

IN-DEPTH ANALYSIS

One year to go: The debate over China's market economy status (MES) heats up

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ABSTRACT

Market economy status (MES) – a technical term used in antidumping investigations – has come to the top of the international agenda, bringing heated discussions on whether or not China will soon be granted this status. China argues that its WTO accession documents foresee an automatic acquisition of MES after 11 December 2016. Yet for many other WTO members, the text in question – Section 15 of China's Protocol of Accession – is subject to interpretation.

The issue is sensitive for a number of reasons. Legally, the EU must ensure that its rules are compatible with the WTO's. But the economic aspects are complex – and potentially substantial for significant sectors of the Union's economy. The EU's ability to level the playing field for its own industrial products and imports from China depends on its ability to offset unfairly low prices of 'dumped' Chinese imports; the antidumping instruments the Union deploys to this end depend on China's MES. The issue also has political ramifications, and may well affect the Union's relationship with other countries.

In general, the EU would benefit from a more elaborated assessment than has yet been undertaken, from the input of the European Parliament, and from a more coordinated approach with major trading partners.

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1 China's road to 'market economy'

In 2001, China joined the World Trade Organisation (WTO), whose system is based on market economy principles.

When it entered the WTO, China made commitments that have yet to be fully implemented.

State intervention in the Chinese economy is still significant. China might even reverse its advances towards a market-based

China became a member of the World Trade Organisation (WTO) on 11 December 2001, a milestone in the history of the multilateral trading system and a major leap in the WTO's evolution towards a truly global organisation¹. The date was also a key moment in China's development, as the Chinese government agreed to a series of important commitments to open and liberalise the Chinese economy 'in order to better integrate into the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules'². China committed to adhering to the rules and obligations of the WTO system, which is based on market economy principles, and to the WTO's policies of pro-competition and non-discrimination; to granting market access for imported goods and services; and to promoting a transition towards a 'socialist market economy'.

China's process of acceding to the WTO was negotiated through a working party (WP)³ composed of Chinese representatives and representatives of WTO members. During WP negotiations, applicants generally prepare 'substantive offers' to satisfy current WTO Members and demonstrate that they have the necessary legislation and administrative arrangements in place to implement the obligations of WTO membership⁴. China made strong commitments in the context of these negotiations; these are included in its Protocol of Accession⁵ and in its legally binding annexes on specific issues related to the Chinese trade regime.

Fifteen years after China's accession to WTO, most analysts acknowledge that the country has made impressive steps towards becoming a more open market and real efforts to reduce state interference in the management of the economy. Nevertheless, several of its WTO commitments have yet to be implemented. The state continues to exercise a high degree of intervention in key areas of the Chinese economy, and this may ultimately compromise the level playing field for Chinese companies

¹ WTO, Understanding the WTO: the agreements. Anti-dumping, subsidies, safeguards: contingencies, etc, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm [accessed on 16/12/2015].

² WTO, Understanding the WTO: the agreements. Anti-dumping, subsidies, safeguards: contingencies, etc, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm [accessed on 16/12/2015].

³ A Working Party was initially created in 1987 to examine the request of China to resume its status as a GATT contracting party. Later, in 1995, it was converted into a [WTO Working Party \(see WTO Press release of the 17 September 2001\)](#).

⁴ WTO, Handbook on accession to the WTO, see https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/intro_e.htm [accessed on 16/12/2015].

⁵ China's Protocol of Accession to WTO can be downloaded from the WTO website on Protocols of accession for new members since 1995, including commitments in goods and services, see https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm [accessed on 16/12/2015].

economy.

Market economy status (MES) matters only in anti-dumping proceedings.

and foreign competitors in international trade. According to the most recent 'Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition' (Taube et al. 2015), 'a large number of sectors were opened to overseas investors and China has acted largely in line with its liberalisation commitments from the accession protocol'. However, the study also notes that numerous businesses are closed to foreign direct investment (FDI) 'as the Chinese government sought to protect [...] domestic companies in general and SOEs [State Owned Enterprises] in particular.'

A high degree of state intervention continues to affect prices and costs in China, according to the international organisation setting the rules for the international trade - the WTO. As stated in the WTO's 2014 trade policy review on China, 'China still applies price controls⁶ to commodities and services deemed to have a direct impact on the national economy and people's livelihoods⁷'. In Section 3.3.2.6 ('Price Controls') of this report, the WTO lists the product(s) for which Beijing sets government prices and government-guided prices (see Annex III). In response, the Chinese authorities have noted that while price controls in these areas are set by law (Government Pricing Catalogue), 'in practise reserve-material procurement is general conducted through auctions⁸, meaning that prices result from competitive bidding. Price distortions – which derive from state intervention and may occur at different stages of production – are relevant for anti-dumping investigations.

China has made political and legal commitments; their implementation has been the subject of debate. Most observers agree nonetheless that state interference in the Chinese economy has not steadily decreased, as was projected at the signature of its WTO Accession Protocol. The government's recent response to the Shanghai's Stock market crash – actively intervening in the market – suggests that Beijing is capable of reversing its market-based achievements, and even of increasing state intervention in the economy on an *ad hoc* basis.

Whether or not China is a market economy is not a matter of interest to the WTO; the organisation has, in fact, no rules in place to define what constitutes a market economy or how a market economy should function. What matters to WTO members is the extent to which the prices of Chinese exports reflect the influence of state intervention. 'Market economy status' (MES) is relevant then, when China's trading partners launch anti-dumping investigations.

A number of China's trading partners have already granted the country MES

⁶ 'Price controls may take the form of 'government prices', fixed prices set by the authorities, or 'government-guided prices', for which a range within which prices can fluctuate, is determined' (WTO Trade Policy Review: China (2014), p. 13).

⁷ WTO Trade Policy Review: China (2014), p. 13., see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1103> [accessed on 16/12/2015].

⁸ WTO Trade Policy Review: China (2014), p. 100., see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1103> [accessed on 16/12/2015].

(a map showing these countries appears in Figure 1 below). The EU has not; neither has the United States. For the EU, this apparently technical issue has become a major point of discussion today, one year before of the supposed deadline for China's partners to grant it market economy status. The issue has major implications for the Union – and for many other WTO members – and there is real work to be done in the next twelve months.

1.1 Market economy status (MES) in anti-dumping proceedings

The WTO system allows its members to take action against 'dumping'.

