

Brussels, 16 February 2016

For the attention of:

Commission President Juncker, Commission Vice-President Timmermans, Commissioner Malmström

Subject: Major concerns with regard to the ongoing public consultation on China Market Economy Status (MES)

Dear Commissioners,

On behalf of AEGIS Europe, I would like to comment on the public consultation that was launched last week by DG Trade concerning the above mentioned subject.

In particular, we are concerned that there are a number of major deficiencies, both in the Inception Impact Assessment (IIA) and in the online Questionnaire, which call into question the value of the information that will be collected to inform the next discussion of this matter at the College of Commissioners:

- 1) **The Questionnaire does not allow any room for additional comments, either with regard to individual questions or at the end of the questionnaire. This is highly unusual and not appropriate for a true in-depth impact assessment.**
- 2) The Inception Impact Assessment (IIA) says the external economic study will be published only in May, which means there is no possibility for stakeholders to comment on its assumptions and methodology, either with regard to the part already completed (re "option 2") or the part still to be completed (re "option 3"). As the Information Note published on the DG Trade website refers to that study and mentions results which are relatively small compared to another study, the one carried out by EPI, **there needs to be a full view of the assumptions and methodology of the external study conducted for DG Trade in order to provide a basis for an unbiased assessment. Not to make the study available until after the public consultation is incompatible with a true in-depth impact assessment.**
- 3) The IIA does not adequately describe known impacts, whether economic (e.g. investments and innovation) or other (environmental, social, 3rd countries, etc). **These are all known impacts in relation to every trade liberalisation initiative (e.g. free trade agreements), and they also need to be addressed in the context of this initiative, i.e., a change of methodology which would significantly reduce AD duties.** For example, with regard to environmental impacts, it can be expected that the increase in imports from China will increase the number of products on the EU market which do not comply with EU chemicals and hazardous substances regulations, and that the increased shipping of products to the EU will increase the amount of shipping-related pollution in EU waters, in particular those near major EU ports. Similarly, the Questionnaire asks only one close-ended question each, with no room for descriptive comments, concerning jobs, investments and the environment, and nothing with regard to other impacts.

- 4) **The IIA does not consider other possible options, such as making changes to the EU AD legislation without obliging the use of Chinese prices and costs as the starting point. This manner of presentation (combined with the leading nature of the questions and the fact there is no room for additional comments) effectively steers the result toward the option of changing methodology and putting in place allegedly mitigating measures.**
- 5) **Neither the IIA nor the Questionnaire give any indication how the suggested mitigating measures could possibly have any significant impact, which is particularly important when one considers the following:**
- "Grandfathering": besides being a temporary measure at best, there is no explanation of how it could be implemented without violating the right of Chinese producers under both WTO law and the EU Basic AD Regulation to request interim reviews of all measures in force on 12 December 2016 in the event there is a change of methodology effective on 11 December 2016 (which is the hypothesis of "Option 3").
 - Cost adjustments: there is no explanation of how effective these might be to deal with the systemic distortions of the Chinese economy, especially considering that if China is removed from the list of NME's (the hypothesis of "Option 3"), no discrimination would be allowed against imports from China, and in any event the "standard" EU cost adjustment methodology is under challenge currently at the WTO, with press reports indicating that the WTO has found that methodology to be in violation of the EU's WTO obligations.
 - Removal of the "lesser duty" rule in relation to dumping and subsidy cases: there is no explanation of how effective this might be in relation to the particularly low dumping margins that could be expected if the current analogue country methodology was no longer used, and the fact that to date the subsidy margins of Chinese producers have always (except for the case of one single Chinese producer) been lower than the injury margin.
 - Allowing the investigation of subsidies discovered in the course of the investigation: to begin with, there is no explanation of what "current disciplines" (cited in the online Questionnaire) prevent the Commission from investigating such subsidies now, especially as it is understood that all WTO Members other than the EU already do this and that the EU was itself doing it until relatively recently. Further, there is no indication of what effective difference this change would make in the context of the systemic distortions of the Chinese economy which escape action under the WTO ASCM Agreement.

Overall, we regret that the IIA and online Questionnaire do not appear to be designed to provide the College of Commissioners with the kind of in-depth and thorough assessment spoken of by First Vice-President Timmermans on 13 January 2016 following the orientation debate of the College on this issue. In the light of these deficiencies, which go to the heart of the impact assessment and its value to inform discussions of the College of Commissioners, let alone to serve as a basis for a proposal to be presented to the European Parliament and the Council of Ministers, **we respectfully request that the Commission revise its IIA to take these comments into account, revise its online questionnaire accordingly, and relaunch the public consultation once these revisions have been completed.**

With the relaunch of the public consultations, we further respectfully request that the Commission publish at the same time the portion of the external economic study concerning the impact of the grant of MES which was completed in 2015.

Sincerely,
Inès Van Lierde



Cc : Vice-Presidents Katainen, Mogherini and Dombrovskis, Commissioners Bienkowska, Thyssen, Canete, Vella, Secretary-General Italianer and Ms Marianne Klingbeil

AEGIS Europe is a grouping of nearly 30 industrial associations dedicated to ensuring that EU policymakers work towards free and fair international trade. AEGIS members are leaders in sustainable manufacturing and account for more than €500 billion in annual turnover and millions of jobs across the EU.

