

February 2017

## Revision of the calculation methodology of dumping

*Impact Assessment (SWD(2016) 370 final, SWD(2016) 371 final (summary)) of a Commission proposal for a regulation of the European Parliament and 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)*

### Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above [proposal](#), adopted on 9 November 2016 and referred to Parliament's Committee on International Trade. The proposal<sup>1</sup> aims to amend the EU's main trade defence instruments (TDI): the Basic Anti-dumping Regulation and the Basic Anti-subsidy Regulation.<sup>2</sup> It targets the methodology to determine anti-dumping duties and the procedure for anti-subsidy investigations. The proposal has been triggered by the recent expiry of part of section 15 of China's [protocol](#) on its accession to the World Trade Organization (WTO) (IA, p. 7). This accession protocol has allowed WTO members to treat China as a non-market economy (NME) and thus apply an alternative, or 'NME', methodology to calculate dumping duties instead of the standard methodology.<sup>3</sup> The expiry of the relevant text in December 2016 caused legal uncertainty as to whether this NME methodology could continue to apply to China (IA, p. 7) and whether and how the EU could disregard Chinese domestic prices in dumping investigations. The final proposal, however, is not limited to China, since it modifies the anti-dumping methodology for imports from all WTO members, and will particularly impact other WTO members which are NME countries.

In its [resolution of 12 May 2016](#), the European Parliament strongly opposed abandoning the NME approach for Chinese imports, by granting market economy status (MES) to China, as long as the EU's five MES criteria<sup>4</sup> were not fulfilled. The resolution also called on the Commission to come forward with a proposal 'giving full effect to those parts of [...] China's Accession Protocol which provide room for the application of a non-standard methodology' and stressed 'the imminent need for a general reform of the EU's TDI'.

This proposal is linked to a previous Commission proposal to modernise other aspects of TDI – 'the TDI Modernisation proposal'<sup>5</sup> – which also aims to enhance the effectiveness and efficiency of the EU's TDI. The

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<sup>1</sup> For more detailed information on the legislative proposal, see Gisela Grieger, [Protection against dumped and subsidised imports from countries not members of the EU](#), Briefing, EPRS, January 2017.

<sup>2</sup> [Regulation \(EU\) 2016/1036](#) of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (Basic Anti-dumping Regulation 2016) and [Regulation \(EU\) 2016/1037](#) of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not member of the European Union (Basic Anti-subsidy Regulation 2016).

<sup>3</sup> The 'standard methodology' compares the export price with the 'normal value', which presents the price of a product when sold on the internal market of the exporting country (IA, p. 5).

<sup>4</sup> Article 2(7)(c), Basic Anti-dumping Regulation 2016.

<sup>5</sup> Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) no 1225/2009 on protection against dumped imports from countries not members of the European Community, and Council Regulation (EC) no 597/2009 on protection against subsidised imports from countries not members of the European Community (COM(2013) 192) ([TDI Modernisation proposal](#)).

latter was blocked in the Council for several years, but the Council reached an agreement on its negotiating position in December 2016.<sup>6</sup>

## Problem definition

The IA focuses on China because of the expiry deadline of part of section 15 of its WTO accession protocol, although a possible methodology change might also impact other NME countries (IA, p. 7).

The IA points out the following problems (IA, pp. 7-11):

- the 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;
- the risks to the continued effectiveness of the EU's TDI in relation to China:
  - insufficient remedy for EU producers exposed to unfair competition from China and other NME countries:
    - risks of using the standard methodology
    - anti-subsidy duties do not reflect the full amount of subsidisation;
  - risks for the stability and continued effectiveness of existing measures.

