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INTERNATIONAL TRADE

The treatment of imports from China in the EU's anti-dumping proceedings

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Stéphanie Noël, Attorney-at-Law
contact@stephanienoel.com
www.stephanienoel.com

Article 15(a)(ii) of China's WTO Accession Protocol (expired on 11 December 2016)

"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."

Normal value determination for producers in NMEs

- The EU anti-dumping regulation classifies China as a **“non-market economy” (NME)**;
- The NME status **directs the application of one of the three special methodologies** for normal value determination listed in the Basic Regulation, **unless investigated producers qualify for market economy treatment (MET)** ;
- In practice, normal value is determined on the basis of the price or constructed value in a market economy third country: **“analogue country” methodology** (unless exporters under investigation show that they operate under market economy conditions)

The 5 cumulative MET criteria (in the AD regulation)

- **Decisions regarding prices, costs and inputs**, including for instance raw materials, cost of technology and labour, output, sales and investment, **are made in response to market signals reflecting supply and demand and without significant State interference** in this regard, and **costs of major inputs substantially reflect market values**;

- **The production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system**, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

- Firms have one clear set of basic accounting records which are independently audited in line with international standards and are applied for all purposes;

- The firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firm;

- Exchange rate conversions are carried out at the market rate.

Sampling and individual examination

- Recourse to sampling where the number of exporters is high;

- Where sampling applies, an individual margin of dumping shall be calculated for any exporter not initially selected who submit the necessary information within the time limits provided for in the regulation, except where the number of exporters is so large that individual examinations would be unduly burdensome (very rarely applied);

- Any anti-dumping applied to cooperating non-sampled companies shall not exceed the weighted average margin of dumping established for sampled companies.

Lesser duty rule

The amount of provisional and definitive duties must not exceed the margin of dumping and should be less if such lesser duty would be adequate to remove the injury.

The Commission's approach to the expiring provision

- Removing the list of "non-market economy" countries from the EU's anti-dumping regulation; and

- Adopting a new, country-neutral methodology to capture market distortions linked to state intervention;

- Deviating from the lesser duty rule under certain circumstances.

The Commission's legislative proposal

- If it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence of significant distortions, the normal value shall be constructed on the basis of undistorted international prices, costs, or benchmarks, or corresponding costs of production and sale in an appropriate representative country;

- Reports on the situation of certain countries or sectors (with respect to distortions) to be prepared by the Commission.

Agreement on deviations from the lesser duty rule

- Where there are raw material price distortions, and these raw materials account for a significant proportion of the cost;

- Higher duties will be based on a target profit, and be subject to a Union interest test.