

**Errata for the article**

**MARKET ECONOMY STATUS FOR CHINA  
IN ANTI-DUMPING PROCEDURES – WHAT IS REALLY MATTERS?**

**p. 4** line 15

there is: what is really matters?

it should be: why does it matter?

**p. 8** line 6

there is: WHAT IS REALLY MATTERS?

it should be: WHY DOES IT MATTER?

The publishers would like to apologize to the author and the readers for these errors.

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## Asian Economies in the Context of Globalization



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## Contents

<b>Introduction</b> .....	7
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### Part 1. Asian Economies in the Global Context

---

<b>Tadeusz Sporek:</b> The dimensions and features in the economy and politics of the contemporary world / Wymiary i cechy gospodarki i polityki we współczesnym świecie.....	11
<b>Małgorzata Bartosik-Purgat:</b> Social media as a source of information about products and services in the light of cross-cultural research in China, Poland and United States / Media społecznościowe jako źródło informacji o produktach i usługach w świetle badań międzykulturowych w Chinach, Polsce i Stanach Zjednoczonych .....	22
<b>Elżbieta Majchrowska:</b> Mega-regional blocs in global trade – from noodle bowl to jigsaw puzzle – the RCEP case / Megaregionalne bloki w handlu globalnym – od „noodle bowl” do „jigsaw puzzle” – przypadek RCEP....	32
<b>Joanna Skrzypczyńska:</b> Market Economy Status for China in anti-dumping procedures – what is really matters? / Status gospodarki rynkowej dla Chin w procedurach antydumpingowych – dlaczego jest ważny? .....	46
<b>Grzegorz Mazur:</b> EU-India Bilateral Trade and Investment Agreement – stumbling blocks on the way to consensus / Dwustronne porozumienie w sprawie handlu i inwestycji między UE a Indiami – przeszkody na drodze do konsensu.....	55
<b>Katarzyna Kita:</b> Polish agri-food products and their international competitiveness in trade with ASEAN – the context of the trade-liberalization process / Polski handel zagraniczny artykułami rolno-spożywczymi z ASEAN i ich pozycja konkurencyjna w warunkach liberalizacji światowego handlu rolnego.....	67

---

### Part 2. Asian Economies in the Regional Context

---

<b>Paweł Pasierbiak:</b> Trade regionalization in contemporary East Asia / Regionalizacja handlowa we współczesnej Azji Wschodniej.....	83
<b>Sebastian Bobowski:</b> Another insight into Asian trade regionalism. ASEAN-Japan economic partnership / Kolejny wgląd w azjatycki regionalizm handlowy: partnerstwo gospodarcze ASEAN-Japonia .....	95

<b>Anna Kuropka, Anna H. Jankowiak:</b> The impact of natural disasters on economy and production networks in ASEAN / Wpływ katastrof naturalnych na gospodarkę i sieci produkcyjne w ASEAN.....	111
<b>Malgorzata Żmuda:</b> Evaluating sustainability and transferability of the “Singaporean Competitiveness Model”: Lessons for the catching-up European states / Ocena „Singapurskiego Modelu Konkurencyjności”: lekcje dla europejskich gospodarek doganiających .....	123

---

### Part 3. Asian Economies in the Local Context

---

<b>Joanna Bogołębska:</b> China as an immature creditor country – the dilemmas for its monetary policy / Chiny jako niedojrzały kredytodawca – dylematy ich polityki monetarnej .....	137
<b>Artur Klimek:</b> Cross-border mergers and acquisitions by Chinese state-controlled enterprises / Fuzje i przejęcia zagraniczne przeprowadzone przez chińskie przedsiębiorstwa państwowe .....	147
<b>Sebastian Stępień, Agnieszka Sapa:</b> Chinese pork sector in the process of world economy globalization / Chiński sektor mięsa wieprzowego w procesie globalizacji gospodarki światowej.....	156
<b>Iwona Sobol:</b> Development of Islamic banking in Indonesia / Rozwój bankowości islamskiej w Indonezji.....	168
<b>Marta Kightley:</b> Why the regime change in North Korea will not come from society – an evolutionary game theory explanation / Dlaczego zmiana reżimu w Korei Północnej nie nastąpi pod wpływem społeczeństwa – wyjaśnienie za pomocą ewolucyjnej teorii gier .....	178

## Introduction

It is our great pleasure to deliver another volume of Research Papers on Asia-Pacific economic issues. Each year we present you multiple points of view on that topic, trying to show how much the processes in Asia & Pacific affect the world economy. After nine years of hosting international scientific conference dealing with that region's affairs, we are still confident that these issues are important not only for the countries of the region, but also for economies worldwide.

