

EU Parliament approves new anti-dumping methodology

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The European Parliament approved on Wednesday (15 November) new anti-dumping and anti-subsidy legislation, whose main aim is to fight China's trade dumping.

MEPs adopted the rules with 554 votes for, 48 against and 80 abstentions. Trade dumping is essentially the practice by which countries flood an export market with products at or below cost price.

The new regulation is now expected to be rubber-stamped by the EU Council, representing member states, for publication before the end of 2017.

"It's a vital legislation," said Salvatore Cicu (centre-right EPP), the Parliament's rapporteur for the text.

He said that the new tool would help to "preserve the European industry" and "prevent the loss of hundred of thousands of jobs" in the EU.

But the text, which will be applied on industries like steel, e-bikes, solar panels or tyres for heavy duty vehicles, is already attracting criticism from a number of World Trade Organisation (WTO) countries.

One of the main issues is a complex new 'country-neutral' methodology.

The European Commission's original proposal to revise its anti-dumping and anti-subsidy rules was tabled in November 2016, just before the 15th anniversary of China's accession to the WTO. The deadline meant that China could not be treated anymore as a non-market economy in anti-dumping investigations. China demanded to be recognised as a market economy status, something the EU was wary of doing.

Under the existing rules, anti-dumping investigators from these countries calculated a Chinese product's undistorted price by using proxies from similar countries - instead of domestic prices. This 'analogue country' method usually led to slapping higher anti-dumping duties on Chinese goods.

Faced with its obligation to respect WTO rules, the European Commission's new proposal is 'country-neutral' - yet framed to seize upon the so-called 'substantial market distortions' caused by state intervention.

For such cases the new EU methodology spells out exactly how to construct an undistorted value by using benchmarks or data from similar countries.

The methodology is innovative: an unprecedented move in trade defence, labour and environmental standards, which have been introduced under pressure from the Parliament. "This has everything to do with a level-playing field and fair trade", a senior EU official said. For such provisions to be WTO compatible, they will mainly apply when picking a third country for establishing the normal value: the Commission will look for a country that is "as close as possible to (EU) standards".

In this new method, the 'burden of proof' - the demonstration of a market distortion - had to be shifted to the complainant EU industry, and to the Commission.

The text adopted by MEPs stresses the "need to avoid any additional burdens for the Union industry... in particular in view of the economic and trade specificities of SMEs [small and medium-sized enterprises]."

EU companies will be able to rely on detailed reports by the Commission, which will describe the specific market circumstances in any given country or sector.

These "technical, factual assessments" will be made public but under "full control" from the Commission: "we do not, obviously, want these reports to be politicised", the senior expert said. The Commission also insisted that EU anti-dumping investigators should be able to distinguish whenever a local company operating in a distorted market is presenting them with a fair price. These companies should also have "an opportunity to comment including an opportunity ... to conclusively show that their domestic costs are undistorted," reads the text.

The Commission is still working on its China report, a 400-page paper that provides a general analysis of China's economic model, plus a focus on four sectors often the subject of anti-dumping proceedings: aluminium, steel, ceramics and chemicals.

The report is expected on 20 December.

It is not clear yet whether additional reports will be tabled when the new regulation enters into force.

Already under fire

But the new EU methodology is already under fire from a number of WTO members. Eleven countries - including China and Russia - expressed their concerns at a WTO meeting on 25 October.

Their hostility is mainly directed towards the EU's discretionary power to apply the 'significant distortions' criteria, plus also the social and environmental standards.

Asked about China's expected reaction to the new methodology, a Commission senior expert acknowledged that he expects Beijing to promptly lodge a new WTO case. But the EU executive is confident that the new law text will pass the compatibility test, he added.

Bernd Lange (centre-left S&D), the chair of the international trade committee in the EU Parliament, said on Wednesday that he was "not surprised" by Russia and China's concerns. "Some sectors in these countries are really not based on market price-building processes," he noted.

Lange argues that the new methodology is "in line with WTO rules" because it will look "into the price-building in a sector or in a company of a partner country".

New vs Old ... or more of the same?

For Simon Lester, a trade policy analyst at the Cato Institute, "it's not clear... how this new methodology will lead to a different result than the current methodology", he told EUobserver. "If the outcome is the same, I think China will have a good argument that the new methodology effectively carries over the old methodology, and therefore violates WTO obligations for the same reasons that the old one does", he added.

The way WTO judges will appraise the new methodology is also uncertain. While a number of WTO law experts have expressed various degrees of scepticism, the organisation is currently experiencing internal tensions, mainly generated by Washington's dissatisfaction with it. "This is an area where WTO obligations are vague, and, given recent criticisms by the US, the panelists may be cautious about how they approach some difficult interpretive issues", said Lester.

Trade defence talks dragging on

Some in the Parliament, in the S&D and Green groups, tried to postpone the plenary vote in order to put pressure on parallel talks - between the Parliament and the Council representing member states - on the modernisation of the EU's trade defence instrument.

EU countries agreed last year to boost the bloc's trade defence rules, and the plan, proposed by the Commission in 2013, is considered as the second leg - with the new methodology - of EU's trade defence strategy.

Discussions have mainly stumbled on the issue of the so-called 'lesser duty' rule, which keeps tariffs at the lowest level possible, with some countries insisting that trade should not be hindered by high tariff barriers.

"If the Council doesn't smash the lesser duty rule, we'll be the idiots of the global village," said French S&D MEP Edouard Martin.

Martin, a former trade unionist who has been one of the main advocates of new defences against Chinese dumping, argues that failing to adopt higher tariffs would "discourage European companies to invest to be more competitive".

"This would greatly jeopardise the goal of increasing the part [proportion] of industry in the EU's economy to 20 percent by 2020," he said.

Talks are expected to wrap up before the end of the year, sources close to the talks say.