Concerning the relationship with China, potential negative repercussions might occur if the EU continues to consider China as an NME country and therefore apply its NME methodology. According to the IA, China expects the EU to no longer apply this NME methodology; otherwise this could lead to litigation in the WTO and in the Court of Justice of the European Union (ECJ), as well as to an increase in its own TDI activity regarding the EU (IA, p. 11). Indeed, one day after the expiry of the deadline, on 12 December 2016, China formally initiated WTO dispute consultations with both the EU and the USA. According to the Commission, it is crucial that any change ensures the continued effectiveness of the EU's TDI (IA, p. 8). The IA shows that Chinese domestic prices and costs often do not 'follow normal market forces' and China does not yet meet the EU's five criteria<sup>7</sup> to be considered an MES country (IA, pp. 8, 13-14). China is the EU's second largest trading partner, while 2 % of all EU-China trade is subject to measures, and 0.4 % of industrial jobs in the EU are directly linked to products subject to those measures (IA, pp. 19, 22). Furthermore, the bulk of EU TDI investigations involve China, with currently more than 50 TDI measures in place against that country (IA, p. 7). Anti-dumping and anti-subsidy measures are targeted at specific products and thus have a primarily micro-economic dimension (IA, p. 19). Therefore, the detrimental effects of dumping are much more consequential in some sectors, such as steel, chemicals, ceramics, the solar panel industry and bicycle industry, than the overall macro-economic impact (IA, pp. 17, 19).

The first issue regarding TDI effectiveness concerns its inadequacy for remedying unfair competition. Firstly, regarding dumping, the standard methodology for Chinese imports would generally 'not reflect the full magnitude of actual dumping' (IA, p. 8). Articles 2(3) and 2(5) of the Basic Anti-dumping Regulation allow the EU to address some limited distortions within the framework of its standard methodology, but the IA points out that it is not sufficient to deal with economy-wide distortions (IA, p. 14). Secondly, concerning subsidies, China does not publicly disclose its subsidy schemes, in spite of its WTO obligation to do so; only schemes identified in the complaint can be taken into account when calculating the anti-subsidy duty, thus disregarding subsidy schemes discovered during investigations (IA, p. 10).<sup>8</sup> Hence, the EU's anti-subsidy duties, which aim to counteract the benefits which companies received through some form of state subsidy, are not always effective in complementing anti-dumping duties (IA, pp. 9-10, 15). These risks to the continued effectiveness of the EU's TDI are amplified by the uncertainty regarding the approach of other WTO members (IA, pp. 9, 11-13).

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<sup>6</sup> European Council, '[Conclusions meeting 20 and 21 October 2016](#)', point 12; Council of the EU, '[Trade defence instruments: Council agrees negotiating position](#)', press release 13 December 2016.

<sup>7</sup> Article 2(7)(c), Basic Anti-dumping Regulation 2016.

<sup>8</sup> Article 10(2), Basic Anti-subsidy Regulation 2016 requires that the complaints initiating these proceedings include evidence regarding the existence of subsidies; Gisela Grieger, Protection against dumped and subsidised imports from countries not members of the EU, Briefing, EPRS, January 2017, p. 3.

The second issue regarding TDI effectiveness concerns risks for the stability and continued effectiveness of existing measures. 'Interim reviews' might cause uncertainty: 'if circumstances have changed since the original investigation and the imposition of the original definitive duty, [...] an interim review is initiated to determine whether there is a need to modify the original duty level' (IA, p. 10). There is a risk that a change in methodology 'could be considered to constitute a change in circumstances, which merits the initiation of an interim review', although the Commission argues that this is not the case (IA, p. 10).

The IA clearly demonstrates the scale of the problem by emphasising the importance of China as an EU trading partner. The problem definition could nevertheless have been organised more coherently. The drivers underpinning the problems are identified and organised under a problem tree (IA, p. 15). However, the IA could have stated more clearly which drivers correspond to which problems, and the problem tree could have indicated the links between problems and problem drivers. Moreover, some confusion could arise, since the IA refers to the 2009 versions of the Basic Anti-dumping and Basic Anti-subsidy Regulations which were repealed and replaced in 2016,<sup>9</sup> while the legislative proposal is explicitly aimed at amending the 2016 versions (IA, p. 4).

