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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

WORKSHOP:

MARKET ECONOMY STATUS FOR CHINA AFTER 2016?

INTA

EN

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT

WORKSHOP

Market Economy Status for China after 2016?

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WORKSHOP
COMMITTEE ON INTERNATIONAL TRADE

European Parliament

Thursday 28.01.2016 – **15:00-17:30**
JÓZSEF ANTALL BUILDING – ROOM **4Q2**

CONTACT AND REGISTRATION: **poldep-expo@europarl.europa.eu**

Market Economy Status for China after 2016?

Chairman: **Bernd LANGE**

Policy Department, DG EXPO for the Committee on International Trade (INTA)

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Authors:

Barbara BARONE with contributions by:

Prof. Bernard O'CONNOR, State University in Milan, World Trade Institute and IELPO

Prof. Jean-François BELLIS, Institute of European Studies of the University of Brussels

Prof. Robert SCOTT, EPI Institute in Washington D.C.

Prof. Maurizio ZANARDI, Lancaster University Management School

Official Responsible: Barbara BARONE

Editorial Assistant: Jakub PRZETACZNIK

Feedback of all kind is welcome. Please write to: barbara.barone@europarl.europa.eu.

To obtain copies, please send a request to: poldep-expo@europarl.europa.eu

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

European Parliament

For the Committee on International Trade (INTA)

WORKSHOP

Market Economy Status for China after 2016?

Thursday, 28 January 2016 - 15.00-17.30h

Brussels, **József Antall building** (JAN), **Room 4Q2**

PROGRAMME

15.00 **Welcome and introductory remarks by Bernd LANGE**, Chair of the Committee on International Trade (INTA)

Panel 1: **Legal interpretation of China's WTO Accession Protocol Section 15**

15.10 Presentations by the *Speakers:*

- **Bernard O'CONNOR**, Visiting Professor at the State University in Milan and member of the teaching faculty of the World Trade Institute and IELPO
- **Jean-François BELLIS**, Professor at the Institute of European Studies of the University of Brussels

15.40 Q&A Debate

Panel 2: **Economic implications of granting China MES**

16.10 Presentations by the *Speakers:*

- **Robert SCOTT**, Director of Trade and Manufacturing Policy Research at the EPI Institute and author of the Study "Unilateral grant of market economy status to China would put millions of EU jobs at risk"
- **Maurizio ZANARDI**, Associate Professor in Economics at the Lancaster University Management School

16.40 Q&A Debate

17.25 **Concluding remarks by Bernd LANGE**, Chair of the Committee on International Trade (INTA)

Report of the Workshop

1 Context of the Workshop

Section 15 of China's Protocol of Accession to the World Trade Organisation (WTO), on 'Price Comparability in Determining Subsidies and Dumping', allows importing WTO members to determine, under their national law, whether China is considered to be a market economy for the purpose of price comparability and the calculation of dumping margins. Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members lists China, alongside other countries, as a non-market economy (NME) (Article 2(7)).

On 11 December 2016, some provisions of Section 15 of China's Protocol of Accession to the WTO will expire; as the wording of these provisions is rather ambiguous, they have been subject to differing interpretations as to the methodology to be applied to China in antidumping investigations thereafter. If the interpretation favouring the automatic granting of market economy treatment to Chinese companies prevails, this will have implications for the application of antidumping measures in proceedings concerning China, and the EU may need to amend its basic antidumping regulation ((EC) No 1225/2009).

In light of possible changes on account of the above, the European Parliament's Committee on International Trade (INTA), jointly with the Policy Department of the Directorate-General for External Policies, organised a workshop in order to hear the views of academic experts. In particular, experts were invited to discuss the legal interpretation of Section 15 of China's Protocol of Accession to the WTO and on the possible economic consequences deriving from the granting of market economy status (MES) to China.

Marietje Schaake (ALDE, NL), the INTA Coordinator, chaired the workshop, replacing Bernd Lange (S&D Group, DE), the INTA Chair. The workshop was divided into two panels, which discussed different sets of issues. The first panel addressed the differing interpretations of Section 15 of China's Protocol of Accession to the WTO and the possible implications of changing China's status for the purpose of antidumping calculations. Professors Bernard O'Connor and Jean-François Bellis participated in the first panel. The second panel dealt with the possible consequences of granting MES to China for EU industry and the EU economy as a whole. The speakers on this panel were Professors Robert Scott and Maurizio Zanardi.

The workshop was webstreamed. Recordings of the event can be found on the INTA website:

http://www.europarl.europa.eu/ep-live/en/committees/video?event=20160128-1430-COMMITTEE-INTA.

2 Opening remarks

Marietje Schaake opened the meeting, introducing the issue of market economy status (MES) for China as a key topic of current interest in the European Parliament. She expressed appreciation for the exchange of views with experts on this matter and welcomed the high level of attendance.

Ms Schaake explained the technical nature of the issue. She pointed out that MES was a technical term used in antidumping investigations, "technical" in the sense that it dealt essentially with the detailed matter of calculating a 'normal value' in connection with investigations.

She added that the position of the Chinese Government was that its WTO accession documents provided for the automatic application of MES after 11 December 2016. Yet some would argue that Section 15 of China's Protocol of Accession is subject to interpretation.

Ms. Schaake explained that while it was certainly a matter of legal interpretation, any decision taken on the matter by the EU would have consequences of an economic nature and on trade. In addition to the legal and economic considerations, the matter is also a very political one.

Ms Schaake called for the issue to be approached from every angle, and for fact-based discussions among the EU institutions and with other WTO members, including China. She explained that the INTA Committee was contributing to this in anticipation of possible Commission decisions and proposals on the subject later in the year. The Commission, Parliament and the Council each had responsibilities within the legislative process, and Parliament looked forward to a transparent and cooperative process that would lead to a successful and mutually acceptable outcome.

3 Panel 1: Legal interpretation of China's Protocol of Accession to the WTO - Section 15

The first panel addressed the legal interpretation of Section 15 of China's Protocol of Accession to the WTO. For the sake of clarity, the text of Section 15 is set out below.

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:

(i) 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.

(ii) In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession.

(iii) 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.

The discussion started with a presentation by **Bernard O'Connor**, Visiting Professor at the State University of Milan and a member of the teaching faculty of the World Trade Institute in Bern and of the International Economic Law and Policy Programme (IELPO) in Barcelona.

Professor O'Connor opened his presentation by recalling the commitments made by China on joining the WTO in 2001 and set out in its Protocol of Accession. Some of the commitments made were immediate

(e.g. in relation to tariffs), while others were to be implemented gradually. With reference to the latter, one fundamental commitment made by China was that it would allow prices to be set by the market. This commitment was spelt out in Section 9 of the Protocol (see text below).

9. Price Controls

1. 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.

2. The goods and services listed in Annex 4 may be subject to price controls, consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4 of the Agreement on Agriculture. Except in exceptional circumstances, and subject to notification to the WTO, price controls shall not be extended to goods or services beyond those listed in Annex 4, and China shall make best efforts to reduce and eliminate these controls.

3. China shall publish in the official journal the list of goods and services subject to state pricing and changes thereto.

Section 9 of the Protocol stated that China would allow prices for traded goods and services to be determined by market forces, and that this was valid for all sectors of the economy (with some exceptions for pharmaceuticals and products related to health policy).

Yet, contrary to the commitment made by China, prices in the country are not set by the market. Quoting a study by a German academic (Professor Markus Taube), Professor O'Connor outlined the complex system of price controls in China. In particular, Professor O'Connor referred to the 71 five-year plans that China currently has in force (including general, sectoral, industry-specific and federal plans), by means of which it exercises state control over the economy.

In addition to this economic study, Professor O'Connor mentioned the 'legal certainty' that China was not a market economy as far as the EU was concerned. The EU has five criteria against which it assessed whether or not a country is a market economy. Since 2003 China had sought consideration as a market economy, but in the Commission's assessment it met only one of those criteria.

Professor O'Connor summarised the five criteria applied in assessing China:

1. Does the market allocate economic resources? No.
2. Has China removed barter trade? Yes.
3. Is there compliance in relation to corporate governance and property rights? No.
4. Are there proper rules on bankruptcy and competition? Not in any significant way.
5. Is the financial sector open? No.

Professor O'Connor's position was that Sections 9 and 15 were twinned. In his view, while Section 9 provided that China should let its prices be set by the market, Section 15 stipulated what should be done during the transition phase until China had complied with its commitment to free-market prices.

Professor O'Connor explained the rationale of antidumping calculations:

- to determine whether or not there is dumping, the importing WTO member looks at the normal value of a product in a home country and its export price;
- the normal value is therefore the price in the country of origin, but if there is no such price, or if prices in the country of origin are distorted, then it is possible to "construct" the normal value;

- To determine the normal value, the EU looks at all the different elements of the cost of producing a certain item.
- As China is not a market economy and its prices are not set by the market, there is a system for determining the normal value called the "surrogate method". This system uses the prices of a third-market country (with no price distortions) to calculate the normal value.