This year we have chosen for you 15 articles. All of them were submitted for this year's conference entitled "Asian Economies in the Context of Globalization". Seeing that some authors describe the issues of countrywide importance and others of those having regional or global meaning, we have decided to group them according to the criterion of impact range.

The first chapter – Asian Economies in the Global Context – is a collection of papers on general regionalization or globalization issues. T. Sporek is trying to refresh the view of the globalization processes occurring at the crossroads of economy and politics. M. Bartosik-Purgat is analyzing sources of information about products and services in the light of cross-cultural research. E. Majchrowska is using Regional Comprehensive Economic Partnership case to show the importance of mega-regional blocks in global trade. In addition, we decided to add to this part the articles the subject of which is not so general, but it applies to trade relationships of a global nature. This will be the EU-India trade and investment agreement (G. Mazur), Poland-ASEAN agri-food products trade (K. Kita) or anti-dumping procedures against China under WTO rules (J. Skrzypczyńska).

Articles in the second chapter are – as the title implies – embedded in a regional context. P. Pasierbiak deals with trade regionalization in East Asia. S. Bobowski offers an insight into ASEAN-Japan Economic Partnership. A. Kuropka and A.H. Jankowiak analyse the impact of natural disasters on production networks in the region. As the last in this section we have placed the article about Singaporean Competitiveness Model applied in European economies (M. Żmuda). It may be not strictly connected with Asia & Pacific, but its concept is to transfer Asian experience to Europe at the regional level.

The last chapter – Asian Economies in the Local Context – is mostly about domestic matters of Asian countries. You will find there three articles about China (J. Bogołębska writing about Chinese monetary policy, A. Klimek describing cross-border mergers and acquisitions by Chinese state-controlled enterprises, S. Stępień and A. Sapa showing Chinese pork sector), one about Indonesia (*Development of Islamic banking in Indonesia* by I. Sobol) and one about North Korea (M. Kightley applying game theory in prediction of political changes in that state).

We think it is an interesting set of papers you will find valuable in your studies. We also hope that your scientific interests will continue to be associated with Asia and that is why we invite you to the 10<sup>th</sup> anniversary conference which will be held at the Wrocław University of Economics in November 2017.

We appreciate your time and consideration, as also time and effort of our peer reviewers. We look forward to the further submissions of interesting papers on Asia & Pacific. Thank you!

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## **MARKET ECONOMY STATUS FOR CHINA IN ANTI-DUMPING PROCEDURES – WHAT IS REALLY MATTERS?<sup>1</sup>**

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## **STATUS GOSPODARKI RYNKOWEJ DLA CHIN W PROCEDURACH ANTYDUMPINGOWYCH – DLACZEGO JEST WAŻNY?**

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DOI: 10.15611/pn.2016.447.04

**Summary:** The paper examines specific aspects of China’s membership in the World Trade Organization (WTO). China has been a member of WTO since 11 December 2001. The main thesis of this paper is that the Chinese membership in the WTO is not full because China has still not been granted “Market Economy” status. This is the reason why the anti-dumping procedures against China are much simpler than against any other WTO member. The main goal of this paper is to describe the antidumping procedure in the WTO and present the differences between procedures against countries with Non-Market Economy Status (China example) and with Market Economy Status.

**Keywords:** Dumping, China, WTO, Market Economy Status.

**Summary:** Przedmiotem artykułu są wybrane aspekty członkostwa Chin w Światowej Organizacji Handlu (WTO). Chiny są członkiem WTO od 11 grudnia 2001 r. W artykule przyjęto tezę, że chińskie członkostwo w WTO nie jest pełne, ponieważ Chinom nie został nadal przyznany status „gospodarki rynkowej” przez największych partnerów handlowych (UE i USA). W związku z tym procedury antydumpingowe przeciwko Chinom są znacznie prostsze niż wobec jakiegokolwiek innego członka WTO.

**Słowa kluczowe:** dumping, Chiny, WTO, status gospodarki rynkowej.

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<sup>1</sup> This article is a part of the project: The European Union in the face of the intensive development of the People’s Republic of China Project, ID 2013/11/B/HS5/03572, financed by the Ministry of Science and Higher Education, Poland.

## 1. Introduction

The main goal of this paper is to describe antidumping procedure in the World Trade Organization (WTO) and present the differences between procedures against countries with a Non-Market Economy (NME) status and a Market Economy Status (MES). Another vital question examined in this paper is whether the Chinese government will be granted a Market Economy Status by the end of 2016.

