
BDI Assessment of the European Commission's Proposal on Reforming the EU Basic Anti-Dumping Regulation

**External Economic Policy
International Markets**

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Seite
1 von 2

On 9 November 2016, the European Commission submitted its proposal on reforming the EU Basic Anti-Dumping Regulation (COM (2016) 721 final). The EU Commission aims at reforming the Anti-Dumping Regulation because the transition period stipulated in China's Protocol of Accession to the WTO ended on 11 December 2016. Meanwhile, China has filed a complaint with the WTO against the EU and the United States. From the perspective of German industry, the reform proposal is a first step in the right direction but leaves room for improvement in several areas. EU trade defence instruments must continue to effectively protect German and European companies against unfair competition from abroad. At the same time, the use of those instruments must conform to WTO law. Good relations with important trading partners such as China must not be called into question, while the EU should continue to promote open markets. Good relations are important for the export-oriented German industry. However, both partners must ensure fair competition. This requires, among others, a differentiated approach that takes into account the different elements of the major economies. Moreover, BDI calls on the Chinese government to accelerate structural reforms and to reduce overcapacity, especially in the steel, ceramics, construction materials, aluminum, and other non-ferrous metals industries.

1. The EU Commission proposes to abolish the country lists in the Basic Anti-Dumping Regulation, which would mean that in principle, the same procedural requirements apply for all WTO members. Alternative calculation methods could be used only if there was proof of significant market distortions in home countries or industries. The new country-neutral approach of the European Commission is designed to take into account the claims that China derives from its WTO accession protocol. This is to be welcomed in general. However, in its reform proposal, the Commission should pay particular attention to the specific shape and form of the obligation to provide proof. Otherwise, European companies could find it difficult to make use of the anti-dumping instrument in cases of market distortions in a third country. Indeed, there are several risks to this approach. Until now, listings as non-market economy provided a sound legal foundation for using alternative calculation methods in anti-dumping procedures against companies in countries where market distortions could be found. Doing away with this presumption rule must not lead to prohibitive burden-of-proof obstacles on the European side. Thus it must be ensured that there is a clear legal basis for providing proof of market distortions.
2. According to the European Commission's proposal, the EU will have the obligation to demonstrate and prove significant market distortions. This must not

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lead to responsibilities being shifted onto industries that have filed a complaint and applied for an anti-dumping investigation. BDI therefore welcomes the initiative of the European Commission to issue reports assessing the market economy conditions in certain countries or individual sectors to which companies applying for an EC anti-dumping investigation could refer. The assessment of individual countries in such reports should not be influenced by political considerations. One problem of the proposal is that the European Commission has not committed legally to issuing reports (“When appropriate, the Commission services *may* issue a report . . .”). This is why some sectors of German industry remain very concerned that companies will be unable to provide proof in cases which involve countries with insufficient transparency. In particular, small and medium-sized industrial enterprises often do not have sufficient means to provide the necessary proof. To tackle these problems, the European Commission must issue the planned reports at regular intervals and in a targeted, transparent, and expeditious manner. At the same time, the country reports should themselves be subject to regular and transparent review. Only in this way anti-dumping procedures can be carried out efficiently against countries in which there are market distortions.

3. BDI also welcomes the fact that according to the alternative calculation method, both international prices and prices from appropriate comparable markets are to be taken into account when determining the normal value in anti-dumping procedures. The chosen calculation method should not send anti-dumping duties soaring; rather it should ensure a comparable level of protection. Furthermore, BDI welcomes the decision to maintain the analogue country procedure for non-WTO members in the calculation of the anti-dumping margin.
4. BDI urges the EU to ensure that the reform proposal is compatible with WTO rules and is rapidly incorporated into applicable national law. The EU should consult important partner countries such as the United States, Canada and Japan regarding the reform. Divergences over how the provisions of China’s WTO accession protocol are applied in those countries would pose the risk of a major diversions of trade flows.