## Objectives of the legislative proposal

The two *general* objectives of the Commission proposal are to 'promote free and fair trade' and to 'increase EU competitiveness and create/preserve EU employment' (IA, p. 21). The IA also presents five *specific* objectives: (1) 'deal adequately with the expiry of certain provisions of Section 15 of China's Accession Protocol to the WTO, taking into account other countries in a similar situation'; (2) 'ensure continued effectiveness of the EU's trade defence instruments'; (3) 'provide an effective response to the persisting distortions in the Chinese economy and in other NME countries'; (4) 'ensure an adequate remedy to offset injury caused by dumped/subsidised [...] imports'; and (5) 'maintain strong ties with our trading partners' (IA, p. 21).

These objectives appear to correspond to the defined problem, although compliance with the S.M.A.R.T. criteria (specific, measurable, achievable, relevant, time-bound) as defined by the Commission's [Better Regulation Guidelines](#) (p. 22), is not always apparent. No time indication is provided and the specific objective to deal 'adequately with the expiry of [part of] China's Accession Protocol' appears somewhat vague.

## Range of options considered

The IA considers three policy options (IA, p. 23):

### Option 1: 'baseline'

The Commission would not make any changes, in legislation or in practice (IA, p. 23). Hence, the EU would continue to rely on the NME methodology for dumped Chinese imports. Subsidy schemes discovered during investigations would also remain excluded from duty calculations as they were not included in the initial complaint. However, this 'baseline' option would not actually maintain the status quo, because the expiry of part of the accession protocol changed the political and legal environment (IA, p. 23). Politically speaking, China has officially signalled its expectations that WTO members stop applying the NME methodology to Chinese imports. From a legal point of view, the EU might be found non-compliant with its WTO obligations after the expiry deadline (IA, p. 31).

### Option 2: replacing the NME methodology by the standard methodology

China would no longer be considered an NME country and, by default, the NME methodology would be replaced by the standard methodology (IA, pp. 23-24). Therefore, the EU would still be able to take into account distortions, but within the more rigid framework of the standard methodology. Although most of the Commission's discussion of this option clearly refers to China, the IA could have perhaps clarified the scope of

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<sup>9</sup> Article 24, Basic Anti-dumping Regulation 2016; Article 35, Basic Anti-subsidy Regulation 2016.

this option further in order to establish whether this change of methodology would apply to other NME countries as well.

### **Option 3: new methodology allowing to capture the non-market distortions coupled with transition periods and further strengthening of the TDI**

Option 3 contains three complementary elements: the standard methodology would be amended to allow it to deal with significant economic distortions, transition periods would apply to existing measures and TDI would be substantially strengthened (IA, p. 24).

As a first element of option 3, the standard methodology would be amended and the IA states that it would apply to all WTO members. For both options 2 and 3, no alternative methodology would apply to any NME country, including China. Yet, in addition to option 2, option 3 would enhance the EU's ability to deal with 'significant distortions affecting prices and/or costs of exporters in the country of export' under the standard methodology (IA, p. 24). If such significant distortions were identified, the Commission could continue to disregard domestic sales prices for dumping calculations and rely on domestic costs, costs in analogue countries or international benchmarks (IA, p. 25), as under the current NME methodology. Amendments to the 2016 Basic Anti-dumping Regulation would specify the basis for identifying such significant distortions. Relevant criteria could be government involvement affecting costs, presence of state-owned enterprises, etc. (IA, p. 25). Option 3 would shift the focus from NME status to existence of significant distortions. Importantly, however, the burden of proof would shift: the NME methodology would no longer apply by default to NME countries and the burden of proof would lie with the EU industry. Recognising that the latter may face difficulty in finding evidence on market distortions, the IA points out that the Commission may issue a report describing the specific situation and that therefore 'the Commission would effectively assume the burden of proof in determining whether situations of deep distortions would exist' (IA, p. 25).