Section 15 granted China certain rights, allowing it to show at any time that it graduated to market economy, by demonstrating that it met the criteria set by the national law of the importing WTO member. If it could not demonstrate that, then the importing WTO member was entitled to use the surrogate method.

As some provisions of Section 15 (i.e. Section 15(a)(ii)) are due to expire as of the end of 2016, what would happen to the rights of the EU Member States as importing WTO members? Professor O'Connor said that as the provisions in question did not state that China was, or would automatically become, a market economy, the expiry of Section 15(a)(ii) did not remove its obligation to demonstrate that it was a market economy according to the law of the importing WTO member, and nor did it diminish the EU's rights to do something different in respect of China when it calculated the normal value. In fact, even after the expiry of subparagraph (a)(ii) the other parts of the section dealing with the EU's rights would remain valid (see paragraphs (a), in particular subparagraph (i), and (d) below):

(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;

[...]

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy:

> **(i)** 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.
>
> **(ii)** In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession.
>
> **(iii)** 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.

After the expiry of subparagraph (a)(ii), according to Professor O'Connor, the remainder of Section 15 still gave the importing WTO member the choice as to whether or not to use Chinese prices (see introductory part of paragraph(a)). Under subparagraph (a)(i), in order to obtain that Chinese prices were to be used during the investigation by importing WTO members, Chinese producers had to demonstrate that market economy conditions prevailed in their industry. If they could not do that, then subparagraph (a)(i) did not apply and WTO members were not required to use Chinese prices.

Professor O'Connor explained briefly how other WTO members (e.g. the United States, Canada, Australia) had been dealing with this issue:

- The United States considers that it is not under an obligation to grant MES to China.
- Australia granted MES to China in 2005 and has struggled since then to deal with a surge of imports from China (as its antidumping instruments were not effective and anti-subsidies were not an alternative).

Professor O'Connor added that in Europe, some viewed the MES issue as a minor one, arguing that only 2-3 % of the EU's bilateral trade with China is covered by antidumping measures. He disagreed with this approach, saying that the very reason the quoted figure was so low was the deterrent effect of having effective trade defence instruments in place. He then concluded with a quotation from Adam Smith: "If you don't have manufacturing capacity, you don't have innovation."

The second speaker on the legal panel was **Jean-François Bellis**, Professor at the Institute of European Studies of the University of Brussels. He began by discussing the concept of a "market economy", presenting it as a "legacy of the Cold War" – a time when the world had been divided into two camps (the Capitalists and the Communists) characterised by radically different and competing economic systems. While the picture had been black and white back then, after 1989 and the end of the Cold War this neat division had faded away as non-market economies had become more and more similar to market economies.

Professor Bellis then explained how the WTO dealt with the issue of non-market economies. The GATT agreement contained a provision introduced in 1955 which described a type of economy based on the model of the Soviet Union – a country with a complete or largely complete monopoly of trade, where all domestic prices were fixed by the state (see below). The provision stated that there could be special difficulties in determining price comparability and in using domestic prices in antidumping cases involving these countries.

Ad Article VI of the GATT Agreement[1]

Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Professor Bellis said that such a provision had never been included in any version of the WTO Anti-Dumping Agreement (ADA). More importantly, as the Appellate Body had said in its report on the Fasteners case, only countries that met the strict conditions set out in Ad. Article VI of the GATT agreement were covered by the provision in question. In conclusion, there was no distinction within the WTO system between market and non-market economies, nor any general WTO concept of a "non-market economy". This was a strictly national concept.

[1] Legal Texts: GATT 1947 - The General Agreement on Tariffs and Trade (GATT 1947), available at: https://www.wto.org/english/docs_e/legal_e/gatt47_03_e.htm

Moving on to the EU context, Professor Bellis stressed that there was no EU legislative text that defined the criteria for determining when a country was considered to be a market economy. This was important, because one of the conditions stipulated in China's Protocol of Accession to the WTO was that "the importing Member's national law contains market economy criteria as of the date of accession" of the country to the WTO. The EU had never complied with such a condition, as it had no legal text setting out such country-wide market economy criteria.

The EU used a list indicating which countries were considered to be non-market economies. The first list of non-market economy countries dated back to 1968 (and the first antidumping regulation), and included all the countries in the Eastern Bloc (except Cuba). As the years had gone by, the list had become shorter, especially after 1989 and the end of the Soviet Union. The first countries to leave the list had been central and eastern European countries which, after signing an association agreement with the EU, had been automatically recognised as market economies without any analysis of the criteria. Simply stating that these countries were moving towards becoming market economies had been sufficient for them to obtain such status. Similarly, Russia had obtained MES in 2002, a decision made by the EU on purely political grounds. The same had happened to Ukraine in 2005.

As for China, the EU had set up a special antidumping regime in late 1988, known as special market economy status. Under this regime, "market economy treatment" (MET) could be obtained by individual companies. However, MET was not consistent with Section 15 of the Protocol, which allowed only industries or countries to obtain market economy status. The reason Section 15 did not provide for MET was that Section 15 had been negotiated bilaterally by the USA and China, and therefore reflected the US system (where there were only two levels of assessment: industry and country). In practice, the strange concept of MET developed by the EU mostly benefited Chinese producers wholly or partially owned by European companies. Such companies managed to have the normal value calculated on the basis of their own prices and costs and thus to obtain much lower duties than other Chinese companies subject to non-market economy treatment (whereby the normal value was determined by the analogue country method).

The EU considered China to be a non-market economy on the basis of five criteria, which it had developed from the five MET criteria set out in the EU antidumping regulation. China had requested MES in 2003, and two reports had been published since then. Until very recently, however, it had been clear to everyone that the meaning of Section 15 of the Protocol was that importing WTO members were able to apply to China a normal value that was not based on Chinese prices or costs. The fundamental basis of China's treatment under non-market economy status would expire on 11 December 2016. This would make it legally impossible for WTO members to apply this derogation in their treatment of China after 2016.

Professor Bellis then addressed the other legal interpretations of Section 15 given by Professor O'Connor and others. These alternative interpretations focused on the fact that the expiry clause only affected subparagraph (a)(ii), which allowed importing WTO members to apply a methodology that was not based on Chinese prices and costs. Yet the substance of Section 15 was contained in that provision. For the purpose of calculating the normal value in antidumping investigations concerning China, whether or not China was a market economy under the national law of the importing WTO member was irrelevant. This latter element was relevant only before the deadline expired, not afterwards.

Professor Bellis concluded with a series of quotations demonstrating that the interpretation of Section 15 had been always clear to everyone, and had only very recently been challenged by some commentators. Further details of his interpretation can be found in his written contribution (p. 26 of this report).

Ms Schaake opened the floor to Members of the European Parliament (MEPs) for questions. **Jo Leinen** (S&D, DE), Chair of Parliament's Delegation for relations with the People's Republic of China, started by

outlining the current debate on possible options. The first option was to "do nothing", which meant that China would go to the WTO court after the expiry of the deadline. However, most thought that the EU would lose. The second option was to endorse the view that granting MES to China was automatic. However, there were concerns that the EU would be flooded by imports from China, and that it would be impossible to cope with China's overcapacity. Mr Leinen said that there must be a third option for dealing with the issue, and asked the panellists about the experiences of Canada and Australia. He concluded by saying that the EU needed trade defence instruments in order to protect itself against unfair competition. The changes that would need to be made to its methodology and instruments had yet to be defined.

Helmut Scholz (GUE/NGL, DE) noted the historical genesis of the problem. At the time China had joined the WTO, there had been differing interpretations of the concept of market economy on the two sides, and now, 15 years later, the issue needed to be resolved. This was an important political issue that had to be addressed.

Reinhard Bütikofer (Greens/EFA, DE) said that China was obviously not a market economy. China could argue that it was a "market economy with Chinese characteristics", but then perhaps the EU should be entitled to grant “MES with characteristics”, i.e. while keeping its trade defence instruments. As regards the legal interpretation of the Protocol, Mr Bütikofer asked the panellists why the USA could take the view that it was not obliged to grant MES, whereas the EU was not even considering that approach.

Inmaculada Rodríguez-Piñero Fernández (S&D, ES) also supported the view that China was not a market economy, and stressed that the reason there were antidumping measures was because there was a dumping problem. She asked two questions: (1) If the methodology for calculating antidumping duties were to change on account of the expiry of certain provisions of Section 15, would it be possible to develop a common methodology within the WTO for calculating those duties? (2) What would be the consequences in terms of trade and investment if the EU alone decided to grant MES to China, while the USA and other partners did not?