Dumping is a form of unfair competition. WTO members, including the EU, use trade defence instruments to re-establish a level playing field when faced with dumping.

On the basis of Article IV of the General Agreement on Tariffs and Trade and the WTO Anti-dumping Agreement (ADA)⁹, the WTO envisages the possibility that its members take action against 'dumping' – the practice of exporting a product at a lower price than what is normally charged in the home market ('normal value') – in order to defend their domestic industries from dumped imports¹⁰. The provisions allow importing WTO members to charge duties on particular products from a particular exporting country, in derogation from the GATT's general principles of binding tariffs and non-discrimination¹¹. The Addendum to GATT Art. VI recognises that 'special difficulties may exist in determining price comparability' for the purpose of anti-dumping actions in the case of 'imports coming from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State'¹²– i.e., where market conditions do not prevail.

Not all WTO members make use of anti-dumping instruments, and the WTO agreement does not pass judgement on whether 'dumping' is a form of unfair competition¹³. Nevertheless some governments consider unfair competition to include a situation in which prices are not determined by market forces or in which a state's intervention creates an artificial and unfair comparative advantage for its exports. The EU (acting on behalf of EU Member States, since the common commercial policy is an exclusive EU competence) promotes open trade and recognises the value of trade as an

⁹ The formal name of the agreement is the AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994. See https://www.wto.org/english/docs_e/legal_e/legal_e.htm#antidump [accessed on 16/12/2015].

¹⁰ WTO, Understanding the WTO: the agreements. Anti-dumping, subsidies, safeguards: contingencies, etc, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm[accessed on 16/12/2015].

¹¹ Ibid.

¹² (...) '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' (Par. 1(2) of the Addendum of Article VI of GATT.

¹³ WTO, Understanding the WTO: the agreements. Anti-dumping, subsidies, safeguards: contingencies, etc, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm[accessed on 16/12/2015].

engine of growth and job creation. At the same time, the EU requires that domestic and foreign producers compete on a level playing field. The EU therefore opposes unfair trade practices and applies its own legislation on trade defence instruments (TDIs), including anti-dumping measures. (*How the EU does this is outlined in Annex IV.*)

The EU has committed to using only the minimum trade defence instruments necessary to offset any injury inflicted on EU industry.

In applying WTO rules on TDIs, the EU has committed to refrain from applying trade defence instruments in situations other than those allowed by WTO rules¹⁴. In fact, the EU goes further and complies with the 'WTO-plus rules', which further restrict the use of TDIs: the EU sets anti-dumping duty rates by reference to the 'lesser duty rule' and applies a 'Union interest test'. Under the 'lesser duty rule', duties are imposed only at the minimum level sufficient to remove the injury suffered by EU industry, if that level is lower than the dumping margin. In applying the 'Union interest test', the EU considers whether the positive effects on EU industry are offset by negative effects in other areas/sectors of the economy, after considering all relevant EU interests – e.g., EU industry, industrial users, consumers and traders.

The prevalence of non-market economy conditions in China means that Chinese prices are not comparable to international prices.

When China acceded to the WTO, all parties (including China) considered that China had made progress towards becoming – but had not yet become – a (socialist) market economy¹⁵. Accordingly, the Protocol of Accession did not require price comparability based on Chinese prices and costs for the purpose of determining dumping and calculating duties. Due to distortions introduced by the state, Chinese prices and costs are not a credible measure of the true domestic costs of production in the country. If they were taken as a 'credible' measure, EU industry would be *de facto* exposed to unfair competition.

The EU has evaluated China on the basis of five MES criteria; this has led the union to use an 'analogue country' methodology to determine dumping.

Each WTO member was therefore allowed to use its own legislation to establish whether or not China would be classified as a market economy. In the case of the EU, this meant evaluating China against five MES criteria. As a result, China was – and has remained – listed alongside other countries as a non-market economy in the EU's Basic Regulation on Anti-dumping (No. 1225/2009). This entitles the European Commission – the investigating authority in the context of EU anti-dumping investigations – to use a methodology 'that is not based on a strict comparison with domestic prices and costs in China'. The EU has applied an 'analogue country' methodology.

Single companies may obtain Market Economy Treatment (MET) – an exception to the general method – if they can prove they comply with five criteria established by the EU (Article 2.7 EC

Some exceptions to the general application of non-market economy treatment of Chinese products in EU anti-dumping investigations have been made: individual Chinese exporting companies that demonstrated they met the market conditions set in the five EU criteria (Market Economy Treatment - MET) were granted MET, and antidumping duties were calculated on the basis of Chinese prices. The resulting prices were, on

¹⁴ The basic WTO requirements are: (i) dumping by the exporting producers in the country/countries concerned; (ii) material injury suffered by the Union industry concerned, and (iii) a causal link between the two.

¹⁵ See, e.g., the statements of both the representative of China and those of other countries set out in the Working Party Report of China's Accession to the WTO, para. 4-9, WT/ACC/CHN/49, 1 October 2001; see also para. 150 of the same Report.

1225/2009).

Chinese companies rarely obtain MET, as they are unable to prove they function under market conditions.

average, 30 % lower than those calculated by the 'analogue country' procedure. This difference – which varies by product – suggests that lower dumping margins may result if China is granted MET. Moreover, experience suggests that dumping margins calculated in MET cases have often been even lower than the injury margins – a finding that may lead some to question the efficacy of such duties in offsetting the injury caused by Chinese dumping on the EU industry.

Although Chinese companies could be granted MET, their rate of success when applying for MET in anti-dumping investigations has been very low. In the last five years of EU antidumping investigations into Chinese imports, MET has been granted only rarely. The most common grounds for refusing MET have been the non-fulfilment of one of the three first criteria of Article 2(7)(c) of the Basic Regulation: business decisions and costs were not made in response to market conditions and without significant state interference; there was no clear set of basic accounting records; or there existed significant distortions carried over from the former non-market economy system (see Annex II).

1.2 What if China's status changes in 2016?

Whether or not China must be granted MES as of 11 December 2016 is subject to different interpretations.

A possible change in China's status would imply economic and political costs for other countries.

Economic analysis must consider a variety of aspects. To date, no comprehensive assessment of these aspects has been performed.