The second element of option 3 would introduce transition periods: this element would clarify that the expiry of part of the Chinese accession protocol would not constitute a change of circumstances. This change would merit an interim review which would determine whether there was a need to modify the original duty level of existing measures. Therefore, any reviews of existing TDI measures would apply the methodology of the initial investigation, which is the NME methodology (IA, pp. 25-26).

As a third element of option 3, the Commission would amend the EU's anti-subsidy legislation to allow it to include newly discovered subsidy schemes during investigations when calculating anti-subsidy duties (IA, p. 26).

### **The preferred option is option 3.**

The IA would have been strengthened by a wider range of options, as it seems that only option 3 can in fact achieve all the objectives. In addition, the Commission unfortunately does not present any option which is completely in line with Parliament's resolution of 12 May 2016. Under option 1, China would still be subject to NME methodology, but this does not take into account the changed legal and political environment caused by the expiry of part of the protocol. Options 2 and 3 would not give 'full effect to those parts of [...] China's Accession Protocol which provide room for the application of a non-standard methodology'.<sup>10</sup> In its above-mentioned resolution, Parliament also focused on the distinction between MES and NME countries, and the coordination with the EU's major trading partners who also use this distinction. The preferred option 3, on the other hand, shifts the focus from NME status to the existence of significant distortions. Moreover, the IA remains vague about a possible shift on the burden of proof under option 2.

The Commission could also have elaborated more on the details of its preferred option 3 and how it would function in practice. It does provide some examples of criteria to be used to determine whether deep or significant economic distortions exist (IA, p. 25), but this entirely new concept still remains vague. The overall clarity of this option would have also benefited from more elaboration on how each of the three elements of option 3 'contributes its share to the overall effectiveness of the TDI' (IA, p. 43). It is also unclear how, and to

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<sup>10</sup> European Parliament, Resolution of 12 May 2016 on China's market economy status, 2016/2667(RSP).

what extent, the reports the Commission 'may' issue on the situation in specific countries will aid complainants to lodge complaints, in particular SMEs. Nor is it clear whether these reports will be automatically generated for each industry, and how frequently. Furthermore, the IA explains that the third element of option 3 concerns 'a further strengthening of the trade defence instruments' (IA, pp. 23-24), but when describing and assessing this element in more detail, it only refers to changes to anti-subsidy legislation and no other TDI (IA, pp. 24, 42).

## **Scope of the impact assessment**

The IA appears to focus primarily on economic and social impacts. In particular employment impacts are assessed, since 'these are the economic effects that are best measurable and [...] also provide a good indication of the social dimension' (IA, p. 30). However, the IA could have been expected to focus also on the economic performance of EU industry, as the role of TDIs is to protect it. Calculating the economic impacts on those particular sectors of the EU industry closely linked to exports from China would have strengthened the IA.

No cost-benefit analysis is conducted. When discussing the impacts of each option separately (IA, pp. 30-43), the IA relies strongly on an externally commissioned economic study to assess employment impacts under option 2 and the first element of option 3.<sup>11</sup> The impacts of the other two elements of option 3, regarding transition periods and anti-subsidy, received less attention (IA, pp. 41-42).

The IA is transparent about the methodology used, and the steps of the qualitative models to assess options 2 and 3 are clearly explained. The results depend on critical assumptions and imply a certain degree of uncertainty, indicating orders of magnitude and not precise predictions. Throughout the external study, two sets of parameters were used and results are presented 'as ranges as opposed to point estimates' (IA, p. 27). Not all impacts are assessed for each option, but impacts on fundamental rights and the environment are generally discussed in an introductory section covering the analysis of all options (IA, pp. 27-28).

Concerning the comparison of the different policy options, options 2 and 3 do not appear to be compared to the baseline scenario (as argued by the IA, p. 26), which is not quantified at all. The IA does include a table comparing the options according to effectiveness, efficiency and coherence (IA, p. 45). However, the table seems to be inconclusive and inconsistently displaying the comparison, for example, the overall effectiveness of option 2 is considered positive, while for both its specific criteria, this option scores very low (IA, p. 46).

