a consultation meeting with social partners in the framework of the Impact Assessment currently carried out on a possible change in the methodology to establish dumping in trade defence investigations concerning the peoples' Republic of China.

The aim of the meeting was to provide social partners with an additional opportunity (in addition to the ongoing online consultation and the stakeholder conference which took place on 17 March) to express their views on the issue. On the employers side, the meeting was attended by representatives of BusinessEurope, UEAPME (European Association of Craft, Small and Medium-Sized Enterprises), CEEP (European Centre of Employers and Enterprises providing Public Services), EUROFER, Euromines, ECEG (European Chemical Employers Group), CEC (European Confederation of the Footwear Industry) and Sea Europe (European Ships and Maritime Equipment Association). Cross-sectoral as well as sectoral associations were therefore represented. For trade unions, ETUC, industrieAll, CGIL (Italian Labour Confederation), GSEE (General Confederation of Greek Workers) and IG Metall participated.

The interventions of the social partners as well as the subsequent discussion in the plenary meeting confirmed that the social partners follow the topic were closely and are willing to actively engage with the Commission in a constructive solution-oriented discussion. The social partners generally acknowledged in the meeting that the expiry of the relevant provisions of the Protocol in December 2016 will have to be reflected in the trade defence proceedings (i.e. the current system of calculating dumping based on an obligation to use the analogue country method cannot be continued unchanged). From this starting point, a convergence of views among the social partners emerged on the following points:

- under the Protocol, there is no automatic obligation to apply the standard method for dumping calculation, and therefore treat China like any other market economy country, post 11 December 2016;
- it is only one part of Section 15 of the Protocol that expires in December; the unions as well as the employers emphasized strongly that in their view the surviving provisions of the Protocol need to be given meaning a purpose when designing a solution;
- the EU should coordinate its approach with other major trading partners;
- the social partners are willing to actively engage in searching for solutions (they acknowledge that the current methodology also has its shortcomings, in particular in can be considered too rigid).

A number of additional points were raised, ranging from the possible impacts on trade relations with China (in particular investment) to China's role as both competitor to the EU industry as well as an important supplier.

Annex 3: Who is affected by the initiative and how?

This annex aims at:

- *setting out the practical implications (such as key obligations or timescale) of the initiative for a representative enterprise and/or public administration (or particular groups or individuals if directly regulated),*
- *describing the actions that the enterprise or public authority might need to take in order to comply with the obligations under the proposed intervention and indicate wherever possible the likely costs to be incurred in meeting those obligations.*

On the basis of the preferred option – Option 3 - the current anti-dumping (AD) and anti-subsidy (AS) legislation would be changed in order to provide for:

- (1) an alternative calculation methodology,
- (2) transition periods for existing measures,
- (3) and AS schemes found in the course of the investigation would be covered by the investigation.

The enterprises affected by TDI are typically **EU producers, importers, downstream industrial users, or exporting producers in third countries.**

The possible changes proposed to the anti-dumping methodology do not imply any additional obligations or specific actions that the parties concerned by investigations would have to comply with. They do not impact on the investigative process as such, or on the collection of information on the basis of questionnaires. There would thus not be additional costs for parties cooperating in investigations.

The **public authority** carrying out TD investigations **is the Commission**. The proposed changes will mainly effect how the information collected during investigations is used. This will not have any major implications regarding resources or costs.

Any additional work that may occur in relation to an alternative calculation methodology will be offset by not having to investigate a producer in an analogue country (analysis of questionnaire replies, verification visit in the analogue country). The transition periods would avoid a flood of interim reviews after December 2016 which might be difficult to handle. The changes 3 and 4 do not impact on workload as they are part of investigations under current rules already (3) or would be part of the on-spot verification visit as currently carried out (4).

Annex 4

ANALYTICAL MODELS USED IN PREPARING THE IMPACT ASSESSMENT

The models used for this Impact Assessment is a tailor-made development for the specific purpose of the MES China analysis. It has been established by Hylke Vandenbussche and Jo Van Biesebroeck from the Catholic University of Leuven in Belgium. Both are renowned economic experts and in particular Ms. Vandenbussche is one of the world's leading researchers in the field on economic analysis of TDI.

The main indicator that the analysis produces is the employment in the firms that are directly and, via input-output relationships indirectly, affected by dumped imports from China. Other indicators, in particular GDP have not been addressed on account of the rather limited magnitude of the trade at stake compared to overall EU trade.

Below, a brief technical description of the quantitative model which is excerpted from the study informing this impact assessment:

The analysis proceeds in four consecutive steps with a natural progression, as each step takes the output of the previous step as input. The objective is to obtain an estimate for the differential employment effects on the EU if it were to grant China MES in AD investigations.