On 11 December 2016, fifteen years after the date of China's WTO accession, one sub-paragraph of Section 15 of China's Protocol of Accession to the WTO is set to expire. What will happen to China's status after 2016 is an issue that has spurred multiple interpretations and expressions of concern by interested parties. The issue has three main principal facets that deserve attention: a legal, an economic and finally a political component.

The legal discussion centres on whether or not China must be granted market economy status after 2016 and what methodology could be used by the EU in its anti-dumping investigations into Chinese goods.

The economic issues stem from the fundamentally different way that market and non-market economies must be treated in anti-dumping investigations. A change in China's status after 2016 might – or might not – compromise the EU's ability to ensure that the competition between EU and Chinese companies is fair.

The potential economic impact would probably 'directly' affect the EU's industry in the sectors currently protected AD measures. The 'direct impact' may differ according to the sector, country and type of firms (with, for example small and medium firms [SMEs] likely to be affected more). Other manufacturing sectors may also be affected 'indirectly', either positively (e.g. by buying more imports from China at lower cost) or negatively (e.g. by having their intermediate inputs replaced by Chinese products or even by disappearing as a result of increased competition). A range of effects might be felt by other economic operators within the EU economy, including retailers, importers, third-party users and consumers. Due to the complexity of the economic impact, a careful assessment would need to be performed in order to quantify the economic implications of granting China

The EU may face a political backlash if it either unilaterally grants or does not grant MES to China. A coordinated response with other WTO members would be advisable.

MES.

Finally, there are political considerations, and their costs and benefits should also be carefully evaluated. China's MES issue may influence not only the bilateral EU-China relationship, but also the EU's relations with other trading partners. Negotiations on TTIP with the US and on other agreements with other trading partners (such as Canada and Japan) may be negatively affected if the EU were to decide unilaterally to grant China MES, instead of adopting a coordinated approach.

2 Legal aspects of granting China MES

Section 15 of China's Protocol of Accession to the WTO covers 'Price Comparability in Determining Subsidies and Dumping'.

Only provision 15 a)ii of China's Protocol expires in December 2016. The legal implications of this are fiercely debated by analysts.

On the basis of its Section 15 on 'Price Comparability in Determining Subsidies and Dumping' (see Annex I), China's Protocol of Accession to the WTO¹⁶ allows WTO importing members to determine, according to their national law¹⁷, whether China is considered a market economy for the purpose of price comparability. This section introduces in paragraph a) some non-market economy provisions entitling WTO members to apply a methodology (in their anti-dumping investigations against China) that is not based on a strict comparison with domestic prices or costs in China. This methodology serves the purpose of determining the 'normal value' (i.e. the actual sales price on the domestic market of the exporting country) when market economy conditions do not prevail. The difference between the export price and the 'normal value' determines the 'dumping margin', on the basis of which anti-dumping duties are then imposed¹⁸.

Sub-paragraph (a) (ii) of Section 15 is set to expire 15 years after the date of China's accession – i.e., on 11 December 2016. This sub-paragraph prescribes the conditions to be respected in applying a methodology that is not based on a strict comparison with domestic prices or costs in China (as is the WTO's general methodology) for an entire industry under investigation. Following the expiry of that provision, the remainder of paragraph (a) – as well as the whole meaning of Section 15 on price comparability in determining dumping – has become the subject of a heated debate, with differing interpretations offered. While the expiry clause only specifically refers to sub-paragraph (a)(ii), different commentators have questioned whether WTO members may continue to apply a non-market economy methodology in antidumping investigations concerning China.

¹⁶ WTO, Understanding the WTO: the agreements. Anti-dumping, subsidies, safeguards: contingencies, etc, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm [accessed on 16/12/2015].

¹⁷ The Working Party Report recites 'Members of the Working Party and the representative of China agreed that the term 'national law' in subparagraph (d) of Section 15 of the Draft Protocol, should be interpreted to cover not only laws but also decrees, regulations and administrative rules'.

¹⁸ In the case of the EU the duties are imposed according to the lesser duty rule, i.e. on the basis of the lower of the injury and dumping margins.

When China's Protocol was signed, other WTO members assumed Beijing would speed up economic reforms and soon function according to market economy principles.

Today, however, China does not function as a full market economy, and state intervention continues to strongly affect prices. As a result, EU law treats China as a non-market economy.

The European Commission has not published an assessment of China's economy against the five EU criteria since 2008. At that point, China only met one of the five EU's MES criteria.

The ambiguity of Section 15 seems to have been intentional and reflects a compromise between the US and China at the negotiating table prior to China's accession to WTO. This compromise was then transposed to the multilateral negotiations. In an earlier version of Paragraph 15 (d), the expiration clause applied to the entire paragraph (a). The final compromise instead set a deadline only for a specific sub-paragraph: (a)(ii). In other words, the current debate represents an old disagreement that could not be resolved at the time of China's accession. The Protocol served to introduce temporary provisions to be implemented during China's transition towards an effective, market-based economy, thereby providing WTO trading partners with the possibility of detecting 'dumped' imports from China even when state influence distorted prices and costs in China. The non-market economy treatment of China could have been terminated at any time since, if China had demonstrated the prevalence of market economy conditions, pursuant to the criteria set in the WTO members' national legislation.

The EU lists China as a non-market economy in the EU Basic Regulation on anti-dumping (CE 1225/2009), based on the fact that the country does not comply with the five criteria established by the EU for the granting of MES. The most recent assessment of China's request for MES was performed by the EU in 2008¹⁹, when an *ad hoc* MES working group coordinated the exchange of information between Chinese authorities and the European Commission's services. At that point, only one criterion – 'which relates to the absence of state intervention in enterprises linked to privatisation and the absence of non-market forms of exchange or compensation such as barter trade' – was met. For the other four criteria, the Commission said that considerable progress had been made, but that substantial distortions still existed. Particular concerns were flagged regarding 'the government intervention in the allocation of resources or business decision in the economy'²⁰.

In its 2008 evaluation, the European Commission acknowledged several points of progress towards implementing liberalisation reforms. However, overall, China was considered not to have met the technical requirements to be granted MES, based on a number of areas in which state intervention still influenced prices and costs in China. This was the last public assessment of China's MES by the EU. On several occasions, the Chinese government has argued that Section 15 of its WTO Protocol of Accession establishes a deadline of December 2016, after which its partners must automatically grant China MES.

