

Change in the methodology for anti-dumping investigations concerning China

INTRODUCTION

When China joined the World Trade Organisation (WTO) in December 2001, a transitional arrangement for its accession allowed for a specific methodology for calculation of dumping. This transitional arrangement was introduced in Section 15 of China's Accession Protocol.. Some of these provisions will expire in December 2016. The Commission is studying the implications of the expiry of these provisions on the EU anti-dumping and anti-subsidy legislation. This examination covers legal aspects, and possible economic and employment effects This examination is ongoing.

2. BACKGROUND

Under WTO rules, the EU can impose anti-dumping duties, additional to tariffs, on products from third countries if an investigation demonstrates that these products enter the EU at dumped prices causing injury to the EU industry.

Under the standard rules, in normal market circumstances, dumping is calculated by comparing the export price of a product to the EU with the domestic prices or costs of the product in the exporting country. However, WTO rules allow investigating authorities to apply special treatment for certain countries where market conditions do not prevail. In practice, domestic prices and costs in those countries are not used as the basis to compare with export prices because they are considered unreliable owing to State influence in the economy. Instead, investigating authorities use data from a market economy country (the so called 'analogue country') as the basis for calculating dumping margins. This is the so-called Non-Market-Economy methodology.

As a result of the many distortions in the Chinese economy, prices and costs do not reflect normal market forces. Therefore, under China's Protocol of Accession to the WTO, the Non-Market Economy methodology has so far been applied in anti-dumping proceedings concerning China. The EU legislation contains similar provisions, and as a result, in its anti-dumping investigations, the Commission uses automatically, in all cases, prices or costs from an “analogue country” to calculate the level of dumping of Chinese products, unless the concerned Chinese producers are able to show that they individually qualify for market economy treatment. The EU had also - autonomously - put in place five criteria that, if fulfilled, would have allowed treating China as a “Market Economy” for the purpose of anti-dumping investigations *before* 2016. China does not meet all these criteria as of yet.

3 LEGAL ASPECTS

Certain provisions of Section 15 of China's Protocol of Accession to the WTO on "Price Comparability in determining Subsidies and Dumping" will expire on 11 December 2016. As a result of this expiry, the Commission is analysing possible impact on the EU anti-dumping legislation¹. Should the Commission decide to put forward a proposal, amendment of the current legislation would entail adoption through ordinary legislative procedure by the Council (under a qualified majority vote) and the European Parliament.

¹ Council Regulation (EC) No 1225/2009

4. ECONOMIC IMPORTANCE OF TRADE DEFENCE AS REGARDS IMPORTS FROM CHINA

As of end 2015, imports from China were subject to 52 definitive anti-dumping (AD) measures. In terms of value, the share of imports from China to the EU, affected by AD measures is 1.38%². The undertakings for solar panels account for a large part of the imports from China subject to anti-dumping measures and if these are excluded, the figure would be around 0.68% of imports in value.

Main sectors

The industries with the most measures in force are (i) chemical and allied and (ii) iron and steel with 14 and 13 definitive measures in force respectively.

The largest sectors by market value are iron and steel, with turnover ca. €29 billion, followed by ceramics, with €13 billion turnover

Please see annex 1 for a full data overview.

Employment by sector

The total employment in the EU relating to products on which there are AD measures in force, concerning imports from all origins, is ca. 250,000 in 2015. More than 90% (234,300) of those jobs relate to products on which there are measures imposed concerning Chinese imports³.

The sectors with the highest number of jobs in the manufacturing of products subject to AD measures concerning China are ceramics, iron and steel, other mechanical engineering (bicycles), and electronics (solar panels).

The ceramics sector and the iron and steel sector employ 102,600 and 55,000 people respectively, for the manufacture of products covered by AD measures. Total employment in these sectors is larger than what is directly covered by anti-dumping measures. For example, in the iron and steel sector, the total employment is ca. 350,000 people according to Eurofer⁴.

Employment by Member State and regions

79% of the 234,300 jobs⁵ in the manufacturing of products covered by the AD measures concerning Chinese imports are in Italy, Germany, Spain, France, Portugal and Poland. For two countries, Ireland and Croatia, the employment figures are not available, due to the recent accession of Croatia to the EU and the predominance of services, rather than manufacturing in Ireland's economy.