## **Subsidiarity / proportionality**

The legal basis of the proposal is Article 207 of the Treaty on the Functioning of the European Union ([TFEU](#)). This enables the EU to 'adopt the measures defining the framework for implementing the common commercial policy' which includes 'measures to protect trade such as those to be taken in the event of dumping or subsidies' ([explanatory memorandum](#) of the proposal, p. 4; IA, p. 20). Since the proposal concerns the EU's common commercial policy, which is an exclusive competence (Articles 3(1)(e) and 207(1) TFEU), the subsidiarity principle does not apply (Article 5(3) of the Treaty on European Union ([TEU](#)); IA, p. 20). Furthermore, the explanatory memorandum of the proposal (p. 4) indicates very generally that the proposal is proportionate, but does not delve any further into the issue; options are not compared on the basis of this criterion, contrary to the recommendations of the Better Regulation Guidelines.

With regard to the choice of policy instrument, the Commission points out that the current methodology is contained in the form of a regulation, which thus requires another regulation to amend it (IA, pp. 6, 12; explanatory memorandum, p. 5).

## **Budgetary or public finance implications**

The IA does not explicitly elaborate on budgetary or public finance implications, although it acknowledges that, under the preferred option 3, the Commission would 'effectively assume the burden of proof in determining whether situations of deep distortions would exist' (IA, p. 25). The explanatory memorandum of the legislative proposal indicates that there are no budgetary implications (p. 5), but states that 'the Commission services

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<sup>11</sup> European Commission, 'Assessment of the economic impact of changing the methodology for calculating normal value in trade defense investigations against China', [SWD\(2016\) 372](#), 9 November 2016.

intend to issue public reports describing the specific situation concerning the market circumstances in any given country or sector' (p. 2). Therefore, it could be argued that the administrative burden on the Commission might increase with the production of the reports pointing out the significant distortions.

## **SME test / Competitiveness**

When discussing the options' impacts, the IA's introductory section covering all options notes that SME sectors targeted by dumping practices are generally the same as for the EU industry as a whole (IA, pp. 29-30). No SME test is included. The IA does acknowledge, however, that TDI measures can be crucial for SMEs in particular sectors. It also recognises that 'TDI are not easy instruments for SMEs'; compiling data could be particularly difficult for them because a sector might include hundreds of companies from many Member States. It also notes that lower anti-dumping duties could affect SMEs more negatively than larger companies (IA, pp. 29-30). Therefore, it appears rather unclear to what extent the proposed options could impact EU SMEs, for instance regarding the burden of proof and the application of standard methodology to Chinese imports.

The IA does not explicitly discuss the impact on competitiveness. It nevertheless appears to be one of its major concerns, since one of the general objectives of the proposal is to increase EU competitiveness (IA, p. 21). It also seems to be a crucial factor when balancing the identified options (IA, p. 45). According to the IA, the EU requires effective TDI, as non-market conditions can severely impact the level playing field (IA, pp. 7-9). Although cheaper inputs may help increase competitiveness in other sectors, strong TDI is crucial to maintain investment, R&D and innovation in Europe (inception IA, p. 6).

## **Simplification and other regulatory implications**

The Commission claims that the proposal is consistent with other EU policies, such as the [Communication 'Trade for all'](#), the [EU's 2020 Communication: 'A strategy for smart, sustainable and inclusive growth'](#), the [2016 Steel Communication](#) and the [EU Strategy on China](#) (IA, pp. 21-22).

The IA appears inconsistent about the relation between the current proposal and the TDI Modernisation proposal. The Commission describes the two proposals as 'different concepts', without further explanation (IA, p. 7). At the same time, the proposals seem to be complementary, since the Commission acknowledges that they both address different elements of TDI and both aim to modernise the EU's TDI and strengthen its effectiveness (IA, p. 6-9 and Annex 7, p. 81-82).