If the EU wishes to change China's status in its Basic Regulation, the

¹⁹ European Commission, *Commission Staff Working Document on Progress by The People's Republic of China Towards graduation to Market Economy Status in Trade Defence Investigations*, SEC(2008) 2503 final, 19/09/2008, see http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143599.pdf [accessed on 16/12/2015].

²⁰ *ibid.*

Commission will have to initiate a procedure to amend the Basic Regulation. This would entail a legislative proposal. In deciding whether or not to make such a proposal, the following three elements should be taken into consideration:

1. the ambiguity surrounding the interpretation of Section 15 of China's Accession Protocol,
2. the lack of a recent EU assessment of China in terms of the five technical MES requirements established by EU law,
3. China's incomplete implementation of its WTO commitments. The fulfilment of these commitments would facilitate the effective market-based operation of the Chinese economy. It would also obviate the current need of China's trading partners to apply a non-market economy methodology for comparing prices in anti-dumping investigations concerning China.

2.1 Interpreting Section 15 of China's WTO Accession Protocol

Specialised trade literature contains many different interpretations of Section 15 of China's Accession Protocol. As a result, there is a wide range of post-2016 scenarios put forth by the different authors. Most experts assume that, to obtain MES, China will continue to bear the burden of proof in demonstrating that it has met the market economy criteria of importing WTO members. Nevertheless the expiry of sub-paragraph (a)(ii) creates uncertainties as to how imports from China should be treated at the end of 2016 to comply with WTO rules.

China challenges all interpretations of Section 15 of its Accession Protocol that do foresee the country not being automatically granted market economy status after 2016. On several occasions Beijing has reiterated its disappointment with its current non-market economy treatment in the anti-dumping investigations of WTO members that have not yet granted the country MES. (A map of these countries is reproduced below, in Figure 1.) Beijing has also expressed strong concerns over possible delays in its graduation to full market economy status. Because it is possible to use an 'analogue country' methodology (i.e. a methodology not based on a strict comparison with domestic prices or costs in China), current 'dumping margins' are higher than what would be calculated by using Chinese prices. For Beijing, this is 'unfair treatment'. On the other hand, for EU industry protected by duties based on this methodology, dumping would not be detected by considering only Chinese prices; Chinese prices and costs are still highly influenced by the Chinese government, and this ultimately compromises the possibility of fair competition between Chinese and EU producers. The issue is further complicated by the presence of EU producers in China (especially via joint ventures); these producers would benefit from a reduction of anti-dumping duties. The same is true for European producers and retailers whose goods are partially or entirely made in China.

Beijing has called for all WTO members to automatically grant China MES from 11 December 2016.

Different scholars have offered different legal interpretations of what the Protocol requires after December 2016. These interpretations have different implications for what the EU would have to do to comply with WTO rules.

Four general scenarios can be described:

1. China does not automatically acquire MES; the EU may continue to apply its methodology.

For these researchers, China does not automatically acquire market economy status (unless conditions set in Section 15 (d) are met). WTO members may continue to apply methodologies (including the EU's analogue country methodology) that disregard Chinese prices and costs²¹.

2. China does not automatically acquire MES; the EU may only continue to apply an alternative methodology under certain conditions, and must in any case adapt its legal and administrative framework.

China does not automatically acquire market economy status (unless conditions set in Section 15 (d) are met). While the EU may apply an alternative methodology, this is true only under certain conditions. These analysts argue that the expiry of sub-paragraph 15 (a) (ii) means that the EU's *general* application of the 'analogue country' methodology should cease. The authors also argue, however, that the opening clause of Section 15 (a) in conjunction with Paragraph 150 of the Working Party Report²² permits alternative methodologies to be applied *in certain situations* to ensure a 'fair comparison' between prices based on Art. 2.4 of the ADA.

A [published \(leaked\) extract of an opinion by the European Parliament's legal services](#) appears to follow this line of reasoning. At the very least, the opinion argues, that the EU would have to adapt its legal and administrative framework – the Basic Regulation. The EU could use an alternative methodology in investigations against Chinese imports, as long as China does not meet the EU five criteria.

3. China is granted MES.

This scenario would pre-empt the possibility of applying non-market economy treatment in anti-dumping investigations. This view has been

The most prevalent analyses propose four possible scenarios for China's status after 2016, based on differing interpretations of China's WTO Accession Protocol.

²¹ O'Connor, B., *The Myth of China and Market Economy Status in 2016*, NCTM, 2015; Ruessmann, L., Beck, J., "2016 and the Application of an NME Methodology to Chinese Producers in Anti-dumping Investigations.", *Global Trade and Customs Journal*, 10(9), pp. 457–463.

²² Full text of paragraph 150 of the Report of the [Working Party on the Accession of China](#): 'Several members of the Working Party noted that China was continuing the process of transition towards a *full market economy*. Those members noted that under those circumstances, in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. Those members stated that in such cases, the importing WTO Member might find it necessary to take into account the possibility that a strict comparison with domestic costs and prices in China might not always be appropriate'.

supported by the [Swedish Board of Trade \(2015\)](#), several Chinese scholars²³ and others²⁴. According to the reasoning of some of these authors, once sub-paragraph 15 (a)(ii) expires, the remainder of paragraph (a) becomes insufficient justification for departing from the general methodologies contained in Art. VI of GATT 1994. Therefore, these authors argue, there will be no legal basis for using data from a third country (as the EU does in its analogue country methodology) after 11 December 2016 or for treating China as a non-market economy.

For the EU, this would imply that Regulation 1225/2009 should be amended, and China deleted from the EU's list of NMEs.

4. China's MES would be determined on a case-by-case basis.

Authors arguing this adopt a similar reasoning to those arguing that China acquires MES (option 3), while maintaining the possibility that the existence of market economy conditions be evaluated on a case-by-case basis. As a general rule, non-market economy treatment would not be possible. However, adjustments would be possible if there were evidence of price distortions. Some sectors may be exempted from the general rule of market economy treatment.

This scenario implies that the EU could apply its 'cost adjustment' methodology – currently applied to certain cases concerning Russia, India and Argentina²⁵ – to Chinese cases. It should be noted, however, that this methodology has been contested by trade partners. A decision under the WTO dispute settlement process is forthcoming.

Opting to adopt one of the above interpretations unilaterally may expose the EU to economic and political costs.