This paper focuses on two pillars of anti-dumping procedures and the process for granting a Market Economy Status for China. The first step to proceed is to describe anti-dumping procedures under WTO rules. The second step is to discuss the factors influencing the European Union's (EU) decision to grant a Market Economy Status to China. It is important to establish that China is an example of a country which is treated by its most important trade partners (the EU and USA) as a non-market economy country.

Non-market economies is the particular situation of economies where the government has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, GATT 1994 and the Agreement recognize that a strict comparison with home market prices may not be appropriate. Importing countries have thus exercised significant discretion in the calculation of normal value of products exported from non-market economies.

First of all, granting a Market Economy Status for China is not only a technical and economic issue, but also a political decision with important consequences for the EU-China relationship, and what might be even more important, for the EU-US relationship, given the recent Transatlantic Trade and Investment Partnership (TTIP) Agreement negotiations.

Second, granting a Market Economy Status for China is a very sensitive issue, especially for the European Union, because removing the possibility of imposing duties will result in China dumping goods in Europe, leading to job losses, and may cause deeper economic crisis in the European Union. Europe's traditional industries have led the campaign to deny China's MES. They argue that cheap steel from China destroys the European economy and without the possibility of imposing antidumping duties the future of this branch of EU economy is at risk. The steel lobby (for instance, Eurofer which represents European steel firms<sup>2</sup>) has tried to persuade EU political leaders that granting the MSE for China will destroy the European steel industry.

Third, there is no consensus or a unified voice among EU countries on whether China should be granted a MES. In spite of the fact that the EU trade policy has been conducted at the Community level since 1970 and its creation was preceded by the creation in 1968 of a customs union between Germany, France, Italy and the Benelux countries, there is no common strategy regarding China's Market Economy Status.

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<sup>2</sup> See [<http://www.eurofer.org/Issues%26Positions/Market%20Economy%20Status%20%20China/Market%20Economy%20Status%20-%20China.itpl>].

Anti-dumping proceedings are of great importance to the effectiveness of the EU's common trade policy. They allow for fighting with price competition from China and are an effective tool of trade protectionism. Despite that the European Union is split over whether to grant China a MES. Germany and Great Britain are likely to be more ready to accept the Chinese pleas than Italy or other EU member state countries.

Under Section 15 of the Chinese WTO Accession Protocol, China can be treated as a non-market economy (NME) in anti-dumping proceedings. NME treatment often leads to the determination of higher anti-dumping duties. S. van Kerckhoven and A. Luyten [2014] point out “that the categorization as a non-market economy increases the chances of anti-dumping investigations on its products, through the price comparability mechanism.”

However, the correct interpretation of Section 15(d) of the Chinese WTO Accession Protocol has come under debate, as well as whether the latter section stipulates automatic granting of Market Economy Status to China after December 2016 [Puccio 2015, p. 1].

The literature on China's accession to the WTO and antidumping procedures is extensive. For China, formal accession to the WTO symbolized an important step of its integration into the global economy [Caira 2010; Guijun, Bi 2015; Manjiao 2012; Kerckhoven, Luyten 2014]. Some authors argue that according to the Chinese WTO Accession Protocol China should get the MES at the end of 2016 (e.g. [Tietje, Nowrot 2011; Rao 2013]. Another strand of literature, however, builds on that the expiry of section 15(a)(ii) of China's Accession Protocol does not imply that all WTO Members would have to recognize China as a “market economy” and the problem lies in the interpretation of Article 15 (Puccio 2015; [Vermulst et al. 2016]. Some strongly argue that this provision requires not granting automatically “market economy” status to China by year-end 2016 (e.g., [O'Connor 2011, 2016], specifically that China does not fulfil the MES criteria.<sup>3</sup>

## 2. An overview of anti-dumping procedure in the WTO

WTO agreements are based upon the ideas of progressive liberalization of market access, transparency, and non-discrimination emanating from the 1947 GATT [Cottier 2015, p. 6]. According to S.M. Trommer, “the idea of anti-dumping has been subject to academic and political debate. The academic debate on the economic

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<sup>3</sup> The EU has five criteria to grant MES: “a low degree of government influence over the allocation of resources and decisions of enterprises, the existence and implementation of a transparent and non-discriminatory company law, the existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights, the existence of a genuine financial sector which operates independently from the state, an absence of state-induced distortions in the operation of enterprises linked to privatization and the use of non-market trading or compensation system” [[http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc\\_143599.pdf](http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143599.pdf)].

rationale behind antidumping action remains controversial. Injurious dumping is generally perceived as a problem because domestic producers are competing with the products entering their market at artificially low prices” [Trommer 2007, p. 567].