In addition, the Commission does not explain why it is taking legislative action only now, while the expiry of the relevant part of section 15 of the accession protocol has been known since 2001.

## **Relations with third countries**

The proposed regulation will significantly impact relations with several third countries, notably China (IA, pp. 11-13). China expects the EU to no longer apply its NME methodology from 11 December 2016 onwards and has started litigation at WTO level, as anticipated (IA, p. 11). The IA does not present the impacts of the proposal on China and its economy. However, it indicates that it is crucial for the EU to coordinate its actions with major trade partners, of which the USA response to the expiry of part of the accession protocol would be particularly relevant (IA, p. 12). Currently, the EU and USA approaches differ significantly: EU legislation specifically classifies China as an NME country, while in the USA, legislation merely provides that the administration may determine NME status with respect to any foreign country at any time (IA, p. 12 and Annex 6, p. 79). If the USA maintains its alternative calculating methodology, 'excess volumes might be more easily diverted to the EU' because of the significantly lower EU duties (IA, p. 9). The preferred option would no longer classify China as an NME country, but would opt for a more flexible, ad hoc approach. In this respect, this would align the EU more closely with the USA, according to the Commission (IA, p. 25). Yet, at the same time, it could be argued that this option would move the EU away from the distinction between MES and NME countries which is widely used by the EU's main trading partners (see IA, Annex 6, pp. 79-80), thus potentially hampering this convergence.

## **Quality of data, research and analysis**

The IA (p. 26) clearly states that its assessment is based on the Commission's analysis and practical experiences, the results of the stakeholder consultation and of an independent economic evaluation study. It is also transparent about the different sources of data used for the analysis (IA, p. 30).

Nevertheless, the IA appears to be based on limited evidence, pointing to the difficulty in evaluating the effects of a change in methodology due to the fact that it is based on results of future anti-dumping investigations (IA, p. 34). That is why the Commission requested an external economic study on employment effects when changing dumping methodology for China,<sup>12</sup> which is to be welcomed. However, the study does not go beyond the assessment of employment effects, and a new model was developed, which has not been validated or peer-reviewed by third experts, as acknowledged by the IA (Annex 4, p. 74). Furthermore, some other studies on employment effects exist and have strongly diverging findings,<sup>13</sup> although the Commission only discusses one of these studies (IA, p. 39).

Moreover, quantitative data is sometimes referred to without clearly indicating a source (see, for example, IA, p. 34). The IA also refers to an ongoing study on subsidies in China which 'will complement any legislative change', but does not provide any details (IA, p. 26).

## Stakeholder consultation

The IA identified various stakeholders, such as EU importers and industries, who are directly affected by TDI, either upstream or downstream. The Commission furthermore paid particular attention to EU citizens, in their capacity as workers and consumers, and SMEs (IA, pp. 17-19). It consulted widely and extensively, through three channels: (1) an online open public consultation; (2) a stakeholder conference with approximately 300 participants; and (3) a consultation meeting with representatives of trade unions and employers' associations (IA, Annex 2, pp. 51-71). The online open public consultation lasted for 10 weeks, instead of the minimum 12 weeks required by the Better Regulation Guidelines,<sup>14</sup> and received almost 5 300 replies. The Commission identified a large number of identical replies submitted on behalf of the same entity. It states that the identical replies 'ranged from two to more than 900' for one entity; however, every reply was counted individually (IA, p. 26). Stakeholders' views and their provenance (e.g. upstream or downstream) seem to be transparently reflected throughout the IA.

Stakeholders criticised the limited range of options in the online consultation, and some proposed alternative options, such as sectorial solutions or price baskets (IA, Annex 2.1, pp. 63-66). Regarding option 3, some stakeholders felt that the Commission already had a preference for this option, expressing concerns 'about its legality and feasibility in practice'; many requested clarification on the various elements of this option (IA, Annex 2.1, pp. 63, 66, 68-69). Looking at the online consultation's [list of questions](#), such a request for more details appears justified: the element regarding a modified methodology is only very vaguely described. Hence, such a vague description of the envisaged policy options might have hampered the stakeholders to go into depth when providing their views regarding specific policy options and their impacts. Finally, the IA signals that 'option 3 has evolved and has been strengthened in many respects' following the results of the public consultation. Quite how the consultation fed into the final policy formulation (IA, p. 42) and how this option has clearly evolved is not entirely clear, however.