In the first interpretation (no change for either China's status or the EU's methodology), the EU would continue to apply a non-market economy methodology in anti-dumping investigations into Chinese imports initiated after December 2016. This approach might be challenged by China for cases initiated after 2016, in which case Beijing would ask the WTO to decide on the matter. Even if the WTO were then to find EU legislation non-compliant with WTO rules – the 'worst-case scenario' – the EU would have a reasonable period in which to adapt and comply with the decision of the WTO's Panel and Appellate Body. Only if EU persisted in behaving in a

Each scenario has different economic and political implications.

²³ Rao Weijia, (2013) China's Market Economy Status under WTO Antidumping Laws after 2016, *Tsinghua China Law Review* vol. 5, 2013; Y. Yu (2013), Rethinking China's Market Economy Status in Trade Remedy Disputes after 2016: Concerns and challenges, *Asian Journal of WTO and International Health Law and Policy* vol. 8, 2013.

²⁴ Tietje C., Nowrot, K., *Myth or Reality? China's Market Economy Status under the WTO Anti-dumping Law after 2016*, Policy Papers on Transnational Economic Law No 34, December 2011; Graafsma, F., Kumashova, E., "In re China's Protocol of Accession and the Anti-Dumping Agreement: Temporary Derogation or Permanent Modification?", *Global Trade and Customs Journal*, no. 4, 2014, pp. 154–59.

²⁵ EU- Antidumping Measures on Biodiesel from Argentina (DS473); EU - Cost Adjustment Measures and Certain Antidumping Measures on Imports from Russia (DS474); EU- Antidumping Measures on Biodiesel from Indonesia (DS480).

manner deemed WTO-incompliant might China obtain the authorisation to retaliate. This eventuality could bring high economic costs. It would also expose the EU to political costs, as EU-China relations would be compromised – at least in the short run: there might be negative repercussions for the EU-China Bilateral Investment Agreement, as well as for China's current financial contribution to several EU initiatives, such as the 'Junker Plan' and collateral investment initiatives to revive growth in Europe.

The second post-2016 scenario (China does not automatically acquire market economy status, and the EU may apply alternative methodologies, but only under certain conditions) is based on the assumption that it would be possible to develop a viable 'alternative methodology' for calculating the 'normal value' in antidumping investigations. For the EU, this interpretation would likely carry political costs similar to those described above. However, the perspective also opens the possibility of reaching a compromise with China on the EU's approach to antidumping investigations concerning Chinese products. Granting MES would still be dependent on fulfilling the EU's five MES criteria.

In this sense, the second interpretation converges with the fourth (in which MES is determined on a case-by-case basis); both foresee alternatives to the current non-market economy methodology. One such alternative might be to exempt sectors or industries from market economy treatment, although it remains to be seen whether this is a WTO-compliant solution. The EU currently applies a 'cost-adjustment' methodology in a few cases (e.g. Russia, India and Argentina). In this methodology, following Article 2.4 of the WTO ADA, the existence of a 'particular market situation' justifies recourse to a methodology that takes into consideration the cost of production in the country of origin as well as a reasonable amount for administrative, sales and any other costs and for profits²⁶. There is one important caveat: as mentioned above, this methodology is currently being contested by the EU's trade partners and may be judged to be non-compliant with WTO rules (see the cases cited in footnote 23). Even if the forthcoming WTO rulings permit the EU to continue applying this methodology under certain conditions, there may be other considerations. The nature of state intervention in China may be so pervasive that it is too difficult to detect state subsidies – and, consequently, other price and production cost distortions²⁷ – to allow the importing authorities to collect sufficient information and apply proper cost adjustments in specific

There are two scenarios that involve alternative hybrid methods for evaluating Chinese dumping after 2016.

The EU's cost-adjustment methodology is of questionable value – at least until pending disputes at the WTO are resolved.

²⁶ The legal basis is complemented by art. 2.2.1.1. of the WTO ADA, under which the costs of production are established with reference to the books of the exporting producer but not if those costs do not 'reasonably reflect the costs associated with the production and sale of the product under consideration'.

²⁷ European Commission, *Commission Staff Working Document on Progress by The People's Republic of China Towards graduation to Market Economy Status in Trade Defence Investigations*, SEC(2008) 2503 final, 19/09/2008, see http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143599.pdf [accessed on 16/12/2015].

investigations.

This seems to be the case in Australia (see below).

The example of Australia suggests that cost adjustments methodologies have some flaws. The EU should carefully consider the pros and cons of such an approach before taking action.

Rather than making a unilateral decision about 'China's MES, the EU would be best served by consulting with other WTO members and coordinating its approach.

The Australian example

Australia, a WTO Member, recognised China as a market economy in 2005. Since then, it has relied on cost adjustments to establish the normal values of Chinese imports in anti-dumping cases. The dumping margins that Australia has found are significantly narrower than those found by WTO members that have not granted China MES. For example, Australia's investigation into car wheels found that margins were mostly below 10%, whereas most of the EU margins for the same product were calculated to be 40-60%.

Australian industry complained that the lower dumping margins were at least partly the result of Australia's cost adjustment methodology – and that the margins would have been higher if China were treated as a non-market economy. In response, Australia's Government Productivity Commission issued a report in 2010 that acknowledged some intrinsic merit to the complaints about deficiencies in methodologies used to calculate normal values. The Commission made recommendations 'to allay some of the concerns about the treatment of Chinese imports'. These included 'giving due consideration to relevant findings in overseas anti-dumping and countervailing cases'²⁸. Australia has since done so – mainly by examining similar overseas investigations by the EU and US.

Since 2010, Australia has introduced three packages of reforms addressing the anti-dumping regime in Australia.