Professor O'Connor answered Ms Rodríguez-Piñero Fernández’s question about harmonising calculation methods. He said that finding agreement at WTO level was always very difficult, and cited the example of the Doha negotiations. Incidentally, the Protocol contained a common agreement on leaving it up to WTO members to determine under their national law whether or not China was a market economy. In response to Professor Bellis, he clarified that the EU had a legal basis for its five country-wide criteria. In fact, the Working Party recites that the term 'national law' covers not only laws but also decrees, regulations and administrative rules. In relation to Canada, Canadian law had contained a provision establishing that China would be granted MES as of the end of 2016. After a careful look at the Protocol, Canada had then decided that it was not required to stipulate this deadline in its national law, and had changed the law. Canada’s practice had never changed, and it had always treated China as a non-market economy. Things were different in Australia. Australia had granted MES to China in 2005, and since then its capacity to deal with dumping from China had been decimated. The number of antidumping cases launched had dropped by 50 %, as had the number of complaints which resulted in a duty. The average duty had dropped below 80 % of the level prior to the granting of MES. In response to Professor Bellis's citing of the Fasteners case, Professor O'Connor added that in that case the Appellate Body had been referring to the export price and not to the normal value. Moreover, the ruling misquoted Section 15 (saying that the whole of Section 15 would expire, whereas in fact this applied only to subparagraph (a)(ii)). Finally, with regard to the case of Russia, Professor O'Connor said that the EU had got it wrong, as it had not carried out an impact assessment or looked at its MES criteria. This should serve as a great example. Russia had promised gas pricing, but in the end it had not delivered. Now the EU could not do anything about this, as it had already given Russia MES.

Professor Bellis again stressed that the issue was not whether or not China was a market economy. The question was whether or not the EU would still be entitled at the end of the year to use a methodology

that was not based on Chinese prices and costs. In his opinion, the answer was no. Moreover, the definition of what constituted a market economy was unclear, and in his view all countries had a certain degree of state intervention in the economy. The real question was therefore the EU's legal obligation, and whether or not the EU would decide to comply with it. If not, this would send an unfortunate message to our trading partners and would have consequences at WTO level.

Ms Schaake invited stakeholders to speak. Eleonora Catella, representing **BUSINESSEUROPE**, took the floor. She recalled the recent adoption of a position paper by BUSINESSEUROPE, and said that the main point she wished to make was that the issue of MES for China should be addressed in accordance with WTO and EU rules, on its own merits. BUSINESSEUROPE saw the granting of MES as separate from the expiry of Section 15(a)(ii). In its view, there was no obligation to grant MES automatically as a consequence of the expiry of that provision. This followed from the fact that Section 15(a) and (a)(i) still remained in place. The question was then whether the Commission was going to carry out a comprehensive impact assessment that took into account a number of elements: (i) policies; (ii) the real situation on the ground; (iii) the impact on EU interests. She concluded with a request for a transparent process that involved the business community.

Inès Van Lierde spoke on behalf of **AEGIS EUROPE**, a manufacturing industry association (covering a variety of sectors) spread across Europe and with a turnover of over EUR 500 billion. She said that the only thing that was clear at the moment was how unclear the legal interpretation of Section 15 of the Protocol was. Her first question was whether a full impact assessment would be carried out in accordance with the Better Regulation rules, and therefore would include proper public consultation. There were rumours that some studies had been already carried out, but a full impact assessment should be performed. She concluded with a question about the "do nothing" option. The question was, why not leave the WTO to decide? The WTO's ruling would then apply to all WTO members.

Stuart Newman, representative of the **FOREIGN TRADE ASSOCIATION** (FTA), agreed with Professor Bellis that the question was not whether or not China should be granted MES, but an issue of methodology, i.e. how the EU would look at China when constructing a normal value in antidumping investigations. He agreed that the interpretation of Section 15 had been re-examined only recently (after 2011). The FTA had published a position paper in 2015 that looked at the economic impact of granting MES to China in antidumping investigations. The paper concluded that there were methods and tools to mitigate the negative impact, such as the use of anti-subsidies or price adjustments (along the lines of what the EU had done in respect of Russia).

Leopoldo Rubinacci spoke on behalf the **EUROPEAN COMMISSION** and explained that it was looking very carefully at the various impacts. He confirmed that the Commission was conducting an impact assessment, which included public consultation. He then asked Professor O'Connor whether he could develop his reasoning with regard to Sections 9 and 15 of the Protocol being twinned. The question was whether this connection stemmed from the fact that they appeared in the same protocol, or derived from some sort of conditionality between the two.

The representative of the **DUTCH CONFEDERATION OF INDUSTRIES**, Winand Quaedvlieg, echoed what Ms Van Lierde had said about the unclear legal interpretation of Section 15 of China's Protocol of Accession to the WTO. While the legal interpretation was unclear, what was clear was that granting MES to China would not correspond to the situation on the ground. Nobody wanted a trade war between China and the EU, so his question was whether the EU should now start to open negotiations with China on how to solve this problem and find a solution that complied with WTO rules but also reflected the current situation on the ground in China.

Professor O'Connor answered the Commission's question, explaining the link between Sections 9 and 15 of China's Protocol of Accession to the WTO. If China had complied with the commitment made in

relation to price controls (Section 9) and allowed prices to be set by the market, there would be no need to have Section 15, which stipulated how to calculate the normal value in the event that domestic prices were distorted. Legally speaking, a protocol of accession was like a contract containing the terms and conditions for joining a club. If China did not comply with the legal commitments made, then importing WTO members had certain rights until such time as China did comply with its commitments.

3.1 Speakers' biographies and contributions

3.1.1 Bernard O'CONNOR

Bernard O'Connor is the head of the Brussels office of NCTM, one of the top independent law firms in Italy. His areas of expertise include trade defense, subsidies and state aids, administrative procedures including competition law and litigation. Much of his work has been in the agricultural sector, in agro-chemicals, in intellectual property and in metals.

He has been practicing EU and WTO law for more than 25 years. In that time, he has argued many significant cases before the EU Courts in Luxembourg and participated in a number of dispute procedures under the GATT and the WTO. His most recent cases are related to gas pricing in Russia, the impact of WTO on the EU legal order, dumping from China and EU FTAs in Asia. He represents the EU Council in anti-dumping and anti-subsidy cases.

Mr. O'Connor has written and edited a number of books on EU and WTO law, and holds teaching positions at State University in Milan, the World Trade Institute in Bern, and the University of Barcelona. He qualified as a lawyer in Trinity College Dublin in Ireland and did post graduate studies at the European University Institute in Italy.

NCTM
Studio Legale Associato

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 committments.

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

Other committments (like tariffs etc) were immediate.

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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.

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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 or because the market has a peculiarity which distorts it.

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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, or because of a particular market situation, 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,

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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 (if the producers can show that they operate in a market economy)

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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The core of the problem

The law is Not Clear (except to me)

Nothing Automatic in text

(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.

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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.

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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.

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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.

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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.

3.1.2 Jean-François BELLIS

Jean-François Bellis is the co-founder and managing partner of the law firm Van Bael & Bellis, Brussels. He is also a law professor at the Institute of European Studies of the University of Brussels (ULB).

Jean-François Bellis has represented clients before the European Commission and Courts in numerous landmark competition and trade cases. He was appointed by the WTO Director-General as a panel member in the Automotive Leather dispute between the US and Australia. He has extensively written on competition and trade legal issues.

The Interpretation of Section 15 of China's WTO Accession Protocol

1 Introduction

Like a number of WTO Members, the EU applies special rules for the determination of "normal value" in anti-dumping investigations involving exports from so-called "non-market economies" (hereinafter "NMEs"). Whereas, in accordance with the WTO rules, normal value of exporting producers in principle determined on the basis of their own domestic prices or cost of production in the exporting country, a different methodology is applied to exports originating in countries classified as NMEs where normal value is determined on the basis of price or cost data for the "like product" in a market economy referred to as the "analogue country".

China has been classified as a NME in the EU anti-dumping legislation from the outset. When China became a WTO Member in 2001, Section 15 of its Accession Protocol authorized, under certain conditions, the continued use of this methodology for a maximum period of 15 years from the date of accession, that is, until 11 December 2016. This is how Section 15 has been universally interpreted until very recently. As the deadline of 11 December 2016 drew nearer, a novel interpretation of that provision emerged under which the deadline should be ignored and nothing should change in the determination of normal value for exports from China.[2]

This note will demonstrate that there is only one possible valid legal interpretation of Section 15 of China's Accession Protocol, namely that, after 11 December 2016, normal value for exports from China must be determined in exactly the same way as that applied to exports from any other WTO Member in strict compliance with the relevant rules of the WTO Anti-Dumping Agreement. Before addressing the arguments advanced against this interpretation, this note will discuss the status of the concept of NME in

[2] O'Connor, B., *Market-economy status for China is not automatic*, available at: http://www.voxeu.org/article/china-market-economy.

WTO law and, against that background, will analyze the treatment of imports from China in the EU Basic Anti-Dumping Regulation.[3]

2 The concepts of "market-economy" and "non-market economy" have no defined meaning in WTO law

At the outset, it is important to stress that WTO law does not distinguish between market economy and NME countries. Indeed, "market-economy" or "non-market economy" are national law concepts for which there is no internationally binding definition.

The only provision which refers to a certain extreme form of NME country, namely one with "a complete or substantially complete monopoly of their trade and where all domestic prices are fixed by the state", that can be found in the WTO Agreements is the second Ad Note to Article VI:1 of the GATT 1994. This provision recognizes that "special difficulties may exist in determining price comparability" in anti-dumping investigations involving such countries but does not prescribe any rule about how to deal with such difficulties. As a matter of fact, no provision of the WTO Anti-Dumping Agreement deals with the treatment to be accorded to countries of the type described in the Ad Note.

