

5 February 1998

UNICE position paper on the Commission's proposal to change the treatment of China and Russia in EU anti-dumping proceedings

General remarks

1. The Commission's 16 December 1997 proposal to confer, on a case-by-case basis, market-economy status on China and Russia in EU anti-dumping proceedings is clearly of a political nature. With this proposal, the Commission is pursuing the following main objectives:
 - to alleviate the political tensions in EU-Russia and EU-China relations generated by the EU anti-dumping policy and in particular the treatment of China and Russia as non market economies (NMEs);
 - to recognise the efforts made so far by China and Russia to transform their economies and to bolster their efforts to pursue reform at the microeconomic level;
 - to give an incentive to those enterprises in Russia and China which do not yet operate in a market economy environment to restructure fundamentally;
 - to interact positively with the on-going WTO accession negotiations by further stimulating reforms.
2. UNICE generally shares these political objectives, however it has serious concerns about the Commission proposal as it stands. The economic reality which companies face when doing business with China and Russia, which is far removed from anything resembling a market economy, requires that the proposed legislative change be more clearly and precisely defined before being adopted. Simultaneously, the EU should seek further concrete progress in the resolution of outstanding market access problems with these countries.
3. Of particular importance is definition of the criteria to be applied in deciding whether domestic prices and costs should be used in anti-dumping proceedings involving former NMEs. These criteria should ensure objective analysis of cases.
4. In addition, it should be pointed out that the proposed Commission approach, if implemented as it stands, would have a significant impact on Community anti-dumping policy for two main reasons:
 - firstly, EU anti-dumping proceedings concern, to a large extent, China and Russia. In 1996, China and Russia were concerned by more than 60% of the anti-dumping measures enforced by the European Union, and were involved in 70% of the ongoing anti-dumping proceedings;

- secondly, the use of Chinese and Russian market prices and costs would have a significant impact on assessment of the normal value of the dumped product and hence its dumping margin.

5. UNICE is also concerned by the practical measures for implementation of the approach proposed by the Commission which could pose problems, considering:
 - the poor quality of “non-market economy” statistics and company data in the countries concerned;
 - the feasibility of on-site investigation;
 - the cost (in terms of both time and money) of on-site investigation.
6. For all these reasons, UNICE attaches great importance to the Commission's proposal for change and calls on the Commission to enter rapidly into a consultation of European business, which will be the most affected by the proposed changes to the current anti-dumping legislation.
7. A full assessment of the implications of the Commission's proposed change to the Regulation currently in force on the EU antidumping policy should be conducted before any final decision is taken. For European business, the Commission's proposal should in no way affect the efficiency of the EU anti-dumping instrument. In cases of unfair practices, European business should be in a position to defend its legitimate interests effectively and rapidly, in full compliance with the respective WTO rules.

Requests for clarification / amendments

The following comments are specific European business requests for change to the Commission's proposal for regulation.

8. ***With regard to the granting of "market economy" treatment in anti-dumping proceedings***

The Regulation should specify:

- unequivocally the cumulative and binding nature of the criteria to be applied in deciding whether domestic prices and costs should be used in anti-dumping proceedings involving former NMEs (Annex to the proposal for a Council Regulation). A lack of supporting evidence that one of the criteria is being met should automatically lead to refusal to grant market-economy treatment;
- in any proceedings, initiation of a parallel investigation on a normal value in an analogue country in order to ensure that alternative information is readily available if “market-economy” treatment cannot be granted or if some of the data provided by the beneficiary countries appear to be distorted.

- the obligation of the EU to check the arguments and its right to go back automatically to non-market economy status if there is insufficient collaboration at the time of the investigation, or to refer automatically to analogue country data if the data provided by the companies under investigation appear to be distorted;
- the time limit given to the exporter/producer suspected of dumping for submission of a substantiated request in order to be considered as a “market-economy” operator and the deadline within which a decision must be taken in response to such requests;
- consideration, in the investigations, of the actual operating conditions of the domestic supplier and consumer market for the product exported under dumping conditions.

9. ***With regard to the rights of complainants***

The complainant Community industry should be able to lodge complaints on the basis of a normal value in an analogue third market-economy country in all cases, even if the Russian or Chinese companies accused of dumping have been classified as "operating under market economy conditions" in previous investigations;

10. ***With regard to transparency***

The procedure for granting “market-economy” treatment should be fully transparent. The complainant Community industry should be:

- informed of the producer's or exporter's request to be treated as operating in a market economy;
- entitled to a non-confidential version of the information submitted by the Chinese or Russian exporters to the Commission;
- consulted and its arguments duly taken into account in the decision making, as is the case whenever a “newcomer’s” request is submitted pursuant to Art. 11.4 of the Regulation.

11. ***With regard to implementation***

- The Commission's proposed new approach would only act as an incentive for Chinese and Russian companies to implement market oriented economic reform if:
 - the benefit of the new regime is only granted to economic operators who strictly fulfil the “market-economy” requirements;
 - recourse is made, without exception, to the analogue country approach for any other producers in the sector not identified in the request or not complying with the required criteria;
- Article 2 of the Regulation should also specify, as spelled out clearly in the Commission's Communication, that the new approach will apply only to proceedings opened after its entry into force and not affect ongoing cases and measures in place.

- Accession of China and Russia to the WTO should not lead automatically to granting market-economy status to these two countries. The possibility of continuing the flexible approach, which would be provided in the EU regulation once properly developed, should be reviewed in due course to take account of the progress achieved in the direction of market economics and discussed in the framework of their respective WTO accession negotiations.

12. ***With regard to the rights of exporters***

- The concept of "natural comparative advantages", which the producers suspected of dumping could invoke, should be clearly defined.
- The criteria to qualify for individual treatment, as defined in the March 1997 EU administrative rules, should also be included in the regulation, as market economy treatment would imply individual duties for each exporter.

Conclusions

13. On the understanding that, in the framework of the proposed anti-dumping procedures vis-à-vis Russian and Chinese companies, market economy status would be granted on a “case-by-case” basis, European business urges that the proposal for a Council regulation be amended along the lines suggested in this position and the criteria on which the decisions will be based be clearly and unequivocally defined and not be weaker than those laid down for the granting of individual treatment to NME operators. The content of the Annex to the proposed Regulation should also be amended in such a way as to :
- remove any latitude for interpretation;
 - specify more precisely the criteria for conferring market-economy status in accordance with the above-mentioned comments;
- and be included in the regulation itself.
14. UNICE looks forward to entering into a dialogue with the European institutions concerned in view of defining the approach most likely to meet the objectives pursued with the Commission's proposal, which are shared by European business, without weakening the EU 's anti-dumping instrument or making its operation ineffective.
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