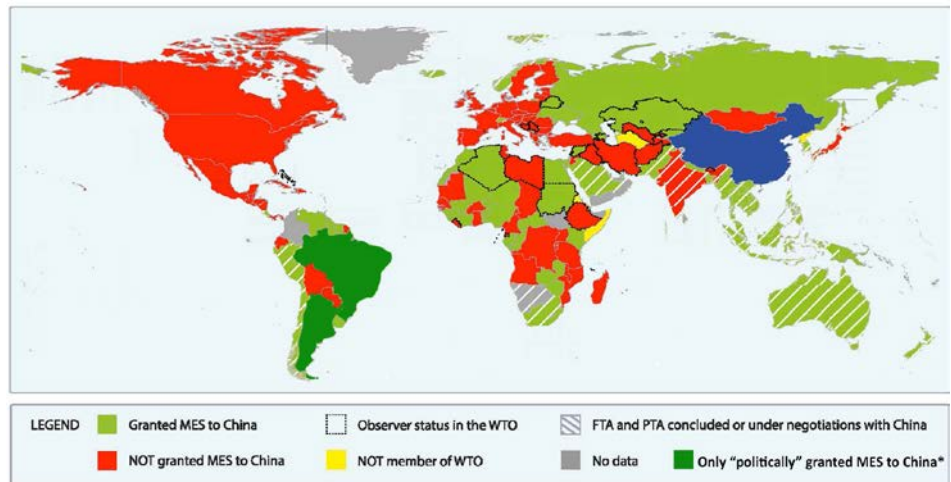
The third scenario (which foresees granting MES to China and using Chinese prices and costs in the context of antidumping investigations) may also lead to a range of economic costs and benefits. These have not been yet been quantified by the European Commission in a comprehensive impact assessment. Some studies commissioned by EU industry (notably Scott and Jiang 2015) have attempted to measure the potential economic implications arising from a change in China's status after 2016. They estimated there would be serious damages to EU industry and to the EU economy as a whole – and not only for those sectors where AD measures are in place. The validity of this analysis has been strongly debated among scholars, as well as among different stakeholders. The study is nonetheless the only one that has attempted to measure the 'indirect jobs' that might be jeopardised by a change of in China's status and a by decrease in the anti-dumping duties applied to Chinese imports. The study did not assess

²⁸ Australian Government Productivity Commission, *Australia's Anti-dumping and Countervailing System. Inquiry Report*, No. 48, 18 December 2009, see <http://www.pc.gov.au/inquiries/completed/antidumping/report/anti-dumping.pdf> [accessed on 16/12/2015].

what might be the economic gains – if any – for EU industry and the EU economy more generally if China gained MES.

Figure 1:

Map of WTO members that have granted MES to China



Source: Policy Department, based on a version published by the [European Parliament Research Service](#).

*No change was made in legislation (or practice) to implement the political commitment to grant China MES.

WTO members are not currently united in their view of how China should be treated in anti-dumping investigations after 11 December 2016 – or of how they should change their own legislation, if such a change is necessary to make their laws WTO-compliant. WTO members that have not yet granted China MES include the USA, Canada, Mexico, Turkey, India and Japan. Brazil and Argentina committed to recognising China as a market economy in 2004, but never changed the NME methodology they used in anti-dumping investigations of imports from China.

There is a general disagreement on the interpretation of Section 15 of China's WTO Accession Protocol: for the moment, until the WTO has ruled on the issue, there is no consensus on the consequences of the expiry clause of Section 15.

The European Commission may now adopt one interpretation. However, it is not obliged to do so – it could well wait for a possible WTO decision before proposing an amendment to the current Basic Regulation 1225/2009. And whatever path the Commission takes, the different economic consequences of each option should be assessed beforehand. Granting China MES is an irreversible step. If the Commission advances down one path while other trade partners choose another, this may lead to further complications and trade distortions. And these would be very difficult to rectify if the Commission had already made its irrevocable decision.

3 Conclusions

The question of China's MES involves values and considerations that the European Commission and the European Parliament should discuss.

The issue is not about protectionism but about unfair competition.

Three points bear emphasising:

1. China does not fulfil the EU's MES criteria.
2. The EU has not carried out a comprehensive impact assessment.
3. Many EU jobs depend on the sectors for which products are currently subject to AD when imported from China.

The principles espoused in the European Commission's newly released 'Trade for All' strategy support a more 'responsible' and 'effective' trade policy in the EU, where 'states, people and companies are treated equally' and 'consumers, workers and small companies can all take full advantage of trade'²⁹. At the same time, the 'EU stands firm against unfair trade practices, through anti-dumping and anti-subsidy measures'.

As a legislator on the EU's trade policy, the European Parliament must understand all the implications of a change in the EU's trade policy on China in order to make informed policy choices and counteract adverse consequences, should these arise.

The EU's decision on China's MES has the potential to change EU trade policy substantially. It is important that the European Commission regularly and rapidly inform the European Parliament about the Commission's intentions and reasoning on the matter.

In conclusion, three points bear emphasising:

1. China does not fulfil the technical MES criteria defined by EU legislation that would permit the country to graduate to 'market economy status' for the purpose of anti-dumping proceedings. A change in China's status would alter the conditions prompting the EU to act to ensure that international competition is played on a level playing field.
2. The economic implications of granting China MES may be positive for certain sectors of the economy and negative for others. However, no full-fledged impact assessment has yet been carried out. As a result, the net effect on the EU economy remains unclear.
3. Most AD measures in force for Chinese imports are concentrated in certain sectors, with the steel sector one of the most targeted. This sector serves both downstream and upstream industries; it plays an essential role in Europe's manufacturing industry and the European economy generally, with more than 350 000 direct jobs and several million more in related industries.

In the EP's resolution on 'The steel sector in the EU: protecting workers and industries' (RSP 2014/2976), the Parliament expressed its view that '*the EU should promote a policy of developing industrial production in all the Member States in order to safeguard jobs within the EU and should strive towards its indicative objective of raising the share of **GDP coming from industry to 20 % by 2020***'. The text also stressed that '*fair trade in steel products can only work on the basis of compliance with basic employment rights and environmental*

²⁹European Commission, *Trade for all. Towards a more responsible trade and investment policy*, see http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf [accessed on 16/12/2015].

standards' and pointed out that *'imports at dumping price levels lead to unfair competition, in particular for stainless steel producers in Europe'*³⁰.

Whatever the European institutions do as they establish post-2016 trade rules with China, they will need to consider the three points above. The European Parliament and the European Commission must not disregard one another at this important juncture.

Coordination between the institutions is of paramount importance, and not simply because the Parliament plays a legislative role in the EU's trade policy. In this case, any appearance of divergence between the institutions could come back to haunt the two, by damaging both the image of the EU and, potentially, EU interests in future proceedings against China.

At stake is also a deeper, systemic impact on the EU economy, as well as a reconsideration of the principles guiding free trade. For the moment, unfair competition remains something condemned by the EU. Yet if the EU grants China MES before the country fulfils the conditions, the Union's stance on unfair competition may collapse along with the level playing field.

