

Denying China market economy status would be 'bad politics'

Written by David Kleimann and Sophia Müller on 29 September 2015



Granting China market economy status would not be a threat to EU jobs, argue David Kleimann and Sophia Müller.

The recent release of a report on the consequences of the EU granting 'market economy status' (MES) to China gained much media attention in Brussels.

The study, commissioned by a group of European industry associations and prepared by the US-based Economic Policy Institute (EPI), asserts that Europe will face large-scale negative output and employment effects should EU institutions decide to grant MES to China by 11 December 2016.

China's MES status, under World Trade Organisation (WTO) law and EU secondary legislation, is relevant as it will affect the amount of duties that the European Commission may impose on imports that are sold at below market value. More precisely, granting MES would change the method that the Commission must use to determine the market value of the merchandise export under investigation.

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China's non-market economy status currently allows the European Commission to impose highly effective anti-dumping duties on Chinese exports. MES conferral to China, the EPI report argues, would deprive the Commission of the single most effective trade defence instrument that is appropriate to protect vulnerable EU industries against unfair Chinese trade. Loosing this tool of protection would result in highly adverse output and employment effects.

The assumptions and conclusions presented in the EPI report are highly deceptive and misleading in regard of three critical aspects.

First, the EPI report assumption that granting MES to China is a matter of EU domestic political discretion is flawed. In reality, MES conferral makes for a clear-cut international legal obligation of the Union under WTO law.

Any rigorous legal analysis of section 15 of China's WTO accession protocol allows for only one conclusion. After 11 December 2016, WTO member governments - and therefore EU anti-dumping investigators - are required to calculate anti-dumping margins on the basis of 'normal value' price comparisons.

Legal arguments that propose otherwise are adventurous at best, and motivated by incentives set by special interest advocacy, at worst.

The deliberate neglect of EU international legal obligations would signal nothing less than the willingness of the Union to sacrifice its commitments to the rule of law as well as free and fair trade, which are enshrined in its constitutional framework.

Furthermore, it would render the EU highly vulnerable to challenge in the dispute settlement body of the WTO and could easily transform into a full-blown trade war.

We therefore strongly support the conclusions of the legal services of the European Commission and the European Parliament on this matter.

Secondly, we argue that the EPI report greatly misjudges the array of alternative strategic opportunities and instruments to safeguard EU producer interests that are available under the present EU and WTO trade defence framework.

The report's conclusions are based on the assumption that EU industries will be vulnerable to import surges from China if left unprotected by pre-2016 anti-dumping measures. This is not the case. The authors of the report completely ignore the fact that a strategic shift from anti-dumping to anti-subsidy investigations will enable the EU to preserve all main features of its current trade defence practice against China well beyond 2016.

This is because dumped Chinese export prices are mostly the result of Chinese government subsidies.

As a recent study demonstrates anti-subsidy investigations offer a valid and highly effective alternative to the current anti-dumping approach.

It is beyond doubt that anti-subsidy investigations will offer adequate protection to EU producers' vis-à-vis their Chinese competitors.

Finally, a delay of MES conferral to China beyond December 2016 is not only unlawful and economically unnecessary. It is also bad politics.

The broad range of EU economic and foreign policy priorities warrants a cooperative and rules-based approach to the integration of China in the world economy.

Ignoring the Union's international obligations in such a prominent and politically charged instance carries a high risk of generating an adversarial atmosphere among the respective interlocutors in commercial diplomacy without good and legitimate cause.

Link to full report: Link: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2665960 [5]

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