Step 1: Revisiting the expected employment effects in the 10 selected AD cases

We start with an independent assessment of the *direct* employment effects in the 10 anti-dumping cases the Commission selected for the purpose of this study which allowed us to use detailed (confidential) information. The reduction in AD duties under the new methodology, as calculated by the Commission, is an important input to this analysis. Our approach consists in the estimation of a partial equilibrium model that relies on two separate sets of elasticities used to construct multipliers. It involves the estimation of i) import-demand elasticities of Chinese imports on Chinese prices and ii) EU employment elasticities with respect to Chinese imports. In combination they generate an elasticity of EU employment with respect to import tariffs (percentage change in EU jobs/percentage change in tariffs on Chinese products).

Simply rescaling the estimated effects for the 10 cases to all TDI-sensitive sectors, we obtain the expected effects under Scenario 1.

Step 2: Assessing the likelihood each EU sector will face dumping by Chinese firms

To estimate the impact on the entire tradable goods sector of granting MES to China, we need to resolve two issues. The first issue is to assess for each sector in the EU how likely a random product is to suffer from Chinese dumping. We assign all current AD cases to a 4-digit HS product category and calculate what share of trade in the category is affected in these cases. We then aggregate these shares to the sectoral level of the

World Input-Output Database (WIOD) to obtain a sector-specific probability that a product is subject to dumping by Chinese firms.⁴⁷

We calculate these probabilities under two scenarios. Scenario 2 represents the current situation. It relies on all existing AD measures of the EU against China. The aggregate results of Scenario 2 capture the short-term effects of the change in methodology, where we only consider the same Chinese products are dumped as before but now the assessment of anti-dumping duties by the EU will be according to market economy methodology. As it assumes that product coverage remains the same, we label this scenario as “short-run”. Scenario 3 additionally considers a possible expansion in the range of dumped products by Chinese firms. We refer to this as “long-run” effects because we now allow for the possibility of new AD-cases in the future in products that thus far have not occurred under EU TDI cases.

Step 3: Generalizing the direct employment effects of Chinese MES status for the *entire* economy

The second issue we need to resolve is to develop a methodology to predict employment effects that can be applied without observing the same detailed information available in the 10 cases (in step 1). We use a sector-specific semi-elasticity that measures the percentage reduction in employment for each percentage point reduction in AD duty to quantify the effect of the new methodology on EU employment. We use the average of these semi-elasticities estimated in step 1 as starting point, but adjust them for the import penetration from China and the Rest-of-the-World to allow for heterogeneous effects across sectors.

We obtain the aggregate effects by multiplying these adjusted semi-elasticities (from step 1) with the predicted reduction in AD duties (from the Commission) and the probability each sector is affected (from step 2). Using two sets of estimates for two scenarios, we obtain 4 estimates.

Step 4: Adding *indirect* employment effects

Finally, we estimate the indirect effects, or the effects in upstream and downstream sectors. We first discuss at a theoretical level which effects we expect and whether they are likely to magnify or cushion the direct effects. We next illustrate that the sectors where anti-dumping action against China is likely are relatively upstream, which means positive effects will be relatively important. Finally we quantify the indirect employment effects upstream and downstream exploiting the detailed information in the World Input-Output Database.

The choice of an external expert rather than an internal analysis has been made deliberately so as to provide a maximum of specific analytical expertise. As the model has been developed for this very exercise, peer-review and validation by third experts are not yet available by definition.

⁴⁷ The dumped products in the 10 AD-cases are classified in a total of 13, 4-digit HS product categories (many cases comprise a large set of products). From the detailed information of the 10 AD-cases we can ascertain that the dumped products account for 22% of the total Chinese imports into the EU in these 13, 4-digit categories. From the entire list of 52 existing AD-cases involving China, we identify all 4-digit product categories with at least one product involved in a case. In those categories we consider 22% of Chinese imports subject to TDI measures (with an adjustment for categories with multiple cases). In the remaining 4-digit categories there are currently no TDI measures against China and none of the Chinese imports is subject to TDI measures. Aggregating over all product categories suggests that 2.5% of all Chinese trade is subject to TDI measures. We opted for this methodology since it also allows us to assess the indirect employment effects using WIOD in a later phase of the analysis.

Uncertainties in the economic analysis are addressed by working with two alternative, complementary datasets from which to perform the first step of the analysis as described above. This allows presenting a confidence range for all quantitative results.

The analysis does not have a time dimension and therefore no baseline in the traditional sense. The reference scenario, referred to as option 1 in this impact assessment is the status quo in both legislation and practice. (For further qualifications please cf. section 5.2.1).

WORLD TRADE ORGANIZATION

WT/L/432
23 November 2001

(01-5996)

ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Decision of 10 November 2001

The Ministerial Conference,

Having regard to paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization, and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93),

Taking note of the application of the People's Republic of China for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 7 December 1995,

Noting the results of the negotiations directed toward the establishment of the terms of accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol on the Accession of the People's Republic of China,

Decides as follows:

The People's Republic of China may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms and conditions set out in the Protocol annexed to this decision.

PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Preamble

The World Trade Organization ("WTO"), pursuant to the approval of the Ministerial Conference of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), and the People's Republic of China ("China"),

Recalling that China was an original contracting party to the General Agreement on Tariffs and Trade 1947,

Taking note that China is a signatory to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations,

Taking note of the Report of the Working Party on the Accession of China in document WT/ACC/CHN/49 ("Working Party Report"),

Having regard to the results of the negotiations concerning China's membership in the WTO,

Agree as follows:

15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.
- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.
- (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

Annex 6

Legal context of other WTO members regarding China and/or other NME countries

US

There is no US statute classifying China as a non-market economy (NME) generally. The US statute provides Department of Commerce (DOC) with significant administrative discretion for determining when a foreign country is a NME.

The legal basis for China's treatment as NME in AD cases is contained in 19 U.S.C. §1677(18), which sets out the factors which the DOC must take into consideration when making a determination regarding a country's status as a non-market economy. The determination of NME status may be made "with respect to any foreign country at any time," and remains effective until expressly revoked by DOC. Moreover, DOC's determinations are not subject to judicial review. DOC has confirmed China's NME status in every AD investigation so far.

In 2006 DOC received a request from a respondent in the "lined paper" case, supported by the Chinese government, to review China's NME status. DOC then issued a memorandum with a comprehensive analysis of the NME factors, concluding that China does not meet the relevant criteria⁴⁸ to be considered a market economy.

Since the status of China is not laid down in legislation, granting MES can be done by an administrative decision by DOC, either in the context of a concrete AD case, or independently from an investigation.

As a result of the application of the non-market economy methodology to China, DOC bases the calculation of normal value for Chinese exporters on 'factors of production' selected in an appropriate foreign surrogate country. The costs of production borne by Chinese exporters are thus replaced by the value of the corresponding factor of production in the surrogate country.

Canada

In Canada, the legal basis to treat a country as a non-market economy is contained in the Special Import Measures Act (SIMA). The countries concerned are identified as a "prescribed country" under the Special Import Measures Regulations (the SIMR).

When the provisions were enacted for China and Vietnam, automatic expiry dates were included (11 December 2016 for China and 31 December 2018 for Vietnam). These expiry dates were removed in April 2013 "to ensure that Canada's trade remedy system can continue

⁴⁸ (1) currency convertibility, (2) free bargaining for wages, (3) foreign investment, (4) government ownership or control of production, (5) government control over the allocation of resources, (6) other appropriate factors.

to take into account whether these countries are operating according to market economy conditions".

Changes to the SIMR are adopted by the "Governor in Council on the recommendation of the Minister of Finance", who is the minister responsible for SIMA. Amendments to the Regulations are therefore under the control of the council of ministers headed by the Prime Minister. Changes do not need to be formally adopted by the Parliament.

Japan

Japan currently uses criteria similar to the EU to determine market economy conditions. It also has a presumption of NME treatment for China. Japan has initiated joint negotiations for a free trade agreement with China and with South Korea. Like India, it did not commit to early recognition of China's MES. Japan had already, at the time of China's request for MES in 2007, introduced an amendment to the guidelines for procedures relating to countervailing and antidumping duties, setting a December 2016 deadline for the application of NME status to China. However, the guidelines are not legally binding and can easily be modified (with no legislative procedure required).

China probably did not insist on early MES recognition from Japan, simply because Japan rarely used anti-dumping measures. The Joint Study Report, which was drafted to evaluate the FTA between Japan, China and Korea, contains a chapter on the use of trade remedy measures. In particular, the study reported that between 1995 and 2010, Japan initiated six AD investigations and applied seven AD measures in total, of which only one investigation and one measure were respectively initiated and introduced against Chinese imports. In total Japan has only one AD measure still in force against Chinese imports.

Annex 7

TDI Modernisation – the lesser duty rule

The continued effectiveness and further strengthening of the EU's TDI is also linked to TDI modernisation and the *lesser duty rule* ('LDR').

During the public consultation, stakeholders, in particular in the steel sector, claimed that due to the LDR, duties are too low to offset injury. The negative effect of such low duties is amplified in situations of massive overcapacity in the exporting country. In such cases, the very low import prices combined with the very high import volumes disrupt the market mechanisms of supply and demand. Thus, a duty based on the injury margin, which primarily deals with price injury is insufficient to also offset the volume injury. Such situations are likely to increase in the future and compromise the effectiveness of the EU's TDI, as many sectors with huge overcapacities in China have been identified (ref. para 2.3.3 of the main report).

As explained at the beginning (section 1 of the main report), the LDR element is part of the TDI modernisation proposal of 2013. It is proposed not to apply the LDR in cases of significant raw-material distortions. Thus, duties would in those cases not be limited to the level of the injury margin (which is not a requirement imposed by the WTO).