The stakes require the European Parliament and the Commission to coordinate at this important juncture.

³⁰European Parliament resolution of 17 December 2014 on the steel sector in the EU: protecting workers and industries (2014/2976(RSP)) , see <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2014-0104> [accessed on 16/12/2015].

Annex I - Section 15 of China's Accession Protocol to WTO

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.

Annex II - Refusal of MET to Chinese companies in EU AD Investigations since 2010

The following list contains the cases where MET was requested by Chinese companies in the context of EU antidumping investigations concerning Chinese imports and the reasons stated by the European Commission for the refusal of MET on the basis of the assessment of the five MET criteria (Art. 2.7c) of the EU Basic Antidumping Regulation 1225/2009³¹:

- **High tenacity yarn of polyesters originating in the 'People's Republic of China'³²**

MET was granted to one exporting producer (recital 52) but it was denied to two other sampled producers for not meeting the requirements of the criteria set forth in 1 to 3 of Article 2(7)(c) of the of the Basic Regulation (see recitals 49 to 51).

These findings were confirmed by the definitive Regulation.³³

- **Hand pallet trucks originating in the 'People's Republic of China (partial interim review)³⁴**

One exporter claimed MET but this was not granted since it did not meet the first three criteria of Article 2(7)(c) of the of the Basic Regulation (recitals 18 to 32).

- **Hand pallet trucks originating in the People's Republic of China (new exporter review)³⁵**

One Chinese producer was granted MET after showing that it fulfilled all the requirements of Article 2(7)(c) (recitals 21 to 41).

- **Ironing boards originating in the 'People's Republic of China produced by Since Hardware (Guangzhou) Co., Ltd³⁶**

The Chinese producer was not granted MET since it did not comply with the first two requirements of Article 2(7)(c): business decisions and costs are made in response to market conditions and without significant State interference and clear set of basic accounting records (recitals 25 to 44).

- **Ironing boards originating, inter alia, in the 'People's Republic of China³⁷**

The Chinese applicant was not granted MET since it was not able to prove that it fulfilled the first criterion

³¹ Five MET criteria based on EC 1225/2009, Art. 2.7 c):

- decisions of firms regarding prices, costs and inputs, including for instance raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard, and costs of major inputs substantially reflect market values,
- firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes,
- the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts,
- the firms concerned are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of firms, and
- exchange rate conversions are carried out at the market rate.

³² Regulation (EU) No 478/2010 of 1 June 2010.

³³ Regulation (EU) No 1105/2010 of 29 November 2010.

³⁴ Regulation (EU) No 372/2013 of 22 April 2013.

³⁵ Regulation (EU) No 946/2014 of 4 September 2014.

³⁶ Regulation (EU) No 1243/2010 of 20 December 2010.

³⁷ Regulation (EU) No 270/2010 of 29 March 2010.

of Article 2(7)(c) (recitals 12 to 32).

- **Ironing boards originating, inter alia, in the 'People's Republic of China (new exporter review)**³⁸

The applicant was not granted MET as it did not meet the second and third criteria as was laid down in Article 2(7)(c) of the Basic Regulation: clear set of basic accounting records and no significant distortions carried over from the former non-market economy system (recitals 14 to 23).

- **Threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand**³⁹

MET was denied to the two Chinese exporters who applied for as they did not fulfil the requirements of criterions 1 and 2 of Article 2(7)(c) of the Basic Regulation: business decisions and costs are made in response to market conditions and without significant State interference and clear set of basic accounting records (recitals 32 to 43).

These findings were confirmed by the definitive Regulation (recital 15).⁴⁰

- **Melamine originating in the People's Republic of China**⁴¹

The Commission found that none of the cooperating Chinese companies that had requested MET could show that they fulfilled the criteria set out in the first, second or third criterion of Article 2(7)(c) of the Basic Regulation (recitals 16 to 32).

These findings were confirmed by the definitive Regulation (recital 19).⁴²

- **Certain organic coated steel products originating in the People's Republic of China**⁴³

The Commission found that neither of the two groups of cooperating exporting producers in the PRC that had requested MET could show that they fulfilled the criteria set out in the first and second criterions of Article 2(7)(c) of the Basic Regulation (recitals 21 to 38).

These findings were confirmed in recital 23 of the definitive Regulation.⁴⁴

- **Oxalic acid originating in India and the 'People's Republic of China**⁴⁵

The investigated companies failed to prove their compliance with the either the first, second or third criteria of Article 2(7)(c) of the Basic Regulation and they were consequently not granted MET (recitals 26 to 32).

These findings were confirmed in recital 35 of the definitive Regulation.⁴⁶

- **Certain continuous filament glass fibre products originating in the People's Republic of China**⁴⁷

One sample exporter producer was granted MET (recital 28) whereas the others did not succeed due to

³⁸ Regulation (EU) No 77/2010 of 19 January 2010.

³⁹ Regulation (EU) No 1071/2012 of 14 November 2012.

⁴⁰ Regulation (EU) No 430/2013 of 13 May 2013.

⁴¹ Regulation (EU) No 1035/2010 of 15 November 2010.

⁴² Regulation (EU) No 457/2011 of 10 May 2011.

⁴³ Regulation (EU) No 845/2012 of 18 September 2012.

⁴⁴ Regulation (EU) No 214/2013 of 11 March 2013.

⁴⁵ Regulation (EU) No 1043/2011 of 19 October 2011.

⁴⁶ Regulation (EU) No 325/2012 of 12 April 2012.

⁴⁷ Regulation (EU) No 812/2010 of 15 September 2010.

the fact that their decision making was not considered to be free from State interference and also due to non-market oriented prices for the land use rights (recital 27).

This was confirmed in recital 35 of the definitive Regulation.⁴⁸

- **Certain open mesh fabrics of glass fibres originating in the People's Republic of China⁴⁹**

None of the two producers was granted MET. In the first case it was denied due to the fact that it submitted misleading information and in the second the reason was the non-fulfilment of the second criteria of 2(7)(c) of the Basic Regulation (recitals 31 and 32).

This was confirmed in recital 24 of the definitive Regulation.⁵⁰

- **Coated fine paper originating in the People's Republic of China⁵¹**

The exporting producer applying for MET was not able to prove that it fulfilled criterions 1, 2 and 3 of Article 2(7)(c) of the Basic Regulation (recitals 31 to 51).

