

EUROMETAUX POLICY PAPER

Reform of the EC Anti-dumping Methodology

On 9 November 2016, the European Commission presented a legislative proposal to introduce the new alternative methodology into the Basic Anti-dumping Regulation. Contrary to the current EU method, which is based on market economy/non market economy distinction, the new alternative methodology can be used where the market is significantly distorted. The methodology would apply to imports from countries such as China, but potentially could be used in investigations of producers from all WTO countries. In order to describe significant distortions in certain countries or sectors, the Commission services will issue reports.

Eurometaux welcomes, in general, the introduction of new European Commission (EC) anti-dumping methodology based on the new system of significant market distortions. The EU should ensure that the new methodology is a fully-fledged, stand-alone methodology that can be used in efficient and practical way. In order to achieve it, Eurometaux would like to introduce some key suggestions.

1. Under the new methodology, third country and/or international prices and benchmarks must be used as a general rule
2. The method to identify the existence of significant distortions should be properly specified
3. The burden of proof must not shift towards the EU industry
4. Provisions related to reports should be reinforced
5. Effective grandfathering provisions should be introduced. The risk of annulment of existing anti-dumping duties should be avoided.

Under the new methodology, third country and/or international prices and benchmarks must be used as a general rule

If the new EC methodology starts from the use of domestic prices and costs and only adjusts some costs, there is the risk that the Commission's proposal will be applied only as an embellishment of the general WTO framework used for the normal value determination. A proper stand-alone methodology should ignore domestic prices and costs from the start and construct the price using the costs where they are not distorted. Furthermore, this method should be used for each component of the costs of production.

Thus, it is important that under the new EC methodology, all components of costs of production get constructed using third country and/or international prices and benchmark, unless there is a clear evidence that the sector is not distorted. If an exporter can show that a specific component of costs of production is not distorted, it should be applicable to this specific component only, but not to the whole structure of costs of production.

The method to identify the existence of significant distortions should be properly specified

Significant distortions are the core principle of the new EC anti-dumping methodology. Their existence is a condition for applying the new anti-dumping methodology. Therefore, it is absolutely essential that the Commission creates a clear method for determining the existence of significant distortions in a certain country or sector.



Eurometaux believes this should be made on the basis of a non-exhaustive list of technical and objective criteria¹, grounded on the five criteria currently used by the EU to reference a country as a market economy. Furthermore, a reference should be added to the definition of “significant distortions” with regard to: the existence of a transparent, non-discriminatory and effectively functioning legal framework with regard to bankruptcy law, corporate law and property law. This would ensure that political considerations would not have a bearing on the determination of “significant distortions” and that the new system fully takes into account the market circumstances which exist in a certain country or sector. We recommend that the existence of one or more significant distortions in the economy as a whole - or in a sector of the economy of the exporting country related to the product concerned - should lead automatically to the use of undistorted international, third country or EU prices, costs or benchmarks for each and every factor of production in the construction of the normal value.

The burden of proof must not shift towards the EU industry

In the current system it is up to foreign exporters to prove that they meet the market economy criteria. It would be impossible for EU industry to provide exhaustive evidence on significant market distortions in foreign countries. Thus, the shift of the burden of proof will make the use of EU TDI system unbearable for EU companies. Eurometaux believes it is essential that the burden of proof in the new EC methodology is not shifted towards the EU industry. In addition, it must be ensured, that the EU companies can rely on the country or sector reports while filing a complaint for alleged dumping practices.

Provisions related to reports should be reinforced

The Commission’s reports, which aim to provide evidence of market distortions, constitute the key part of their proposal. However, the current provisions are too general to assess how the reports can work in practice. It should be ensured that reports on significant distortions constitute sufficient evidence for using the new methodology at complaint stage. Moreover, it should be not an option, but an obligation for the Commission to prepare reports for all sectors. In addition, the Commission should make clear that reports are available at the time the legislation enters into force. Industry should be consulted on the reports. Likewise, the European Parliament and Council should be entitled to monitor this process. Finally, a mechanism to update the reports should be established.

Effective grandfathering provisions should be introduced. The risk of annulment of existing anti-dumping duties should be avoided

There is a risk that anti-dumping measures adopted or renewed on the basis of the current methodology can be subject to reviews under the new rules. Thus, it is essential to introduce effective grandfathering provisions in the context of any change to the current anti-dumping rules. Furthermore, it is necessary to ensure that no anti-dumping duties adopted on the basis of the current methodology in relation to countries currently listed as Non Market Economies will ever be annulled or withdrawn with retroactive effect.

ABOUT EUROMETAUX

Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. With an annual turnover of €120bn, our members represent an essential industry for European society that businesses in almost every sector depend on. Together, we are leading Europe towards a more circular future through the endlessly recyclable potential of metals.

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¹ The following criteria can be used as an example:

- 1) government/authorities purchase or sales of productions or products from or on stocks
- 2) “cost of raw materials” should include energy
- 3) favourable lending terms by state owned banks
- 4) capital support or grants by government or state owns banks
- 5) logistical support, free or support of use of land and infrastructure
- 6) lack of existence or enforcement of health, environmental and safety requirements
- 7) lack of existence or enforcement of bankruptcy legislation
- 8) lack of legislation or enforcement of anti-trust/anti-competitive arrangements or practices