The regions manufacturing products subject to AD measures concerning Chinese imports are widely spread across the Union. (e.g. Lombardy in Italy, North Rhine-Westphalia and Saarland in Germany and Catalonia in Spain).

² Including the Solar Panel undertakings.

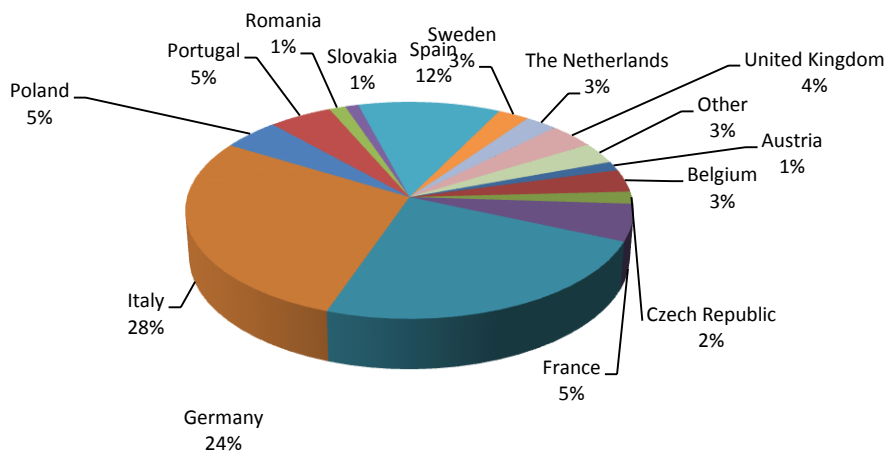
³ Source: regulations imposing definitive anti-dumping and anti-subsidy measures following new investigations or expiry reviews

⁴ <http://www.eurofer.be/About%20us/Eurofer%20Portrait.fhtml>

⁵ In order to compute these percentages an internal Commission database was used.

Please see annex 2 for a full data overview of employment per Member State for products directly affected by anti-dumping measures concerning China, broken down by sector.

5. OPTIONS



The Commission is exploring a number of possible options to follow up the expiry of the provisions in China's Protocol of Accession to the WTO. Given the slowdown of the Chinese economy coupled with the excess capacities in a number of sectors, notably in steel, such analysis is of particular importance. The Commission is currently conducting an assessment of the possible impact of each option. Work is on-going.

There are three basic options:

Option 1: Leaving the EU legislation unchanged:

This option would consist in continuing to apply the anti-dumping investigations concerning Chinese products -including to the reviews of the 52 measures currently in place, the non-market economy methodology.

There is a clear risk that this option could put the EU in breach of WTO obligations and may be challenged leading to compensation.⁶

Economic impact of option 1:

It is not possible to quantify at this stage the economic impact of such a scenario, which depends on a number of factors currently unknown, with potential challenges and costs including in employment terms.

Option 2: Changing the antidumping methodology for trade defence investigations against China with no mitigating measures:

EU law would be modified to reflect the expiry of the transitional arrangement by removing China from the list of non-market economy countries. It would require an ordinary legislative procedure amending the antidumping regulation.

⁶ See article 22 of the WTO Understanding on Settlement of Disputes (DSU).

Economic impact of option 2:

As mentioned above, at the end of 2015, there were 52 measures in place on imports originating in China. These measures affect 1.38% of EU imports from China. About 250,000 jobs in EU industries are in sectors where anti-dumping measures against China are in place.

An external study commissioned by the Commission estimates, on the basis of a representative sample of recent anti-dumping investigations concerning China, that using the market economy methodology in AD cases against China could reduce the level of the anti-dumping measures by 27 percentage points compared to application of the analogue country regime⁷. As a result, gross import prices on imported products from China that are subject to AD measures could fall by 19 percent after the duty is imposed. The lower anti-dumping duties on Chinese imports are estimated to result in lower Chinese prices to EU consumers and downstream industries. Chinese imports will also increase between 17 and 27 percent with respect to what they would be if the analogue country regime were applied and will substitute for sales of the EU import-competing industries (and/or imports from competing third countries)..

