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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
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

Delegations will find attached document SWD(2016) 371 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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**

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Executive Summary Sheet

Impact assessment on a possible change in the calculation methodology of dumping regarding the People's Republic of China (and other non-market economy countries).

A. Need for action

Why? What is the problem being addressed?

A transitional arrangement, included in section 15 of China's Protocol of Accession to the WTO, allowed for a specific methodology to be used when calculating dumping. Due to the pervasive distortions existing in the Chinese economy, Chinese prices and costs are considered unreliable and the dumping margin is calculated in EU Trade Defence (TD) investigations on the basis of prices and costs in a market economy third country (the so-called analogue country). Following the expiry of certain provisions of section 15 in December 2016, it may be necessary to change this methodology. However, since the distortions in the Chinese economy continue to exist, using Chinese prices and costs for calculating dumping would in many cases significantly understate the actual level of dumping and any measures imposed on that basis would not be effective in remedying the injury caused by the dumped imports. This would have a significant negative impact on the competitiveness of the EU industry (around 50% of TD measures in force concern imports from China). According to an independent study, duty levels could decrease by up to 30 percentage points and put up to around 200.000 EU jobs at risk.

What is this initiative expected to achieve?

The main objectives are to promote free and fair trade and to increase EU competitiveness, growth and create/preserve EU employment. Therefore, whilst dealing adequately with the expiry of certain provisions of section 15 of China's Protocol of Accession to the WTO, the continued effectiveness of the EU's TDI need to be ensured. To that end, it is desirable to provide an effective response to the persisting distortions in the Chinese economy and ensuring adequate remedy to offset injury caused by unfairly traded imports (i.e. dumped/subsidised imports). At the same time strong ties with China should be maintained, based on mutual interests.

What is the value added of action at the EU level?

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 to the present initiative. The EU is required to ensure compliance with EU international obligations.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The impacts of three policy options have been analysed and compared:

- Option 1: (the baseline scenario) which does not consist of any policy changes. This can however not be considered as a typical no-change option as certain provisions of section 15 will definitively expire and thus the political and legal framework will change.
- Option 2: applying the standard methodology would mean to treat China in the same way as any other market economy WTO member, which would significantly weaken the EU's TDI.
- Option 3: consists of a new methodology allowing to effectively capture the non-market distortions and a further strengthening of the trade defence instruments. Sub-option 3.1 consists of two elements: dealing with distortions and transition periods in order to ensure the effectiveness of measures already in place. Sub-option 3.2 deals with the lesser duty rule and the anti-subsidy element.

Option 3 (the 2 sub-options combined) is the preferred option. It is best placed in contributing to the objectives set out.

Who supports which option?

Some stakeholders (mainly industry) seem to prefer option 1 – no change. However, the legal and political implications of this option may be considerable.

Option 2 is supported by some importers and traders. However, it would weaken the EU Trade Defence Instruments (TDI), reduce duty levels and thus increase import volumes at lower prices. It would significantly reduce competitiveness of the EU industry and put a significant number of jobs at risk. Option 3 responds to the position of many stakeholders, who insist on the continued effectiveness of the TDI, want a legally sound basis for them, and prefer to avoid a deterioration of the relations with China.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Sub-option 3.1 would lead to slightly lower duty levels (by around 4%) as compared to the current methodology. Sub-option 3.2 would lead to an increase in duty levels of around 8%. Thus, the economic and social impact of the two sub-options in combination, is expected to be neutral. Hence, the current employment levels would be maintained. As the macro-economic impact of TDI is relatively small (2 to 5% of total trade with China are affected by trade defence measures) it is very difficult to quantify any environmental effect of a change in methodology. It can be said that production in the EU is more environmental friendly than in China and that increased shipments have a negative effect on the CO₂ emissions and carbon footprint. The main beneficiary groups are EU industry and employees. The industry's competitiveness would be ensured/increased and jobs preserved.

What are the costs of the preferred option (if any, otherwise main ones)?

The effects of option 3 are mainly positive. Any negative impact may be felt by importers/traders due to slightly higher anti-dumping duties in certain cases as compared to current duty levels. However, such negative impact is limited, because duty levels would only increase slightly and in most cases importers and traders have the possibility to switch to other sources of supply (not subject to TD duties). No compliance costs are expected under the initiative, because the investigative process (data collection, calculations, etc.) would not change for parties, as compared to current practice.

How will businesses, SMEs and micro-enterprises be affected?

SMEs are affected differently by TDI, depending if they are a producer, user or importer/trader. Typically products subject to TD measures are products for industrial users and SMEs and micro enter-prises are often not directly concerned. However, in certain sectors (e.g. table ware, bicycles), TD measures can be essential to the survival of an industry, which is the case for larger companies and also for SMEs. Due to their size and specific structure, SMEs tend to be more vulnerable to change and thus SMEs may be impacted more by any change in methodology than larger companies.

Will there be significant impacts on national budgets and administrations?

No significant impact is expected in this regard. Any increase in workload for the investigating authority (the Commission services) due to a new methodology is expected to be offset by gains of not using the analogue country methodology any longer (investigation and on-spot verification in the analogue country would not be necessary any longer).

Will there be other significant impacts?

Option 3 is expected to preserve/increase the competitiveness of EU industry. It would also avoid any disadvantages for the EU as compared to other WTO members (e.g. US, Japan who are not expected to change their methodology at this stage). These countries would impose higher duties than the EU (if it were to use the standard methodology), which might result in trade deflection to the EU.

D. Follow up

When will the policy be reviewed?

It is planned to review the policy after five years, which would allow for sufficient time to ensure availability of meaningful data.