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Customs Flash
New EU Anti-Dumping Rules in force: Implications for China

On 19 December 2017, an important change to EU anti-dumping rules has been published in the Official Journal of the European Union. The new rules will have significant consequences on dumping determination and resulting anti-dumping duties in future cases targeting imports from China.

Before these new rules' publication, EU authorities considered China as a non-market economy country, for which the prices and costs of a product under investigation were deemed as unreliable[1]. The normal value in China was determined by analogy with a third market-economy country – a so-called "analogue country" – often resulting in higher dumping margins.

From December 2016, this methodology is in breach of WTO rules[2], under which China as a WTO Member should no longer be considered a non-market economy country.

What the new methodology will change?

Under the new methodology, the normal value in China will normally be based – as for any other WTO Member – on domestic prices of the like product or on a constructed normal value based on domestic costs.

In some circumstances however, the Commission may consider that domestic prices and costs do not provide a reasonable basis to determine the normal value, because they are affected by significant distortions.

In such circumstances, the normal value will be established based on undistorted international prices, costs, benchmarks or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development.

What are the significant distortions?

Significant distortions are those which occur when reported prices or costs are not the result of free market forces,

because they are affected by substantial government intervention.

Various criteria must be examined to arrive at such conclusion, i.e.:

- The market in question being served, to a significant extent, by enterprises which operate under the ownership, control, policy supervision or guidance of the exporting country's authorities
- State presence in firms allowing the state to interfere with prices or costs
- Public policies or measures favoring domestic suppliers, or otherwise influencing free market forces
- The lack of bankruptcy, corporate or property laws, or the discriminatory application or inadequate enforcement thereof
- Wage costs being distorted
- Access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state

What does it mean in practice?

In practice, the Commission will produce, publish and regularly update reports on significant distortions describing the market circumstances in a certain country or sector. These reports will mostly concern China and may conclude at significant distortions. Complainants will be able to rely on these reports to substantiate dumping calculations based on international benchmarks, or prices and costs in a third country.

Thus, the use of an "analogue country" is no longer the rule for determining dumping margin in China. However, the risks of relying on international benchmarks or third country prices and costs to establish high dumping margin still exist, resulting in a continued threat for Chinese exporters and EU importers of Chinese goods.

Interested parties should closely follow future anti-dumping investigations targeting China, thereby making sure that the Commission does not rely excessively on international or third countries prices and costs to determine dumping margins, which results in high anti-dumping duties.

1 See Article 2, subparagraph 7(b) of Regulation EU 2016/1036. The rule for China is the same as the one reserved for non-market economy countries unless investigated producers prove that they operate under market-economy conditions.

2 China accessed the WTO in 2001 with a 15-year transition period ending in December 2016

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