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China's Market Economy Status

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China is not a Market Economy

China has not fulfilled the promises it made in 2001

China acceded to the WTO on 11 December 2001.

A Protocol of Accession (dated 11 November 2001) set out the terms.

The Protocol set out all China’s committtments.

Some committtments were to phase out non-market features of the economy.

Other committtments (like tariffs etc) were immediate.

China has not complied with Protocol

Prices in China are not set by the market

9. Price Controls

China shall, subject to paragraph 2 below, allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services shall be eliminated.

Paragraph 2 sets out limited exceptions:

tobacco; edible salt; natural gas; certain pharmaceuticals; grain; vegetable oil; fertilizer; silkworm cocoons; cotton; health and related services; professional services; transport charges; bank charges; selling and renting residential apartments.

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China is a Socialist Market Economy

It's
not
1
but
71
five-year
plans

The Taube Study (from June 2015) shows how a Socialist Market Economy works:

- 71 detailed five-year government plans directing and managing the overall economy;
- 22 national industrial sector plans;
- the absence of markets for capital, labour, land, energy and other factors of production;
- the absence of true competition rules, bankruptcy laws and market exit mechanisms;
- the pragmatic subordination of markets to state planning;
- Industry associations are arms of the state;
- State control (restrictions) of inward investment.

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China is not a market economy

In 2013 China Stopped Trying to Show the Commission It was a Market Economy

How can we tell:

The Commission says so.

Formal Commission reports from 2004 and 2008.

Annual Anti-Dumping Reports to the Parliament.

EU has five criteria. China only meets one.

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The famous five criteria

Some
Change
But
Slow

Party
Remains
In
Control

Allocation of economic resources by the market: **NO**

Removal of Barter trade: **YES**

Corporate Governance: **NO**

Property Rights (real property, IP, bankruptcy, competition): **NO**

Open Financial Sector: **NO**

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Article 15 of the Protocol

Article 15
Will be
Examined
In detail
Later

But first:
Some
Anti-
Dumping

Article 15 is twinned with Article 9.

Article 9 provides that prices should be set by the market.

Article 15 provides special Anti-Dumping rules
when prices are not set by the market.

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Some basics on anti-dumping

Dumping is carried Out by Individual companies

Subsidies Are Given By the State

Dumping happens:

when the **Export Price** to the market of destination (the EU).

Is less than the **Normal Value** in the country of origin (China).

The difference between the Normal Value and the Export Price is the amount of dumping.

Normal Value and not prices

Idea of Normal Value reflects WTO law recognition that prices can be unreliable

Normal Value shall **normally** be based on the **prices** paid or payable **in the ordinary course of trade** by independent customers in the country of origin.

Prices are not used (even for market economies) when:

Export industry only: so no prices in country of origin;

Small volumes sold in country of origin: price is marginal;

No independent customers: price unreliable.

Prices can be distorted because they are not set in the ordinary course of trade.

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Constructing Normal Value

Press Reports say WTO Just Ruled Against EU Practice of Cost Adjustment

When prices are not set in the ordinary course of trade WTO law allows the EU to construct the normal value.

EU interprets this WTO provision by using prices from international markets when prices in the country of origin are distorted because they are not ‘normal market’ prices (in the ordinary course of trade).

In dumping of fertilisers and steel from Russia COM uses Weidhaus (in Germany) gas prices and not Russian gas prices.

For biodiesel from Argentina COM uses international Soya prices rather than distorted Argentina soya price.

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Normal Value: using non-China prices?

If
Article 15
Goes
And
Argentina is
confirmed
Then EU
Must use
China
Prices
Even if not
Set by
The Market

COM considers that it can use non-China prices:

Until December 2016 on the basis of Article 15 of the Protocol

After December 2016 on the basis of general WTO rules allowing the construction of the normal value.

Has the WTO case brought by Argentina against the EU's biodiesel A-D measures blown this post 2016 option out of the water?

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Article 15

EP Lawyers Say Article 15 Can be Interpreted Many ways

As a lawyer I have a Different idea

15. **Price Comparability in Determining Subsidies and Dumping**

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

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China’s rights under Article 15

China Has Not Exercised Either of its Two Rights Under Article 15

Paragraph (d) gives China the right to establish, at any time, that it is a market economy. The standard China has to meet is the standard set by the importing country (the EU’s 5 criteria).

China can also show, on the same terms, that market economy conditions prevail in a particular sector.

If China meets the EU criteria Normal Value must be determined following normal WTO rules (now in doubt because of Argentina).

Different WTO members have different criteria and can come to different conclusions.

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EU's rights under Article 15

Paragraph (a)(ii) Expires 15 years After China's WTO Accession

11 December 2016

Paragraph (a) allows the EU to determine Normal Value either:

(a)(i) On the basis of prices and costs in China

Or

(a)(ii) According to a methodology not based on prices and costs in China

The methodology not based on China prices is called the Analogue Country approach:

The EU takes prices from a producer in a surrogate country and uses those as the Normal Value for goods from China.