The Ad Note was introduced in 1955 and deals with a form of state-controlled economy of a type that still hardly exists today. As the WTO Appellate Body observed in the *EC – Fasteners* case, the Ad Note does not appear on its face to cover "lesser forms of NMEs that do not fulfill both conditions, that is, the complete or substantially complete monopoly of trade and the fixing of all prices by the State".[4] There is thus no general WTO concept of "non-market economy".

3 The treatment of imports from China in the EU anti-dumping regulation

China has been treated as a NME in the EU anti-dumping system from the outset. Even though paragraph (d) of Section 15 of China's Accession Protocol appears to subject the ability of importing WTO Members to consider China as a NME to the condition "that the importing Member's national law contains market economy criteria as of the date of accession", it is important to note that no EU legislative text has ever contained a definition of what is a "market economy". By the same token, the EU Basic Anti-Dumping Regulation has never spelled out any procedure or criteria for classifying countries as being "market economy" or not.

There has simply been a non-exhaustive list of NME countries that initially included all the then communist countries with the exception of Cuba.[5] That list has been modified on several occasions and since 1998 the NME countries are listed directly in the Basic Anti-Dumping Regulation. However, the Basic Anti-Dumping Regulation is silent as to the criteria which a country must meet in order to be removed from the list. It may therefore be rightly wondered whether the EU anti-dumping treatment of imports from China since the date of its WTO accession is consistent with paragraph (d) of Section 15 of China's Accession Protocol.

[3] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

[4] Appellate Body Report, *EC – Fasteners (China)*, footnote 460.

[5] The first series of such regulations concerning imports from state-trading countries was enacted in late 1969; see Regulation 109/70 of 19 December 1969 establishing common rules for imports from state-trading countries (covering Bulgaria, Hungary, Poland, Romania, Czechoslovakia and USSR). The list of state-trading countries referred to in those regulations was subsequently amended and between 1972 and 1978 included China (afterwards imports from China were subject to a separate set of legislation).

One of the most important changes in the EU's treatment of NME countries was driven by a radical change in the political landscape after 1989 and the fall of communism in Europe. The EU concluded a number of association agreements with countries from Central and Eastern Europe, which were seen as stepping stones towards their eventual accession to the EU.[6] Following the signing of the association agreements, they were removed from the list of NME countries. These were clearly political decisions based on the broad consideration that the countries in question "have embarked on a large-scale programme of economic reform aimed at ensuring their transition towards a market economy".[7] During the same period, the EU recognized that "the economy of the People's Republic of China is in transition from a fully State controlled economy to a partially market oriented economy"[8] without this bringing any change in China's classification as a NME.

In November 2002, the EU formally granted market economy status ("MES") to Russia.[9] A similar decision had been taken by the US in June 2002. The preamble to the amending regulation stated that in view of the very significant progress made by Russia towards the establishment of market economy conditions, it was appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions applicable to market economy countries. No assessment of whether Russia met any market economy criteria was made before the announcement of the decision. A similar approach was taken with respect to Ukraine which was also removed from the list of NMEs in 2005, once again without any prior analysis of the fulfillment of any market economy criteria.[10]

Turning now to China, the EU decided in 1998 to amend its Basic Anti-Dumping Regulation and introduced the possibility for individual exporting producers in China (and in Russia) to be granted "market economy treatment ("MET") if they were able to demonstrate, on the basis of five criteria, that they operated under market economy conditions. For exporting producers qualifying for MET, individual dumping margins were determined on the basis of their own selling prices and costs of production in China rather than on price or cost data gathered in an analogue country. This peculiar form of market economy assessment, restricted to individual exporting producers deemed to operate in a market economy enclave in what is otherwise a NME industry, is not consistent with Section 15 of China's Accession Protocol which only identifies two possible market economy assessments, namely one for a country as a whole and another for "a particular industry or sector". Section 15 indeed mirrors the text of the US-China bilateral agreement concerning China's accession to the WTO which itself reflects the US anti-dumping system in which market economy status is assessed at country and industry levels. In practice, MET was granted mostly to Chinese companies owned wholly or partly by EU producers, thus often resulting in significantly lower anti-dumping duties for such companies.

Following the request made by China in 2003 to be granted MES, the EU published in 2008 an assessment of China's progress towards graduation to MES[11], in which it applied five criteria, that is:

[6] Such association agreements were signed with Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Bulgaria, the Baltic States and Slovenia.

[7] See, for instance, Council Regulation 517/92 of 27 February 1992 amending the autonomous import arrangements for products originating in Hungary, Poland and the Czech and Slovak Federal Republic (CSFR).

[8] Commission Regulation 2477/93 of 6 September 1993 imposing a provisional anti-dumping duty on imports of certain photo albums originating in the People's Republic of China.

[9] Council Regulation 1972/2002 of 5 November 2002 amending Regulation (EC) No 384/96 on the protection against dumped imports from countries not members of the European Community.

[10] Council Regulation 2117/2005 of 21 December 2005 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community.

[11] Commission Staff Working Document on progress by the People's Republic of China towards graduation to market economy status in trade defence investigations, 19.09.2008, SEC(2008) 2503 final, p. 6.

1) A low degree of government influence over the allocation of resources and decisions of enterprises, whether directly or indirectly (e.g. public bodies), for example through the use of state-fixed prices, or discrimination in the tax, trade or currency regimes.
2) An absence of state-induced distortions in the operation of enterprises linked to privatisation and the use of non-market trading or compensation system.
3) The existence and implementation of a transparent and non-discriminatory company law which ensures adequate corporate governance (application of international accounting standards, protection of shareholders, public availability of accurate company information).
4) The existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights and the operation of a functioning bankruptcy regime.
5) The existence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision.

These criteria, which were never spelled out in a legislative text, essentially mirror the five criteria for the grant of MET to individual Chinese exporting producers discussed above. The latest assessment of China's request was conducted in 2011 when the EU found that only one out of the five criteria, namely the absence of state intervention in enterprises linked to privatization, had been clearly met by China.[12]

4 Section 15 of China's Accession Protocol

The paragraphs of Section 15 of China's Accession Protocol that deal with anti-dumping are reproduced below. The passages in bold are those that relate to the consequences of the expiry of the 15-year period after China's accession:

> *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.***
>
> …

[12] European Parliament, Policy Briefing, Trade and Economic Relations with China in 2013, p. 24.

> *(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.*

This provision has always been understood as meaning that after 15 years from its accession, China must be treated as any other WTO Member for the purpose of anti-dumping investigations. Until recently this understanding had been also shared by both the US and the EU.

When the US-China bilateral agreement on China's accession to WTO, which, as noted above, is the basis for China's WTO Protocol, was concluded, the White House issued the following statement:

> *The agreed protocol provisions ensure that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies. The US and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future anti-dumping cases. This provision will remain in force for 15 years after China's accession to the WTO.*[13]

The same understanding has always been supported by the EU. Notably, the Explanatory Memorandum attached to the Council Decision establishing the Community position on China's accession to the WTO provides in para. 55:

> *The EU's present legislation which provides specific procedures for dealing with cases of alleged dumping by Chinese exporters, which may not yet be operating in normal market economy conditions, will remain available for up to fifteen years after China enters the WTO.*[14]

The novel interpretation of Section 15 put forward in recent years essentially rests on the claim that the 15-year period set out in that provision only applies to one paragraph of the provision, namely a (ii), but not to the others. Specifically, Mr. O'Connor[15] argues that paragraph 15 (d) contains a general requirement for China to establish that it is a market economy under the national law of importing WTO Members and that without such a showing they will remain free to apply NME methodologies in anti-dumping investigations against China, even after 11 December 2016.[16] This argument is difficult to understand. As of the moment the power of importing WTO Members to use "a methodology that is not based on a strict comparison with domestic prices or costs in China" expires by virtue of paragraph (d) , the question of whether China is still a NME or not under the national law of an importing WTO Member becomes irrelevant. In other words, it is only until 11 December 2016 that the grant to China of market economy status by an importing WTO Member has any practical significance. After that date, no matter

[13] Summary of US-China Bilateral WTO Agreement, available at: http://clinton3.nara.gov/WH/New/WTO-Conf-1999/factsheets/fs-006.html.

[14] Proposal for Council Decision establishing the Community position within the Ministerial Conference set up by the Agreement establishing the World Trade Organization on the accession of the People's Republic of China to the World Trade Organization, COM(2001) 517 final, 2001/0218 (CNS).

[15] O'Connor, B., *The Myth of China and Market Economy Status in 2016*, available at: http://worldtradelaw.typepad.com/files/oconnorresponse.pdf.

[16] Many other creative interpretations of Section 15 of China's Accession Protocol have emerged over the recent years. For instance, according to Jorge Miranda, after 11 December 2016 the burden of proof shifts to domestic producers in importing countries who will need to demonstrate that the individual industries or sectors in China remain under NME conditions. See, Miranda, J., *Interpreting Paragraph 15 of China's Protocol of Accession*, Global Trade and Customs Journal, 9:3, 2014.

how China is classified under the domestic law of a particular WTO Member, normal value for imports from China must be determined on the basis of Chinese prices and costs.