The external study examines the impact of lower tariffs on import levels. Then it examines the impact of these changing import levels on sectoral employment in the EU. The results are based on the observation and econometric analysis of import prices and quantities from China and employment in the related sectors in the past.

The external study indicates that the short term direct effects of removing China from the list of non-market economies in the anti-dumping regulation, in EU sectors currently affected by injurious dumping from China, could result in losses in the range of 30,400-77,000 jobs, if no mitigating measures are put in place.

This estimate is based on two assumptions, the first being that the same products as now would be affected by TDI in the short term, and the second being that the share of Chinese imports affected by TDI would be 2.5%, or the historical average, which is higher than the figure at the end of 2015.

In the long run, losses in the range of 73,300 – 188,300 jobs could be expected if no mitigating measures are imposed. This is an estimate based on potential job losses that might result from lower anti-dumping duties which may not offset the real dumping generated by the cost and price distortions in the Chinese economy. This is based on the assumption of dumping in new sectors, based on cases launched by other countries concerning China. A further assumption is that the long term share of Chinese imports affected by AD measures would be 5.7%, which is a long term upper bound.

The study also looks at indirect effects on upstream and downstream sectors. Calculating upstream and downstream effects in the low range of the two estimates lead to an indirect effect that is slightly positive for job creation due to cheaper imports (+ 9,700). In the upper bound scenario leading to direct potential losses of 188,300 jobs, indirect effects are negative on balance and increase the number of overall jobs lost to 211,000, still assuming that no mitigating measures are taken.

The following table summarizes the potential long-term effects of changing the methodology for anti-dumping investigations concerning China on EU employment that the external study found:

⁷ This average reduction is a combination of lower AD duties in some cases (where the investigation would still conclude Chinese firms are dumping) and elimination of AD duties altogether in other cases.

Table 1: Range of potential job losses in the EU from treating China as market economy in anti-dumping investigations without mitigating measures, long-run

	Lower bound	Upper bound
Direct effects on Jobs	-73,300	-188,300
Indirect upstream effects	-20,700	- 53,100
Indirect downstream effects	+30,400	+30,400
Total effect	-63,600	-211,000

Source: Assessment of the economic impact of changing the methodology for calculating normal value in trade defence investigations against China. 21 December 2015

The total employment effect in the long term, if no mitigating measures are taken, is therefore a possible employment loss, including indirect upstream and downstream effects, ranging between 63,600 and 211,000 jobs. This sharply contrasts with a recent study by EPI researchers Scott and Jiang (2015) commissioned by an EU industry consortium, AEGIS. This study forecasts that changing the methodology for anti-dumping investigations concerning China would put between 1.7 million and 3.5 million EU jobs at risk. The study assumes that MES methodology would lead to a decrease in duties for all imports from China. It should however be recalled that in reality, currently products subject to anti-dumping duties only represent 1.38% of imports from China. EPI findings should thus be read with great caution.

Option 3: Changing the antidumping methodology for China as part of a package including mitigating measures:

EU anti-dumping legislation would be modified to reflect the expiry of the transitional arrangement by removing China from the list of non-market economy countries while, at the same time, strengthening other related provisions of the legislation. These could include safeguarding the definitive anti-dumping measures in place ('grandfathering') as well as strengthening other provisions of the trade defence instruments (anti-dumping and anti-subsidies) to ensure the continued effectiveness of the instruments for future cases. The exact scope and design of such mitigating measures remains to be defined. The ultimate objective of such measures is, within the WTO and EU framework, to maintain the ability to redress any distortions that would be detected on the market of the exporting country, thereby imposing anti-dumping duties that reflect economic reality, maintaining a level playing field.

Economic impact of option 3:

Until such mitigating measures are defined, it is difficult to predict their precise impact. A first rough estimation of the effect of mitigating measures may reduce the impact by at least half of what the impact of option 2 would be.

6. NEXT STEPS

The Commission has decided to conduct an in-depth Impact Assessment to inform its decision making process on the matter. In this process, possible economic and employment effects broken down by Member States will be studied carefully. The Commission will discuss the matter again in July on the basis of the Impact Assessment and the feedback from the European Parliament and the Council.

