

Brussels, 19 October 2016

To the attention of President Donald Tusk

Dear President Tusk,

At the upcoming European Council you will discuss how to treat China in anti-dumping investigations in light of the expiry of certain provisions of China's WTO Accession Protocol in December 2016. In view of this crucial debate, AEGIS Europe, which represents nearly 30 manufacturing sectors, wishes to share with you its views on this matter.

European political, industrial and trade union leaders now widely acknowledge that China is not a market economy. Government-induced distortions have resulted in the build-up of significant overcapacities in many industrial sectors, and China's unique business model continues to represent a severe threat for the EU and other partner economies.

The European Commission now believes that it is necessary to revise the EU trade defence rules to allow the EU to continue to address effectively unfair dumped or subsidized trade by China. Its intention, made clear in a Communication adopted earlier this week, is to "*propose a new anti-dumping methodology to capture market distortions linked to State interventions in third countries. This new methodology will be country neutral and it will involve the removal of the list of non-market economy countries*".

AEGIS Europe believes that, despite reassurances by the Commission that "*the proposal will not grant 'market economy status' to any country (...) while maintaining an equivalent level of protection*", there is a very high risk that the proposed changes would make it much more difficult for EU producers, and particularly for SMEs, to be effectively sheltered from Chinese illegitimate dumping against which no market economy producer can compete.

Today the explicit classification of China as a non-market economy in the EU anti-dumping Regulation establishes a clear legal presumption which obliges the Commission not to use Chinese distorted prices and costs in dumping margin calculations. Removing that list as well as the distinction between market economy and non-market economy countries would (i) significantly increase the Commission's discretion to use Chinese prices and costs in individual cases and (ii) shift the burden to prove the existence of "market distortions" on the EU and its producers.

This, in our view, is in stark contrast with the letter and the spirit of the major portion of Section 15 of China's WTO Accession Protocol which remains in force after December 2016 and which makes clear that (i) even after that date it remains up to China to establish "*under the national law of the importing WTO Member that it is a market economy*" and (ii) this assessment must be made against the "*market economy criteria*" contained in "*the importing Member's national law as of the date of accession*".

This is why AEGIS Europe urges you to forcefully ask the Commission to:

- Keep the distinction between market economy and non-market economy countries in the EU anti-dumping Regulation, with “non-market economies” continuing to be understood as those countries which do not meet the EU’s five long-established market economy criteria.
- Make sure that the burden of proving that China and Chinese exporters operate under market economy conditions does not shift to the EU and/or EU producers.

Any legislative proposal not clearly founded on these two key principles should be firmly rejected, as it would not allow to adequately tackle China’s unfair trade practices, thus leading to a massive loss of jobs in Europe.

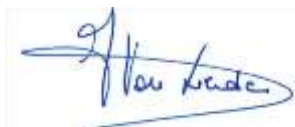
This is not the time for weakening our trade defence instruments simply to please China or for fear of retaliation, all the more so when our major trade partners show no intention of moving. This is the time to show that the EU is able to take measures that strengthen its growth potential, with clear and unambiguous benefits on employment, investment and innovation.

For this reason, AEGIS Europe supports the initiative to drop the “*Lesser Duty Rule*” in certain situations, considering that such a rule is an unnecessary restriction imposed by the EU onto itself without any obligation under the WTO Anti-Dumping Agreement, and could consequently be suppressed in all circumstances.

Nonetheless, we are concerned that under the proposed new regime, dumping margins may be so low as to not offer any effective protection against flagrant dumping and state subsidies, making elimination of the “*Lesser Duty Rule*” largely symbolic.

We therefore call upon you and the other Heads of State or Government to ensure fair competition and sustainable prosperity in Europe. This can be done by strengthening our trade defence system, especially with regard to a non-market economy like China, whose unfair trade practices put at risk hundreds of thousands of jobs in the EU with potentially destabilising effects on the whole European economy.

Your sincerely,

A handwritten signature in blue ink, appearing to read "Inès Van Lierde", is written over a light blue horizontal line.

Inès Van Lierde
Chair of AEGIS Europe

ABOUT AEGIS EUROPE

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. To find out more about AEGIS Europe please visit www.aegiseurope.eu.