This reading of Section 15 is shared by the WTO Appellate Body which, in *EC – Fasteners*, confirmed that:

> *Paragraph 15(d) of China's Accession Protocol establishes that the provisions of paragraph 15(a) expire 15 years after the date of China's accession (that is, 11 December 2016). It also provides that other WTO Members shall grant before that date the early termination of paragraph 15(a) with respect to China's entire economy or specific sectors or industries if China demonstrates under the law of the importing WTO Member "that it is a market economy" or that "market economy conditions prevail in a particular industry or sector".*[17]

5 Conclusion

As demonstrated in this note, after 11 December 2016, the EU will no longer be able to derogate from the standard rules on the determination of the normal value included in Article 2 of the Anti-Dumping Agreement when dealing with imports from China. This implies that after that date the EU Basic Anti-Dumping Regulation cannot contain any provisions allowing for the establishment of the normal value for the Chinese exporting producers on a basis other than their domestic prices and costs. It follows that the expiry of the special rules in Section 15 of China's Accession Protocol will require the EU to change its Basic Anti-Dumping Regulation, and more specifically, to remove China from the text of the provision concerning the calculation of normal value in NMEs, i.e. Article 2.7(b). If not, China will be entitled to challenge the EU anti-dumping legislation as being inconsistent as such with the EU's WTO obligations.

[17] Appellate Body Report, *EC – Fasteners (China)*, para. 289.

The interpretation of Section 15 Of China's WTO Accession Protocol

European Parliament
Workshop: Market Economy Status for China after 2016 ?

Jean-François Bellis
Professor, University of Brussels (ULB)

Brussels, 28 January 2016

1. Introduction

2. The concepts of "market-economy" and "non-market economy" in WTO law

3. The treatment of imports from China in the EU anti-dumping legislation

4. Section 15 of China's Accession Protocol

5. Conclusions

The concepts of "market-economy" and "non-market economy" in WTO law

- No general WTO concept of "non-market economy"
- Ad Note to Article VI:1 of the GATT 1994

  It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

The treatment of imports from China in the EU anti-dumping legislation

- No definition of "non-market economy" in any EU legislative text
- Granting market economy status has always been a political decision
  - Eastern European countries after the fall of communism
  - Russia in 2002 and Ukraine in 2005
- Since 1998 MET for individual exporting producers in China (and Russia)
- China's request to be granted MES in 2003. This request is assessed on the basis of five market economy criteria mirroring the MET criteria but which are not spelled out in any legislative text

Section 15 of China's Accession Protocol

15. Price Comparability in Determining Subsidies and Dumping

…

(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.***

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.

Conclusions

Implications for the EU of the expiry of the 15-year period after China's Accession?

After 11 December 2016, the EU will be no longer be allowed to derogate from the rules set out in the WTO AD Agreement in AD proceedings concerning imports from China

- **Article 2.7(b) of the Basic Anti-Dumping Regulation will become inconsistent as such with the EU's WTO obligations**

- **The EU is required to amend its Basic Anti-Dumping Regulation and remove China from the text of Article 2.7(b) dealing with the determination of normal value in NME countries**

4 Panel 2: Economic implications of granting China MES

The second panel addressed the economic implications arising from the granting of MES to China. The first speaker, Professor **Robert Scott**, Director of Trade and Manufacturing Policy Research at the Economic Policy Institute, authored a study in September 2015 entitled "Unilateral grant of market economy status to China would put millions of EU jobs at risk". At the workshop, Professor Scott gave an update on his study, which uses two models to estimate the number of jobs at risk if MES were granted to China. The simplest model lists the jobs at risk in seven key industries within the EU economy. The second model combines micro- and macro-economic modelling. Both models arrive at similar results, i.e. between 1.7 million and 3.5 million jobs would be at risk over the next three to five years if the EU unilaterally granted China MES.

Professor Scott explained that EU imports and the EU's trade deficit with China had soared. The trade deficit with China had almost quadrupled between 2000 and 2015, and was now estimated at EUR 183 billion. China had accumulated massive amounts of excess capacity in several key industries, in particular steel, but also other sectors. The number of jobs in those sectors amounted to:

- motor vehicles: 1.2 million,
- paper and paper products: 650 000,
- steel: 350 000,
- ceramics: 338 000,
- glass: 100 000,
- aluminium: 80 000,
- bicycles and parts: 28 000.

In total, these seven industries accounted for approximately 2.7 million jobs in the EU. Not all of those jobs were at risk, but a substantial portion (perhaps 25-50 %) were. For each of these direct jobs, Professor Scott assumed that there were 2.5 indirect jobs at risk in each sector. 1.35 million direct jobs plus the number of indirect jobs added up to 4.9 million jobs at risk if the EU lost half of its direct employment in those sectors.

Professor Scott's analysis looked at China's huge global goods trade surplus – now estimated at 5.4 % of its GDP, the highest level ever recorded – and how it endangered other countries, including the EU Member States and the USA. This surplus was driven by the relentless growth in China's manufacturing trade surplus. China's manufacturing trade balance had grown steadily, from EUR 45 billion in 2000 to EUR 933 billion in 2014, and would exceed EUR 1 trillion in 2015. It was important to look at the size of the trade surplus. If the trade surplus was large in relation to a country's output, that country would be distorting production and trade across the world – as China clearly was.

Professor Scott moved on to criticisms of his paper. He addressed the following elements:

- The magnitude of the impact: according to the Commission, the antidumping measures in force only covered 1.38 % of imports. Although antidumping measures applied to only a small proportion of imports from China, this had nothing to do with the threat of antidumping duties, which prevented growth in imports at below cost. This "threat" was an institutional restraint. He then referred to the situation in the steel sector. The steel sector provided jobs for 350 000 people in Europe. EU steel production had amounted to about 169 million tonnes in 2015. China's steel production amounted to 750 million tonnes, with excess capacity of 350 million tonnes. A simple comparison of the figures showed that China's excess capacity was more than twice the EU's total steel production. Large dumping margins currently protected against this. Reducing or removing

the duties would destroy the industry. Granting China MES would reduce those duties, but also make it more difficult to demonstrate dumping (meaning that companies would not make the effort to file complaints, which was a burdensome process for them). As a consequence, about half of the EU's steel production would quickly be destroyed.

- The modelling used. In general, computable general equilibrium (CGE) models were used to estimate trade liberalisation impacts. Those models relied on assumptions that did not hold in the present economic situation in the global economy. First of all, they assumed that there was balanced trade between the two countries under analysis, which was not the case in respect of the EU and China (whose EU trade deficit was growing and could potentially explode in the coming years). The second assumption made by CGE models was "full employment", which assumed that if people lost their jobs in one sector they would find new jobs in another. In the current situation in European countries, this assumption would not hold. CGE models also ruled out possible changes in the structure of trade and income distribution.

The second speaker on this panel was Professor **Maurizio Zanardi**, Associate Professor in Economics at the Lancaster University Management School. He noted that antidumping was a very complicated system which only targeted certain countries. He discussed some of the challenges of measuring the impact of granting MES to China, in the light of the EU's current antidumping system.

Professor Zanardi's first point related to the need to consider the trade distribution effect. When duties were introduced against China, imports from China decreased, while those from other countries increased. Professor Zanardi's basic argument was that there was an offsetting effect. Once antidumping duties were introduced in practice, the share of imports from target countries would go down by 30 %, but the share of imports from countries not targeted by antidumping measures would go up by 10 % – this was the trade composition effect.

Another aspect was that not all Chinese producers attracted the same antidumping duties. Accordingly, it was important to understand the current situation in order to project the changes that would occur if the EU were to grant China MES. While the average country-wide antidumping duty for China was 44 % (based on antidumping cases between 2005 and 2014), the Commission had often calculated firm-specific duties based on the costs and prices of individual producers. As a consequence, some Chinese firms had been granted market economy treatment, being subject to an average duty of 7.3 %, while other cooperating Chinese firms had been granted individual treatment, attracting an average duty of 31%. However, the distribution of trade in these three categories of average duty was unknown. It was not possible to say with certainty what the drop in average duty would be.

A further consideration related to the EU's use of the "lesser duty rule" (charging lower duties than the USA and other WTO members) during the time period under consideration. While most believed that the EU always applied this rule, it had actually done so only in respect of 40 % of firm-specific duties in the 2005-2014 period. It was safe to say, then, that the rule did not apply to all Chinese firms and imports on which antidumping duties were imposed.

Another issue to be addressed was the fact that the antidumping system was not able to deal with the global fragmentation of production. Products coming from China might be produced by European firms. Also, an assessment of the economic impact of granting MES to China needed to consider the fact that the impact would be heterogeneous in the EU, i.e. different Member States would be affected differently. Among the countries filing antidumping complaints, for instance, Germany was one of the most prolific.

Although antidumping tools had been conceived as temporary protection measures, in reality they were not. The majority of antidumping measures in force in the EU went back earlier than 2005, while some even dated back to the 1990s. During the life of an antidumping measure, duties were often revised. The assessment would therefore need to consider such changes.