Annex 1. Economic Importance of TDI for products subject to anti-dumping measures concerning China (broken down by sector)

Sectors	Imports from China of Products under Measures (euros)	Total Imports from China (euros)	Percentage of Imports from China under Measures	Imports from rest of the world of Products under Measures (euros)
Ceramics	673,436,173	1,417,974,670	47%	-
Iron and Steel	151,518,111	10,852,462,010	1%	358,809,549
Other mechanical engineering	441,683,079	72,261,850,800	3%	59,647,071
Electronics	2,087,945,770	77,441,821,950	1%	31,422,666
Other	330,111,796	2,772,004,330	13%	17,164,719
Wood and paper	1,313,568	3,951,526,120	0%	-
Chemical and allied	279,356,031	17,020,957,590	2%	163,755,299
Other metals	14,261,920	3,083,830,890	0%	4,595,683
Textiles and allied	154,569,640	1,212,159,220	13%	-
Total	4,134,196,089	301,090,047,630	1.37%	

Annex 2. Employment per Member State for products subject to anti-dumping measures concerning China (broken down by sector)

Member State	Ceramics	Chemical and allied	Electronics	Iron and Steel	Other	Other mechanical engineering	Other metals	Textiles and allied	Wood and paper	Grand Total
Italy	49,780	425	1,583	8,548	191	4,253	236		1,225	66,241
Germany	9,697	552	17,561	14,951	1,999	10,248	192	245	365	55,810
Spain	17,044	694	1,643	4,082	484	675	205	47	2,219	27,094
France	3,432	382	795	5,612	247	1,394	762		280	12,906
Portugal	11,149			309	93	427			87	12,065
Poland	4,128	190	11	4,948	612	728	341			10,959
United Kingdom	4,593	61	650	3,250	129		52			8,736
Belgium		299	571	1,709	2,246	141		41	2,860	7,866
The Netherlands	1,597	180		793	785	2,719	15			6,090
Sweden		14		2,555		3,356	41			5,965
Czech Republic	435	39	755	2,133	424	493				4,278
Austria		851	340	1,750		278				3,219
Romania	16	61		2,760		292				3,130
Slovakia				961	1,032	53	490			2,536
Greece	695	83		30		116	51		155	1,130
Lithuania	21	537				484				1,042
Hungary				135	140	744				1,018

Member State	Ceramics	Chemical and allied	Electronics	Iron and Steel	Other	Other mechanical engineering	Other metals	Textiles and allied	Wood and paper	Grand Total
Luxemburg		32						968		1,000
Malta			890							890
Slovenia			400	46		218	49			712
Finland				380	308		1			689
Bulgaria						581	49			630
Latvia					209					209
Denmark				48			18			66
Estonia	11									11
Cyprus									9	9
Grand Total	102,600	4,400	25,200	55,000	8,900	27,200	2,500	1,300	7,200	234,300