The effects of the non-application of the LDR in such cases was analysed in the impact assessment accompanying the TDI modernisation proposal. There, the analysis did not involve a change in the calculation methodology and was based on using the analogue country methodology for cases regarding China. Furthermore, the analysis was limited to changes in duty levels, but no employment data was available at that time.

The current initiative deals with a change in the dumping calculation methodology and its impact, in particular on jobs. In order to have a complete picture, it was decided to include in this impact assessment also an analysis of the impact of the non-application of the LDR in all cases involving China, in combination with a changed calculation methodology. The results are provided for information, in order to show the possible effects of the new methodology under option 3, also in the event that the TDI modernisation proposal would be adopted.

The impact of the non-application of the lesser duty rule (LDR) in cases involving China, in combination with a changed methodology:

While, the principle of the LDR would continue to be applied in many trade defence investigations, in case the TDI Modernisation proposal is adopted, the LDR would no longer be applied in specific cases. This would lead to higher duties in a certain number of cases and would thus more effectively offset injury (in particular injury caused by distortions, which is often not fully captured in the injury margin calculation). It would also help avoiding injury caused by trade deflection from other third countries, which do not apply the lesser duty rule and thus impose higher duties.

The analysis of the potential **economic and social impact** of the non-application of the LDR in cases involving China is based on the same scenario as for the first element of option 3 (i.e. recalculation of the dumping margins that would have been achieved, when using an alternative methodology). For the purpose of this analysis, it is assumed that the AD duty would always be equal to the dumping margin, even if the injury margin is lower. This would lead to AD duties that are higher than those under the current methodology, by about 7.81 percentage points. In other words the non-application of the LDR (in addition to the three elements of option 3) leads to a real increase in duty levels.

While lower AD duties are likely to result in negative effects on jobs, it would be difficult to sustain the assumption that higher AD duties would allow to create new jobs. However, in order to compare the results of the analysis of the non-application of the LDR with the results of options 2 and 3, the same analytical approach was followed.

On this basis, and for illustrative purposes, the effects of the non-application of the LDR are presented in table 7 at the aggregate level and at the MS level for the upper bound effects in table 8.

Table 7: Illustrative range of the number of potential additionally protected jobs as a result of a change in method towards a new methodology: cost adjustment combined with a removal of the LDR, in all cases involving China, long-run

	Lower bound	Upper bound
Direct effects	+30,700	+45,700
Indirect upstream effects	+9,600	+14,200
Indirect downstream effects	-10,400	-10,400
Total effect	+29,800	+49,500

Source: Assessment of the economic impact of changing the methodology for calculating normal value in trade defence investigations against China. 21 December 2015

Table 8: illustrative upper-bound, long-run estimates of potential additionally protected jobs by EU MS as a result of a change in method towards a new methodology: cost adjustment combined with a removal of the LDR, in all cases involving China

	Direct Effect	Indirect upstream Effect	Indirect downstream Effect	Total effect	in % of total employment
Austria	909	292	- 213	988	0.02%
Belgium	728	210	- 169	769	0.02%
Bulgaria	688	246	- 137	798	0.02%
Cyprus	36	14	- 8	43	0.01%
Czech Rep.	1 842	532	- 454	1 921	0.04%
Germany	10 850	2 675	-2 665	10 860	0.03%
Denmark	428	125	- 96	457	0.02%
Greece	438	255	- 108	586	0.01%
Spain	3 002	913	- 637	3 278	0.02%
Estonia	132	50	- 27	155	0.03%
Finland	495	150	- 104	541	0.02%
France	4 436	1 281	- 992	4 725	0.02%
United Kingdom	3 965	1 111	- 863	4 213	0.01%
Hungary	1 090	333	- 284	1 138	0.03%
Ireland	270	91	- 64	298	0.02%
Italy	6 109	1 662	-1 220	6 551	0.03%
Lithuania	236	96	- 42	291	0.02%
Luxemburg	17	7	- 4	20	0.01%
Latvia	150	64	- 26	188	0.02%
Malta	28	8	- 6	30	0.02%
Netherlands	1 019	301	- 208	1 111	0.01%
Poland	4 292	1 762	- 931	5 124	0.03%
Portugal	931	301	- 173	1 059	0.02%
Romania	1 921	1 192	- 568	2 545	0.03%
Slovakia	703	219	- 182	740	0.03%
Slovenia	281	101	- 73	310	0.03%
Sweden	731	216	- 169	778	0.02%
Total	45 729	14 206	-10 420	49 515	0.02%

Source: Consultants' simulations, Eurostat [Ifsi_grt_a], own calculations.

A rough approximation of the results to Croatia yields about 400 jobs potentially protected additionally, including the LDR element.