Lastly, he discussed Professor Scott's study, contesting a few of the assumptions made.

- On the one hand, Professor Zanardi agreed with Professor Scott that 1.38 % was not a reliable estimate of the impact, because there was indeed a deterrent effect played by the antidumping measures in place. On the other hand, Professor Scott's assumption that the reduction in antidumping duties would affect all imports from China (i.e. 100 %) could not be accepted either. The true figure was not 1.38 %, but nor was it 100 %.
- Professor Scott's model did not allow for adjustments in trade composition, i.e. the model should have taken into consideration the fact that when imports from one country increased as a result of a reduction in antidumping duties, then imports from some other countries must decrease.
- If antidumping duties reduced the prices of imports, then someone must gain; this was not measured by Professor Scott's model.
- Contrary to Professor Scott's argument, CGE models could in fact deal with a situation in which the assumption of full employment did not hold.

The chair of the event, **Marietje Schaake**, noted that the economic discussion had highlighted some very different opinions. She then opened the floor for questions.

Alessia Mosca (S&D, IT) asked the experts about heterogeneous sectoral impacts, and explained that one of the policy options under discussion at present was the use of mitigating measures and a possible sectoral approach to trade defence instruments. She expressed concerns about this approach, since China might divert resources to other sectors. She asked the experts for their opinion on this and on the combination of job losses and trade diversion.

Jude Kirton-Darling (S&D, UK) said that the status quo was not an ideal situation. China's dumping in steel had cost 6 000 job losses in her home town alone. Accordingly, the EU needed to do something to reform trade defence instruments as soon as possible. She also mentioned her concerns about the UK Government blocking progress on the reform of trade defence instruments, despite the large number of British job losses. She asked about the impact on sectors other than manufacturing (such as services), and who might gain from it. Finally, she stressed the need for a proper impact assessment that also estimated the impact of maintaining the status quo, and the impact in the event of a trade war.

Reinhard Bütikofer (Greens/EFA, DE) asked the panellists whether, in their opinion, the anti-subsidy instruments could balance out the effects of giving up the analogue country methodology for calculating the normal value in antidumping investigations relating to China. He also referred to the current policy options under discussion within the Commission, in particular the grandfathering mitigation measure, and asked the experts to comment on the scope of this approach.

Helmut Scholz (GUE/NGL, DE) further stressed the need to understand the impact if nothing were to change.

In response to the questions from the floor, **Professor Scott** said that according to his estimates around 40 % of the jobs at risk were in manufacturing, and 60 % in services. Given that this sector employed mostly women, there would also be a gender impact. He then reiterated the dangers of unbalanced trade with China. He wondered why the EU would give up one of the only defences it had. Anti-subsidy instruments would in no way be a substitute for effective antidumping instruments. Regarding the point raised about a trade war, he said that China was vulnerable to a trade war since its exports to the EU and the USA significantly exceeded its imports from the countries concerned.

Professor Zanardi agreed with Professor Scott that in a trade war the EU would be in a stronger position than China. However, the EU also needed to consider the question of foreign direct invesment. Professor

Zanardi also agreed that anti-subsidy tools could not replace antidumping measures. With regard to trade diversion, it was a possibility, but its extent was not clear.

Regarding the economic impact, Eleonora Catella – representing **BUSINESSEUROPE** – asked about retaliation. In particular, should the EU coordinate with its trading partners (e.g. the USA) in order to avoid trade diversion?

Ralph Kamphöner, of **EUROCOMMERCE**, stressed the need to make use of antidumping measures as a tool for fair trade and not for protectionism. There was a need to reform trade defence instruments and to find a solution with regard to MES that took into account the opinions of all actors (not only manufacturing producers, but also importers and Chinese counterparts).

Patrick Martinache spoke on behalf of **AEGIS**, saying that China was an important trading partner, but that the WTO had imposed rules to prevent unfair trade. China's overcapacity was so high that it could invade Europe. Additionally, the dumping margins in the case of China were greater than 70 %. The situation of Russia was different; the country never had as much overcapacity as China currently had. Mr Martinache commented on the experts' presentations, saying that what remained clear was that there would be a negative impact on employment. Accordingly, AEGIS reiterated the need for an impact assessment.

Adam Dunnett, Secretary General of the **EU Chamber of Commerce in China (EUCCC)**, presented the view of European companies based in China. In his view, China was not a market economy, and the EUCCC had issued several recommendations on how the system could move towards that of a market economy. He reported that nearly half of China's exports originated from foreign companies based in the country. European companies were doing well in China and their profits were often reinvested in Europe, in R&D for instance. The activities of these companies should also be considered when carrying out an impact assessment.

Leopoldo Rubinacci, of the **EUROPEAN COMMISSION**, said that there were many conditions that had to be met before dumping could be determined. Given those circumstances, he asked what assumptions should be considered when modelling the potential impact of a change to antidumping measures in Europe, as it was very difficult to predict which sectors of EU industry would bring complaints.

Professor Scott said that one of the problems in the USA was that it had become increasingly difficult to determine dumping. The granting of MES to China would make this even more difficult. In response to the criticism of his study as regards the lack of analysis of the benefits of cheaper imports, he said that dumping led to growing trade deficits and unemployment. Although in the economics profession a belief in free trade was almost a religious belief, he acknowledged that what happened in reality was different. The major impact was indeed a net loss of jobs.

Professor Zanardi stressed that he had never said that granting MES to China would lead to aggregate job losses. What he had said was that there would be job losses in the sectors currently covered by antidumping measures, although the overall impact on the economy had yet to be seen. As regards possible solutions, he said that back in 2005, at the time of the Multi-Fibre Arrangement, the EU had introduced a temporary solution to the surge of imports; perhaps this approach should be explored.

Professor O'Connor addressed the issue of trade diversion, giving the example of China's overcapacity in the steel sector, which had been analysed in an EUCCC paper. If the USA maintained effective trade defence measures while the EU lowered its protection by granting MES to China, this would translate into a very problematic surge of dumped steel imports from China to the EU. Retaliation would be illegal unless it took place at the end of a legal process within the WTO.

Professor Bellis also commented on retaliation, noting that China would be entitled to retaliate if it could demonstrate that the EU had breached its WTO legal commitments.

Ms Schaake concluded by saying that resolving the issue would also require, in addition to legal, political and economic considerations, a political decision as to how to weight the different interests.

4.1 Speakers' biographies and contributions

4.1.1 Robert SCOTT

Robert Scott holds a Ph.D. in Economics from The University of California, Berkeley. Currently he is Senior Economist and Director of Trade and Manufacturing Policy Research at the Economic Policy Institute in Washington DC, United States. His areas of research include international economics, trade and manufacturing policies and their impacts on working people in the United States and other countries, the economic impacts of foreign investment, and the macroeconomic effects of trade and capital flows. He has published widely in academic journals and the popular press, including *The Journal of Policy Analysis and Management*, *The International Review of Applied Economics*, and *The Stanford Law and Policy Review*, as well as *The Los Angeles Times*, *Newsday*, *USA Today*, *The Baltimore Sun*, *The Washington Times*, and other newspapers. He has also provided economic commentary for a range of electronic media, including NPR, CNN, Bloomberg, and the BBC. Professor Scott has recently published a Study titled "Unilateral grant of market economy status to China would put millions of EU jobs at risk", which prompted the discussion in Europe on the economic impact of a possible change in China's status as of December 2016.

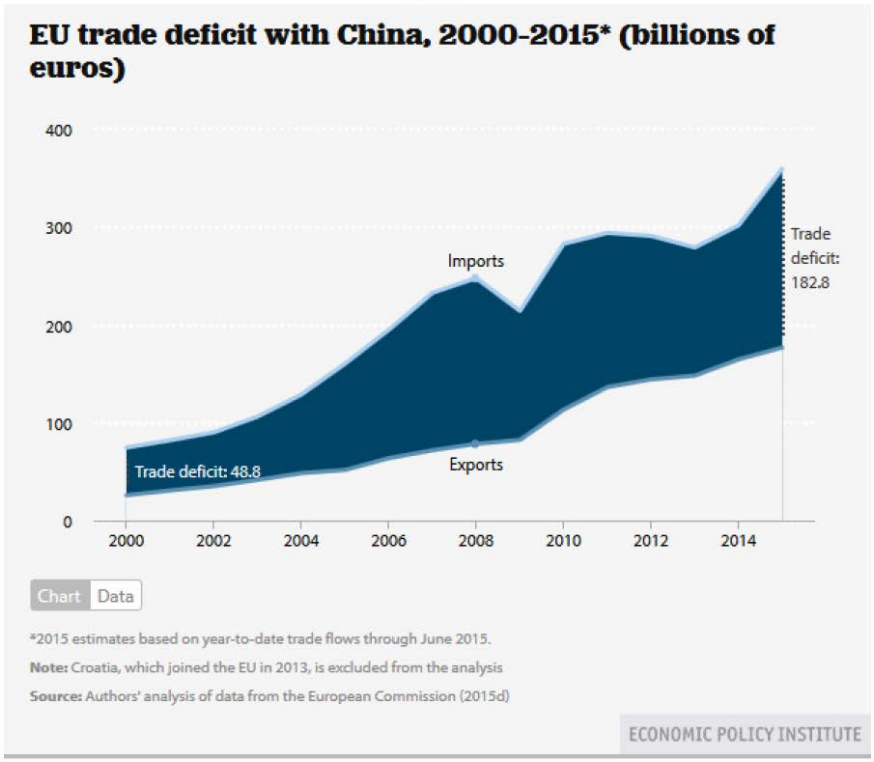
Unilateral Grant of Market Economy Status to China Would Put Millions of EU Jobs at Risk