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Expiry of (a)(ii)

Why
Are the
Lawyers
(in EP
and
COM)
all in a
Muddle?

COM considers that the expiry of Article 15(a)(ii) means:

China must be considered, de facto, a market economy

and

The starting point for Normal Value must be China prices.

Problem with this interpretation is:

Paragraph (a) remains clearly providing that the right to use non China prices remains;

Paragraph (a)(i) remains clearly providing that before China prices can be used, producers in China must show it is a market economy.

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[redacted]m

The law is Not Clear (except to me)

Nothing Automatic in text

(a) In [redacted]
and th[redacted]
either [redacted]
meth[redacted]
price[redacted]

Commission interpretation is wrong

Business
Europe
And
ETUC
Disagree
With
Commission

How often
Do these
Two
Agree?

COM (apparently) considers that the text is clear:

- that EU must give Market Economy Status (MES) to China;
- that MES is automatic (there is nothing automatic in Article 15);
- that China prices must be the starting point for Normal Value;
- that China prices can be adjusted using non-China prices on the basis of the EU practice of cost adjustment;
- that granting MES to China will not weaken defense against Unfair Trade Practices.

What is the Commission up to?

Article 15
Is WTO
Law and
Will be
Interpreted
By the WTO

Why is there
A rush to
Anticipate
That
interpretation

Is COM concerned about retaliation by China?

If so it should do an assessment of the danger and then decide.

Is COM hoping for better access to China's market?

If so in what sectors and for which companies.

Is COM looking for Chinese investment in EU?

Would investment dry up in absence of MES? China needs the world's biggest market

Is COM coordinating with our principle trading partner?

US has said it will not grant MES.

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US, Canada, Australia

If EU gives MES and US does not Then There will Be Massive Deflections Of trade Into the EU (as the open Market)

The US has declared that it will not grant MES to China.

Canada put into its A-D law that China would become a Market Economy in December 2016. It has now changed that law and will not recognise China as a market economy.

Australia granted MES to China (in return for a free trade deal allowing mining exports to China). As a consequence the AD instrument has been severely handicapped:

- the number of cases has halved;
- 50% of cases result in no findings of dumping.
- Dumping duties have dropped 80% (rough average).

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Anti-subsidy is no alternative

China's Sheer size Means that Domestic Distortions Are even Distorting International Prices and Markets Weakening AD and AS instruments

Subsidy instrument was designed to countervail subsidies in market economies (not non-market economies);

Subsides must be specific while China makes them available to everyone;

Anti-Subsidy instrument cannot capture the nexus between the State, the Communist Party and Enterprise

Anti-Subsidy instrument does not work against large integrated State Owned Enterprises (managed by CP members);

(SOEs control more than 40% of the Economy and all key economic sectors including banking, telecommunications, energy, mining, land).

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Markets need strong rules

Anti-
Dumping
Is the best
available
Instrument
(imperfect
Though
It is)
to address
Unfair trade
From
China

The trade defence instruments (anti-dumping, anti-subsidies, safeguards) are the only tools available against unfair trade practices in the global market.

The WTO has not agreed (or even discussed) global fair competition rules. This must be the long-term solution.

AD and AS instruments are not perfect. But they need to be strengthened (remove lesser duty rule, shorten decision making, give more resources to COM).

Markets cannot flourish without strong rules.

EU needs a strong manufacturing base

Adam Smith Recognised That Innovation is Intimately Linked to Production

Patents (IP) don't Come out of Thin air

It was the division of labour which probably gave occasion to the invention of the greater part of those machines, by which labour is so much facilitated and abridged. When the whole force of the mind is directed to one particular object, as in consequence of the division of labour it must be, the mind is more likely to discover the easiest methods of attaining that object than when its attention is dissipated among a great variety of things. He was probably a farmer who first invented the original, rude form of the plough. The improvements which were afterwards made upon it might be owing sometimes to the ingenuity of the plow wright when that business had become a particular occupation, and sometimes to that of the farmer.

Jobs, Innovation, Growth, Culture

Estimates
Of job losses
Run from
400,000
To 3.5 million
If China is
Granted
MES
Before it
Becomes
A true
market

If the EU:

- is to keep its social market model (as opposed to a socialist market model) and ensure labour rights, environmental protection, equality, the capacity to grow and evolve;
- is to achieve 20% manufacturing in the GDP mix by 2020;
- Is to achieve the Juncker plan for jobs, innovation and growth;
- Is to be able to export its values to the world;
- Is to recover from the 2007/2008 financial crisis,

Then

It needs to be able to counter unfair trade practices whether they originate in the EU or from outside the EU.

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