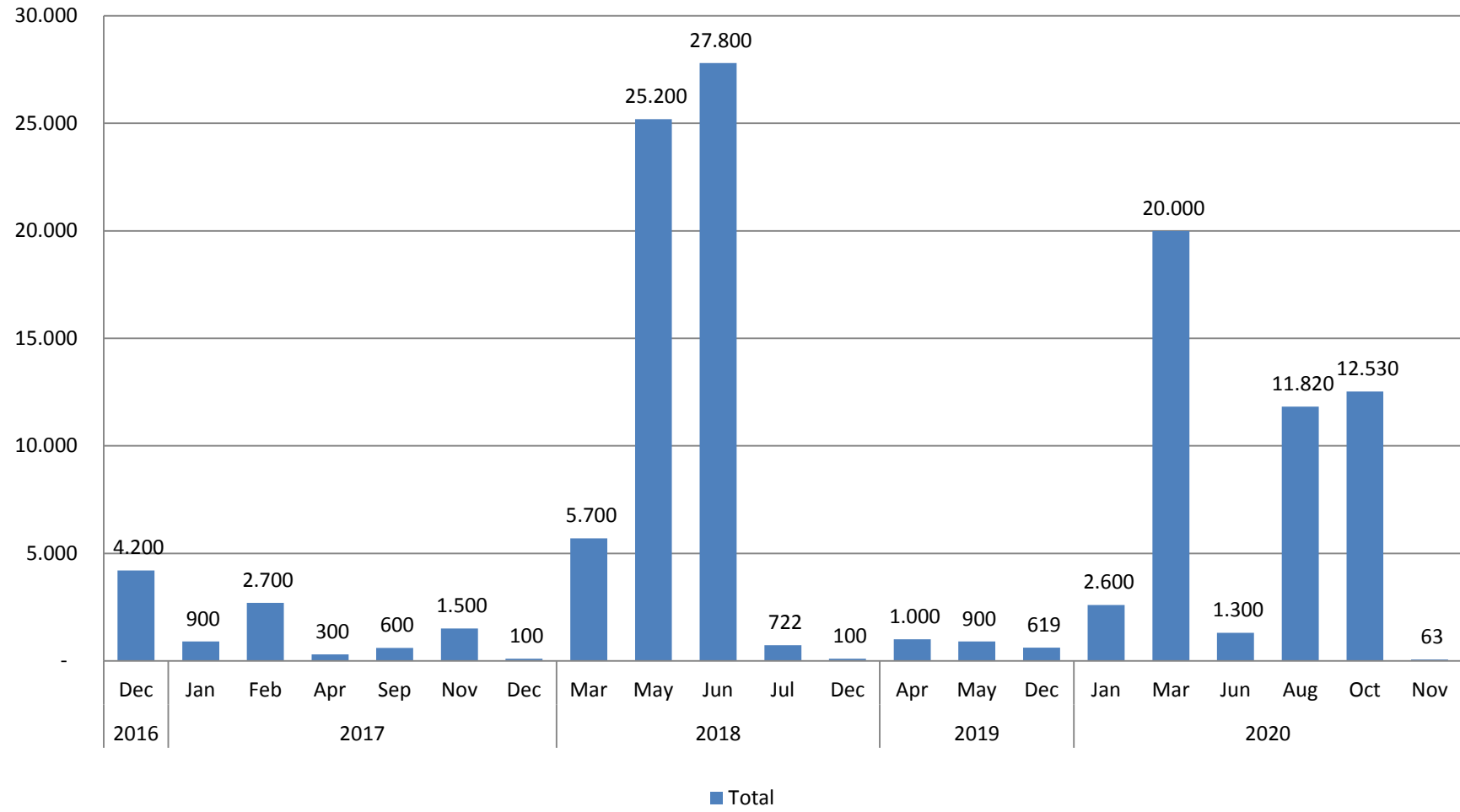
Annex 3. Overview of the Expiry of Measures

3.1. Measures expiring after 12 December 2016

Product	Country	Type	Employment	Normal expiry	Number of measures due to expire per year	Min AD duty	Max AD Duty
Seamless pipes and tubes of stainless steel	China	ad	4,000	21.12.2016		48,3%	71,9%
Trichloroisocyanuric acid (TCCA)	China	ad	200	31.12.2016	2016=2	3.2%	42.6%
Stainless steel fasteners and parts thereof	China	ad	900	08.01.2017		11,4%	27,4%
Steel ropes and cables	China	ad	2,700	10.02.2017			60.4%
Oxalic acid	China	ad	100	19.04.2017		14.6%	52,2%
Tartaric acid	China	ad	200	25.04.2017		8.3%	34,9%
Lever arch mechanisms	China	ad	600	05.09.2017		27.1%	47.4%
Aluminium radiators	China	ad	1,500	10.11.2017		12.6%	61.4%
Chamois leather	China	ad	100	07.12.2017	2017=7		58.9%
Aluminium foils ("household foils", end consumer rolls)	China	ad	300	14.03.2018		14.2%	35.6%
Organic coated steel products	China	ad	5,400	16.03.2018		0.0%	16,2%
Threaded tube or pipe cast fittings, of malleable cast iron (MTF)	China	ad	100	15.05.2018		24,6%	57,8%
Ceramic tableware and kitchenware	China	ad	25,100	16.05.2018		13,1%	36,1%
Bicycles	China	ad	11,800	05.06.2018			48.5%
Bicycles (parts)	China	ad	16,000	05.06.2018			48.5%
Tungsten electrodes	China	ad	n/a	05.06.2018		17.0%	63,5%
Ironing boards	China	ad	see below	24.07.2018		0.0%	42,3%
Ironing boards (Since Hardware)	China	ad	722	24.07.2018			35.8%
Peroxosulphates (persulphates)	China	ad	100	17.12.2018	2018 = 10	0.0%	71,8%
Ferro-silicon	China	ad	1,000	11.04.2019		15,6%	31,2%
Solar glass	China	ad	900	15.05.2019		0.4%	36.1%