Robert E. Scott
Senior Economist and Director of Trade and Manufacturing Policy Research
Economic Policy Institute
January 28, 2016

RScott@epi.org

Two Models Used to Estimate Jobs at Risk due to EU grant of MES to China

- Simplest model, Table 7: Jobs at risk in Key industries
- Model II: Economy wide, combined micro- and macroeconomic model, Tables 1-6
- Both yield similar results: If the EU decides to grant MES to China it would put 1.7 million to 3.5 million EU jobs at risk, or more, over next 3 to 5 years.
- Background: EU imports from and trade deficit with China are soaring, as shown in Figure 1 of our report. Trade deficit alone nearly quadrupled between 2000 and 2015



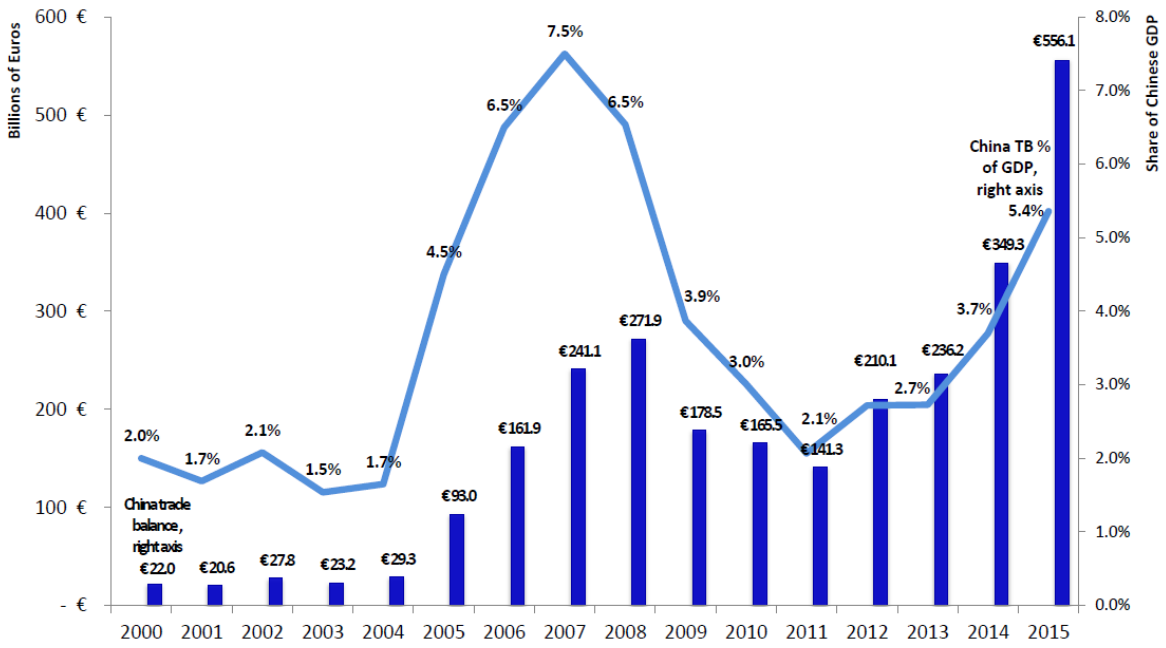
Jobs at Risk in Key Industries (Table 7)

- Motor Vehicle Parts (1.2 million jobs at risk)
- Paper and Paper Products (647,000 jobs)
- Steel (350,000 jobs at risk)
- Ceramics (338,000 jobs at risk)
- Glass (100,000 jobs at risk)
- Aluminum (80,000 jobs at risk)
- Bicycles and Parts (28,000 jobs at risk)
- Up to 2.7 million direct jobs at risk; if half of these jobs are lost, plus indirect and re-spending multiplier effects → 4.9 million total jobs at risk if 50% of jobs lost in these 7 key industries, alone.

Note Recent Surge in China's Goods Trade Surplus

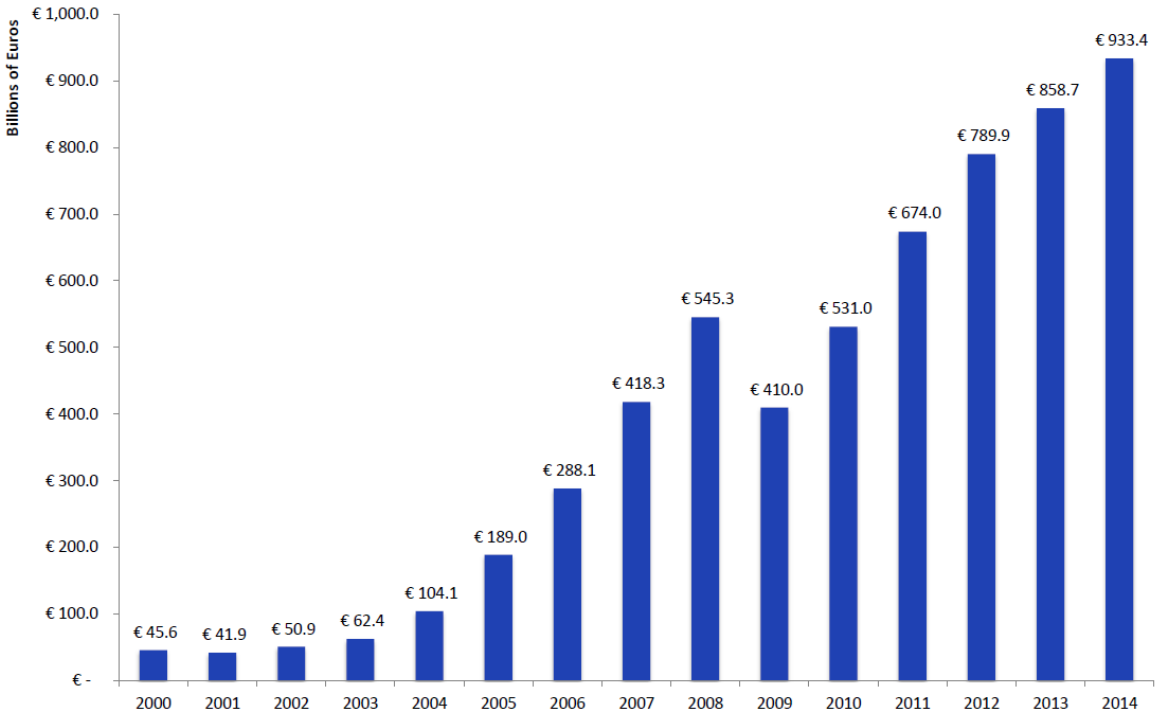
- China's global goods trade surplus equal to 5.4 percent of GDP in 2015, fourth highest ever recorded (including all commodity trade)
- Driven by relentless growth in China's global trade surplus in manufactured goods, which approached €1 trillion in 2014

China trade balance in Euros and as a percent of GDP, 2000-2015



Source: World Trade Organization (2016), IMF World Economic Outlook (October 2015), Board of Governors Federal Reserve System (January 15, 2016)
Notes: Data after 2014 are projections

China manufacturing trade balance, 2000-2014



Source: World Trade Organization (2016), IMF World Economic Outlook (October 2015), Board of Governors Federal Reserve System (January 15, 2016)

Responses to criticism of our report

- DG trade refers repeatedly to fact that anti-dumping (AD) measures apply to only 1,38% of EU imports
  - This is a complete *non-sequitur*, has nothing to do with potential impact of reducing or eliminating the *threat* of AD duties.
  - Consider 1 sector only, EU steel production. Total EU crude steel production in 2015 was 169 Million Tons. China had est. 2015 production of 715 MT and 381 MT of excess production capacity, more that twice total EU production.
  - EU grant of MES could easily eliminate half of EU steel production due to surging imports of dumped and subsidized steel.
- We didn't use a CGE model
  - CGE models assume balanced trade and full employment.
  - Neither assumption holds for China trade with the EU, nor for the EU unemployment situation over the next 3-5 years, where some countries are projecting unemployment well in excess of 20% for next several years, at least.
  - CGE models rule out consideration of changes in structure of trade, and in income distribution (college/non-college wages, and wage/profit shares).

