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Should China be Granted Market Economy Status? : In View of Recent Development

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The Protocol for China's accession into the WTO stipulated certain differential treatment for China, including the determination of normal value in anti-dumping investigations for the transitional period of 15 years. This treatment was authorized by the Protocol in response to concerns raised by other WTO Members at the time of China's entry into the WTO. Since the transitional period is over in November 2016, there is an argument supporting the grant of market economy status to China, although the Protocol does not require the automatic grant of market economy after the passage of the transitional period. However, China's recent trade measures, which have been adopted to press another WTO Member to meet its political objective, raise a question as to whether China is indeed ready for market economy status. This article analyzes such case and offers a view on the grant of market economy status to China.

Keywords: China, WTO, Market Economy Status, GATT/WTO Rules, Trade Governance

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1. Introduction

On December 12, 2016, China requested consultations with the US and the EU[1] concerning certain provisions of the US trade law and the EU regulation,[2] which set forth methodologies to determine normal value in anti-dumping proceedings involving products exported from China. Neither the US nor the EU currently grants China "market economy status,"[3] and the relevant provisions of the US trade law and the EU regulation authorize them to adopt the methodology that allows the determination of normal value on the basis of the production factors (plus amounts for general expenses and profit) as identified in a third "market economy country."[4]

This practice, allowing the use of surrogate values, exposes a substantial portion of Chinese exports to anti-dumping challenges, because the competitiveness of much of the Chinese exports is based on the costs of production, including labor cost, that are lower than those of its competing trade partners.[5] However, the US and the EU practice would be supported by the argument that the role of the government and state-owned enterprises ("SOEs") is substantial in China's economy, and the government support lowers the cost of production in China in a way that is not available in other market-economy countries.[6] There is a little justification to inhibit the expansion of exports based on the exporting country's innate competitiveness, such as lower labor cost. If the lower production cost is not a result of economic competitiveness but of the economic structure that allows government support and control of the economy and trade, however, there is a legitimate interest in adjusting the gaps created by the structural difference.

There is also a broader trade-governance related concern that is associated with the recognition of market economy status. All governments influence international trade one way or another for their own political and economic concerns.[7] However, if the government of an importing country readily controls exports and imports beyond what is permitted under the GATT/WTO legal regime to meet its own political objectives, then this practice will be inconsistent with the core principles of the market economy, because the supply and demand of goods and services would then be influenced by governmental decisions, rather than market forces. The Chinese government has recently adopted a series of measures, arguably outside the GATT/WTO rules. It restricted imports of certain services and goods