

STATEMENT

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FTA
Foreign Trade Association

JULY 2016

“MES” FOR CHINA? THE UNLIKELY MUST BE ALLOWED TO HAPPEN

THE PROTOCOL OF ACCESSION

DEADLINE EXPIRES ON 11 DECEMBER 2016

Section 15 of China’s Protocol of Accession to the WTO, signed on 11 December 2001, contains a condition that says member states must use domestic prices when calculating the normal value during anti-dumping investigations if China can show it operates under market economy condition. It also contains a condition that permits member states to use an alternative method (in the EU the “analogue country method”) if the contrary is the case. The second condition expires 15 years after signing (i.e. 11 December 2016).

DIFFERENT LEGAL INTERPRETATIONS

One opinion is that after the deadline, since the second condition is removed, member states cannot use an alternative method. The opposing view is that the first condition remains and China still has to show it operates under market economy conditions to have its normal value calculated via the usual method.

THE REASON FOR SUCH DISCUSSION

LOWER DUTIES

It is generally accepted that the analogue country method results in higher dumping margins, and consequently higher anti-dumping duties than if domestic prices were used. Therefore, it is likely that if this method was dropped, duties would decrease or even, in some cases, cease altogether. It is also generally accepted that China, today, is not a market economy. Therefore, importers would prefer that the alternative method is dropped, whereas manufacturers would prefer the contrary.

NEGATIVE CONSEQUENCES OF REFUSAL

RETALIATORY MEASURES

China has stated it will take the EU to WTO dispute if it does not use the usual method of calculation. Though this will take several years to conclude, it is also possible that it will use more immediate measures to pressure the EU to change; such as anti-dumping investigations, withdrawal from the negotiations on the bilateral investment treaty and measures affecting EU businesses in China.

WHAT THE EU SHOULD DO

FTA believes that as from 12 December 2016, there is an obligation on the EU to use the usual method of calculating the normal value when investigating China. FTA also notes that the effects of this change may be mitigated by applying a method similar to that employed in investigations against Russia or by using adjustments when comparing the normal value to the export price. In addition, it should be noted that the anti-subsidy regime will be unaffected.

Failure to do so risks a trade war with China that the EU can ill afford to lose.

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See also FTA Position Paper: [To ME or not to ME: China's Status After 11 December 2016](#)