Product	Country	Type	Employment	Normal expiry	Number of measures due to expire per year	Min AD duty	Max AD Duty
Citrus fruits	China	ad	400	12.12.2019		361,4 EUR/tonne	531,2 EUR/tonne
Sulphanilic acid	China	ad	219	19.12.2019	2019=4		33.7%
Citric acid	China	ad/UT	700	23.01.2020		15,3%	42,7%
Monosodium glutamate	China	ad	200	23.01.2020		33,8%	39,7%
Citric acid	China	ad	700	23.01.2020		15,3%	42,7%
Welded tubes and pipes of iron or non-alloy steel	China	ad	1,000	29.01.2020			90.6%
Fasteners, iron or steel	China	ad	20,000	28.03.2020		0.0%	74,1%
PSC wires and strands	China	ad	1,300	06.06.2020		0.0%	46,2%
Stainless steel cold-rolled flat products	China	ad	11,820	28.08.2020		24.4%	25.3%
Wire rod	China	ad	8,991	16.10.2020		7.9%	24.0%
Tube and pipe fittings, of iron or steel	China	ad	1,000	29.10.2020			58.6%
Grain-oriented flat-rolled products of silicon-electrical steel	China	ad	2,539	31.10.2020		21.5%	36.6%
Acesulfame Potassium (ACE-K)	China	ad	63	01.11.2020	2020 = 11	2.6%	4.6%

Employment covered by measures expiring after 12 December 2016 (2016-2020)



3.2. Ongoing investigations and expiry reviews

	Product	Country	Type	Employment
Ongoing new investigations to be concluded before 12 December 2016	Aluminium foils ("converter foils")	China	ad	2,002
	Aspartame	China	ad	99
	Ceramic foam filters	China	ad	120
	Cold-rolled flat steel products	China	ad	11,000
	High fatigue performance steel concrete reinforcement bars	China	ad	1,000
Ongoing expiry reviews to be concluded before 12 December 2016	Aluminium foils ("household foils")	China	ad	781
	Seamless pipes and tubes, of iron or steel	China	ad	18,000
	Ring binder mechanisms	China	ad	161
	Silicon metal (silicon)	China	ad	800
	Sodium cyclamate	China	ad	100
	Molybdenum wires	China	ad	200
	Aluminium road wheels	China	ad	13,000
	Sodium gluconate	China	ad	800

3.3. Measures expiring before 12 December 2016

Product	Country	Type	Employment	Status	Normal expiry	Update
Polyethylene terephthalate (PET)	China	ad	1,300	Def	18.11.2015	Initiation imminent
Polyester high tenacity filament yarn	China	ad	1,300	Def	02.12.2015	Initiation imminent
Solar panels (crystalline silicon photovoltaic modules and key components)	China	ad	25,100	Def/IR/Circumv.	07.12.2015	Expiry review initiated
Okoumé plywood	China	ad	100	Def	03.02.2016	
filament glass fibre products	China	ad	200	Def	16.03.2016	
Tungsten carbide and fused tungsten carbide	China	ad	600	Def	25.03.2016	
Melamine	China	ad	1,500	Def	14.05.2016	
Coated fine paper	China	ad	100	Def	15.05.2016	
Open mesh fabrics of glass fibres	China	ad	6,200	Def	10.08.2016	
Barium carbonate	China	ad	5,400	Def	20.08.2016	
Ceramic tiles	China	ad	77,500	Def	16.09.2016	
Hand pallet trucks and their essential parts	China	ad	25,100	Def	14.10.2016	

Employment in manufacture of products subject to AD measures concerning China expiring before 12 December 2016 (2015-2016)