This was confirmed in recital 60 of the definitive Regulation.⁵²

- **Certain aluminium foils in rolls originating in the People's Republic of China⁵³**

None of the two companies were granted the MET they were applying for due to the distortions in raw materials (aluminium) prices (recital 31). Moreover, the Commission also established the non-fulfilment by the Chinese aluminium industry of the first criterion of Article 2(7)(c) of the Basic Regulation (recitals 32 to 46).

The definitive Regulation confirmed these findings but granted MET to one of the companies (recitals 11 to 13).⁵⁴

- **Certain aluminium wheels originating in the People's Republic of China⁵⁵**

None of the companies was granted MET since they were not able to fulfil criterions 1, 2 or 3 (recitals 29 to 53).

This was confirmed in recital 45 of the definitive Regulation.⁵⁶

⁴⁸ Regulation (EU) No 248/2011 of 9 March 2011.

⁴⁹ Regulation (EU) No 138/2011 of 16 February 2011.

⁵⁰ Regulation (EU) No 791/2011 of 3 August 2011.

⁵¹ Regulation (EU) No 1042/2010 of 16 November 2010.

⁵² Regulation No 451/2011 of 6 May 2011.

⁵³ Regulation (EU) No 833/2012 of 17 September 2012.

⁵⁴ Regulation (EU) No 217/2013 of 11 March 2013.

⁵⁵ Regulation (EU) No 404/2010 of 10 May 2010.

⁵⁶ Regulation (EU) No 964/2010 of 25 October 2010.

Annex III - Price controls in China (2013)

Product	Type of control/rationale
Tobacco, salt and explosive materials	Government price. State monopoly. Establishment of purchasing price of tobacco leaves, wholesale price of salt. Guided price of explosive materials.
Fertilizers	Guided price: benchmark factory prices and fluctuations, port settlement prices.
Educational material	Government price The rationale is public interest.
Refined oil	The retail price is government-guided. Managed prices are determined on the basis of the price of crude oil on the international market plus the average processing fee, taxes and reasonable transportation fees in China. The rationale is the lack of adequate market competition.
Natural gas	The factory price of onshore gas is Central Government-guided while the pipeline transportation price is Central Government-set. The sales price of gas is controlled by the local government and is generally set by the latter. The rationale for maintaining price controls is that natural gas is considered a crucial public utility and the need to complete a full reform of the electricity system before liberalizing prices.
Military products	Factory government price. The rationale is defence and national security.
Electricity	The price of electricity is mainly set by the Government and monitored by the competent price authority. The price of electricity generated by power grids across provinces, autonomous regions and municipalities directly under the competent authority of the State Council at Central Government level and provincial-level power grids is approved by the competent price authority of the State Council, and the price of electricity generated by independent power grids below the provincial level is monitored by the governments of the provinces, autonomous regions and municipalities. The rationale for maintaining price controls is the nature of electricity prices as a crucial public utility price, as well as the lack of a fully completed reform of the electricity system.
Environment protection charges	Pollutant discharge levies mainly include sewage, waste gas, solid wastes and noise-discharge fees and are subject to Central Government-set prices. The rationale for maintaining price controls is that pollutant discharge levies are administrative charges and hence, must be controlled, as mandated by Article 47 of the Price Law, and stipulated in Article 36 of the Regulations on Price Control. The specific rationale for each charge is formulated by the State Council separately.
Urban household garbage disposal charges	Prices are set by local governments. The rationale for maintaining price control is that garbage disposal is a main public utility.
Water	Urban water prices are subject to price control by local governments. The rationale for maintaining this price control is that water supply is a natural monopoly.
Sewage disposal charges	Set by local governments. The rationale for maintaining price control is that sewage disposal is a main public utility.
Financial settlement and trading service fees	Fees for basic settlements such as bank drafts, cash remittances, acceptance of bills of exchange, promissory notes and cheques, and foreign exchange are set by the Central Government. Bank card-swiping service fees are Central Government-guided. The rationale for maintaining price controls is lack of full competition.
Charges of some construction projects	Land-expropriation administrative charges and house-ownership registration charges are set by the Central Government. The rationale is that they are administrative affairs charges.
Operational service charges	Subject to government prices or government-guided prices. The rationale is public interest or lack of full competition.
Real estate prices and charges of related services	Benchmark land prices, economic housing prices, low-price house rental and property service charges are subject to local government-guided prices. The rationale is public interest.
Entrance to sightseeing sites	Local government-guided prices. The rationale is public interests.
Railway transportation fares	Railway-passenger and cargo-transportation fares and miscellaneous charges are mainly government-set or government-guided prices. The rationale is that railway transport closely relates to national economic and social development and people's livelihoods and is to some extent a monopoly.
Harbour charges	Mainly subject to government-set prices and government-guided prices. Charges of major harbours along coastal lines and the Yangtze River and all harbours opened up to the world are administered by the Central Government; charges of other domestic trade harbours are administered by local governments. The rationale is that harbours are important public infrastructure that closely relate to national economic and social development and are to some extent a regional monopoly business.
Air transport prices and airport charges	Civil domestic flight prices are mainly government-guided prices; both the benchmark rates and their fluctuation range are determined by the Central Government. The rationale is that the civil domestic flight market is still developing and civil aviation does not fully compete with other means of transport.
Civil airport charges	Mainly government-guided, the benchmark rates and fluctuation range of which are determined by the Central Government. The rationale is that airports closely relate to national economic and social development and people's livelihood and are to some extent natural monopolies.
Basic postal service fees	Government-set. The rationale relates to people's livelihoods.
Basic telecommunication service charges	Mainly government-set and government-guided. The rationale is inadequate competition and close relation to the national economic and social development and people's livelihood.
Medicines and medical services	Government-set prices or government-guided prices are applied for medicines listed in the catalogue of medicines covered by the basic medical insurance and for medicines outside the said catalogue but in monopoly operation. Government-guided prices apply to basic medical services provided by non-profit medical institutions. The rationale is economic importance and effect on people's livelihoods, public interest and, to some extent, lack of market competition.

Annex IV - How does the EU determine dumping?

When the EU tries to determine if a trade partner has "dumped" goods on the EU market, the question is whether the trade partner's prices are unfair because they are lower than their "normal value".

How the EU determines the normal value depends on the exporting country's market economy status (MES).