## Monitoring and evaluation

The IA indicates that the Commission will further monitor the effectiveness of the proposed changes. To do so, it identifies several indicators for four of the five specific objectives, leaving out the objective to deal 'adequately with the expiry of part of China's Accession Protocol' (IA, p. 46). The IA also establishes operational objectives for the preferred option and corresponding indicators (IA, p. 46). The indicators seem adequate to effectively measure the attainment of the objectives, both specific and operational. However, adding some indicators to

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<sup>12</sup> European Commission, 'Assessment of the economic impact of changing the methodology for calculating normal value in trade defense investigations against China', [SWD\(2016\) 372](#), 9 November 2016.

<sup>13</sup> Laura Puccio, 'Calculation of dumping margins - EU and US rules and practices in light of the debate on China's Market Economy Status', In-depth analysis, EPRS, May 2016, p. 27.

<sup>14</sup> European Commission, Better Regulation Guidelines, SWD(2015) 111, 19 May 2015, pp. 17, 66.

show the evolution of employment and the economic performance of industries, per Member State or sector concerned, could have strengthened this section of the IA.

The IA specifies that the Commission should evaluate the initiative five years after its entry into force, and that the results of this evaluation should feed into decision-making on the future policy (IA, p. 47).

## **Commission Regulatory Scrutiny Board (RSB)**

The RSB issued a positive [opinion](#) on the draft version of the IA in May 2016. The first meeting of the inter-service steering group only took place in February 2016 and this short timeframe for the preparation and submission of the IA might be indicative of the rush in which it was produced. The RSB requested further improvements to (1) better explain the context and the link with the TDI Modernisation proposal; (2) clarify the extent to which the proposal relates only to China; (3) elaborate more on the practical application of the options and on the design of the preferred option 3; (4) qualify the results of the external study; and (5) better explain how the options score on effectiveness, efficiency and coherence and how they compare. For most of these issues, the final version of the IA appears to have been improved, as indicated in Annex 1 (pp. 48-49). Furthermore, the scoring system appears to have been clarified, although this remains rather superficial and, as pointed out above, seems to be inconsistently displayed (IA, p. 45 and Annex 1, p. 49).

## **Coherence between the Commission's legislative proposal and IA**

The proposal seems to correspond to the Commission's preferred option 3. However, the evaluation requirements presented in the IA are not included in the proposed regulation.

## **Conclusions**

The IA appears to provide a well-researched explanation of the evidence base for the legislative proposal; it clearly explains the scale of the problem, illustrated by facts and figures giving a clear view of the international situation. However, a better, more coherent organisation of the data related to the problem definition, and a broader range of options, would have strengthened the IA. Option 3 is the only viable one to address all the objectives, although – as also indicated by stakeholders – its elements are only vaguely presented. The IA would have been more persuasive had it been clearer about the modification of the standard methodology. In particular, it would have benefited from a better explanation as to how it would work in practice, in order to allow the EU to continue to disregard domestic costs and prices of China and other NME countries, as this appears to be the most crucial element of the preferred option. The IA does not look at the impact on the economic performance of the EU sectors concerned, and remains unclear as to how EU SMEs would be affected. The stakeholder consultation covered a broad range of stakeholders and the collected views are presented systematically throughout the IA. However, it seems that stakeholders were not given the opportunity to comment in detail on the preferred option 3. The consultation seems to have happened at an early stage in the drafting process of the IA, which could explain the vague questions asked and the shortened period of consultation of 10 weeks instead of 12.

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*This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on International Trade (INTA), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.*

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