Model II: If EU Grants MES to China

- Would increase EU imports of manufactures from China by €71.3 billion to €141.5 billion
- Reduce EU GDP by €114.1 billion to €228.0 billion (1 percent to 2 percent of GDP).
- Put 1.7 million to 3.5 million EU jobs at risk
- These job losses are over and above trend job losses due to growing EU-China trade deficits

Key Assumptions in This Report

- A decision to grant MES to China would increase EU imports of manufactured goods from China by 25 percent to 50 percent, over the next 3 to 5 years, above trend growth.
- Conservative because
  - Increase is less than trend import growth of 11.1 percent per year
  - EU is now less open to Chinese imports than the US. If EU Grants MES and the U.S. doesn't, EU will be hit with a flood of dumped imports due to excess capacity in China in many industries.
  - Dumped imports from China will come into EU at prices below comparable EU products, displacing more than 1 euro's worth of output (and jobs) for each euro of imports (this effect was not included in our model).
  - EU has recently been in recession, hence economic multipliers are higher in the EU today (around 2.0) than is assumed I our model (1.6)
- Results:

TABLE 1

Impact if EU grants market economy status (MES) to China

	Scenario*	
	Low impact	High impact
CHANGE IN:		
Manufacturing imports from China (billions of euros)	71.3	142.5
Gross domestic product		
in annual billions of euros	-114.1	-228.0
as a share of projected GDP	-1.0%	-2.0%
Number of jobs at risk (millions)	1.7	3.5
Share of total EU employment at risk	0.9%	1.8%

* The low-impact scenario assumes granting MES to China would increase manufacturing imports from China by 25 percent over the next three to five years relative to their base level in 2011; the high-impact scenario assumes a 50 percent increase in imports from China.

Source: Authors' analysis of Bivens (2014, Table 5), European Commission (2015a, 2015b, 2015c, 2015d, and 2015h). For a more detailed explanation of data sources and computations, see text and the appendix.

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TABLE 2

Total jobs at risk if EU grants MES to China

	Low impact*	High impact*
Direct	478,600	957,300
Indirect	537,100	1,074,100
Respending	729,800	1,459,700
*Total***	1,745,400	3,490,900

* The low-impact scenario assumes granting MES to China would increase manufacturing imports from China by 25 percent over the next three to five years relative to their base level in 2011; the high-impact scenario assumes a 50 percent increase in imports from China.

** Subtotals may not add up to total due to rounding.

Source: Authors' analysis of Bivens (2014, Table 5), European Commission (2015a, 2015b, 2015c, 2015d, and 2015h). For a more detailed explanation of data sources and computations, see text and the appendix.

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Hardest Hit Countries (Table 5)

- Germany (319,700 to 639,200 jobs at risk)
- Italy (208,100 to 416,200 jobs at risk)
- United Kingdom (193,400 to 386,800 jobs)
- France (183,300 to 366,600 jobs at risk)
- Next six: Poland, Spain, Romania, Netherlands, Czech Republic, Portugal

Conclusions

- EU imports from China have increased nearly five-fold since 2000, 11.1 percent per year
- China global trade surplus is surging, providing increased threat to EU industries if China is granted permanent, blanket, MES
- Model I: Up to 2.7 million direct jobs at risk in 7 key industries (Table 7) if the EU grants permanent MES to China. If half of those jobs are lost due to MES grant, then up to 4.9 million EU jobs would be at risk (including indirect and re-spending jobs).
- Model II: Economy-wide, combined micro- and macroeconomic model. If EU grant MES to China, imports will increase by an additional 25 to 50 percent, above trend.
- This will put 1.7 to 3.5 million EU jobs at risk, and reducing EU output by €114 to €228 billion (1.0 to 2.0 percent of GDP)
- The EU should carefully consider these costs before deciding whether to grant MES to China

4.1.2 Maurizio ZANARDI

Maurizio Zanardi holds a Ph.D in Economics from Boston College (Boston, USA) and he is currently an Associate Professor in Economics at the Lancaster University Management School (UK) and a Co-Director of the European Trade Study Group (ETSG). His main research interests are in the areas of trade policy and political economy, with a particular emphasis on antidumping. He has published several papers in leading academic journals such as the American Economic Journal: Economic Policy, the European Economic Review, the Journal of the European Economic Association, and the Journal of International Economics.

Lancaster University
Management School

Market economy status to China after 2016? Some considerations

Dr Maurizio Zanardi
Lancaster University Management School

European Parliament, 28 January 2016

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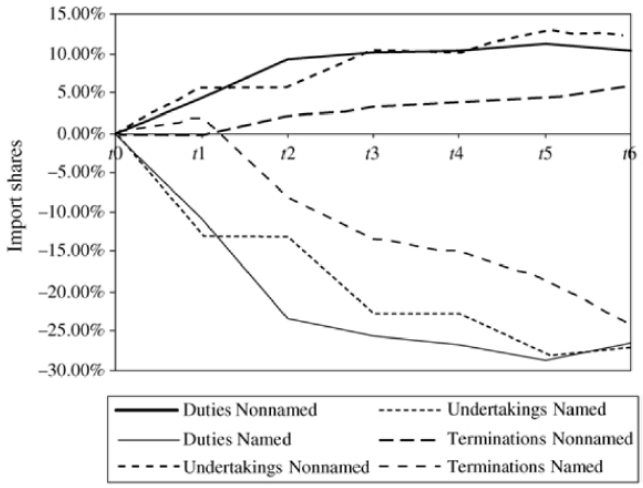
Some considerations

Anti-dumping (AD) is a complex trade instrument:

1. It targets only some countries:

   Import reductions from targeted countries can be compensated by increased imports from non-named countries.



Source: Konings et al. (2001): "Import Diversion under European Antidumping Policy," *Journal of Industry, Competition and Trade* 1, 283-299.

Some considerations

2. It targets exporters from a given country differently:

   Cooperating producers obtain firm-specific AD measures; as a result, country-wide rates usually hide a lot of variation.

   In the case of China, firms can apply for market economy status (MET) and individual treatment (IT). For petitions in 2005-2014:

   - Average country-wide AD duty: 43.61%
   - Average MET AD duty: 7.32%
   - Average IT AD duty: 31.01%
   - Average AD duty for cooperating firms: 31.11%

   (The lesser duty rule is applied in 40% of firm-specific AD duties).

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Some considerations

3. It affects exporters from a given country differently:

   Evidence on Chinese firms subject to AD duties in the United States shows that most of the reduction in trade flows come from the least productive Chinese firms exiting the market.

   (See Lu et al. (2013): "How do Exporters Respond to Antidumping Investigations?," *Journal of International Economics* 91, 290-300).

4. It targets foreign production, irrespective of its ownership:

   AD is not suited to deal with the fragmentation of production across countries: a Chinese product may actually belong to a European company.

Some considerations

5. It affects European countries differently:

   The EU industrial structure is not homogeneous and this is reflected in the geographical span of petitioning firms. In the 64 petitions initiated against China in 2005-2014, the ten most common nationalities of filing firms are

Country	Number of filings
Germany	23
Italy	21
Spain	19
France	18
Poland	14
Austria	9
Belgium	9
Czech Republic	8
Netherlands	7
UK	6

Some considerations

6. It is not necessarily temporary protection:

   More than 30% of the AD measures in force in the EU 31/12/2014 refer to petitions initiated before 2005. Measures on 'silicon metal' and '(fused) tungsten carbide' were introduced in 1990.

   Measures are often extended and the duty levels often reviewed: the AD duty rates in place may be significantly different from the original determinations.

   (See Nita and Zanardi (2013): "The First Review of European Union Antidumping Reviews," *World Economy* 36, 1455-1477).

Some considerations

7. It leads to 'chilling effects' on trade:

   Because of a reputational effect, also imports in sectors not directly affected by AD may be reduced.

   (See Vandenbussche and Zanardi (2010): "The Chilling Trade Effects of Antidumping Proliferation," *European Economic Review* 54, 760-777).

8. It may help for further trade liberalization:

   By providing a safety valve for protectionist pressures, the AD system may allow broad trade liberalization reforms; no clear consensus in the literature but some evidence for the Uruguay Round tariff cuts implemented by EU.

   (See Ketterer (2015): "Antidumping Use and Its Effect on Trade Liberalization. Evidence for the European Union," *GEP working paper 2015/11*).

A concluding remark

In conclusion, AD is a very complex system. An economic assessment of granting market economy status to China must (try to) deal with this complexity and be explicit about its assumptions.

Most assessments of the economy-wide effects of AD reach the conclusion that AD measures lead to a net cost for the importing country (i.e. the benefits for the protected industries are more than offset by the losses to other industries and consumers). But these studies are subject to various caveats.

(See Gallaway et al. (1999): "Welfare Costs of the U.S. Antidumping and Countervailing Duty Laws," *Journal of International Economics* 49, 211-244; US International Trade Commission (1995): "The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements," *Publication 2900*).

A concluding remark

The study by Robert Scott and Xiao Jiang reaches the conclusion that "an EU decision to unilaterally grant MES to China would put between 1.7 million and 3.5 million EU jobs at risk".

Key assumptions of the study:

- Reduction of AD duty rates will affect all imports from China;
- No role for adjustment in the trade flows with other trade partners;
- No role for general equilibrium effects for changes in prices;
- Based on linear mechanical relationship across sectors in terms of inputs to production (input-output tables).

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