Trade protection instruments including anti-dumping, anti-subsidy and tools against extensive import procedures, are now much more effective in defensive trade policy than the so-called “classical” trade policy instruments that rely primarily on custom duties. The most commonly used instrument of protection is the anti-dumping procedure.

The popularity of anti-dumping practices is due to the fact that companies, not governments, are accused of dumping as in the case of subsidies. Anti-dumping law has also similar functions internationally as the functions played by competition rules on the national market.

Besides that, the increasing trade imbalance with China, the leading role of China in global export and the price competition of Chinese products have brought about serious consequences for China in the amount of anti-dumping investigations on the WTO forum. As long as China’s pro-export trade policy and non-market economy status persist, trade remedy issues will remain one of the major types of WTO cases for China in the nearest future [Manjiao 2012, p. 34].

It is also important that traditional instruments of market protection do not deal with dumping practices and price competition. Ordinary custom duty does not give enough protection, especially since when customs duties are regularly cut under WTO agreements and previously under GATT regulations. Trade liberalization has changed the role of duties in international trade, especially in industry products. The average level of tariffs on industrial goods is 3.8%. As a result of the Uruguay Round agreements, developed countries cut tariffs on industrial products from an average of 6.3% to 3.8 % (WTO data). The situation is different in the case of trade in agricultural products, where customs duties are still a vital protection measures, especially in developed countries’ trade policies. Tariffs on all agricultural products are now bound and almost all import restrictions that did not take the form of tariffs, such as quotas, have been converted to tariffs. Dumping is defined in the Agreement on Implementation of Article VI of the GATT 1994 (The Anti-Dumping Agreement) as the introduction of a product into the commerce of another country at less than its normal value. Under Article VI of GATT 1994, and the Anti-Dumping Agreement, WTO Members can impose anti-dumping measures. Dumping is calculated on the basis of a “fair comparison” between normal value (the price of the imported product in the “ordinary course of trade” in the country of origin or export) and export price (the price of the product in the country of import). Article 2 contains detailed provisions governing the calculation of normal value and export price, and elements of the fair comparison that must be made (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994). The relatively rare case of dumping is to sell goods below the cost of production. This is an extreme example of dumping.

The relevant question is what a normal value is and how it should be counted. According to WTO stipulations, “the normal value is generally the price of the product at issue, in the ordinary course of trade, when destined for consumption in the exporting country market. In certain circumstances, for example when there are no sales in the domestic market, it may not be possible to determine normal value on this basis. The Agreement provides alternative methods for the determination of normal value in such cases.” For countries without market economy status it is possible to calculate the normal value as a value of the same or similar good on market of any other WTO member. If we use, for example, the Canadian market to compare normal and export price of a Chinese product, that for sure dumping will be easier to prove, because of differences in normal (Canadian) price and export price. According to P.A. Messerlin, “NME status allows foreigner investigator to use proxies for estimating the home market prices or costs of Chinese exports. Such proxies make the proof of the existence of antidumping much easier than under the antidumping rules for market economies” [Messerlin 2004, p. 42].

To take action against dumping, some necessary conditions must be fulfilled. First of all, antidumping duties are allowed as a trade response only if the practice causes or threatens to cause a material injury to an industry or the export market [Folsom 2014, p. 132]. There should also be a link between the injury to the competing industry and the dumping. This is relevant because the investigator government rarely takes antidumping action automatically, with their own anti-dumping measures can only be applied if the dumping is hurting the industry in the importing country initiative. Usually, the antidumping procedure is starting at the request of injured parties. In addition, the decision-making body should take into account the interests of consumers.

The key issue in actions against dumping is the concept of dumping margin. The dumping margin is the difference between the normal price and the dumping price. The level of dumping margin has a direct influence on the maximum amount of anti-dumping duty that can be imposed on the exporter.

In case of dumping, the investigator may impose anti-dumping duties (usually these are ad valorem duties) on existing customs duties for a maximum period of 5 years. Anti-dumping measures must expire five years after the date of imposition, unless an investigation shows that ending the measure would lead to injury. These duties may be extended for another five years after the verification proceedings. In a situation where the accused party is willing to cooperate, the investigator may adopt the so-called price undertaking, which means that an exporter alone will raise the price of goods beyond dumping price without the need to impose antidumping duties. The whole antidumping procedure should be completed within one year and a maximum close-up of 15 months.

### 3. Market Economy Status for China – what is at stake?

Despite World Trade Organization (WTO) principles of non-discrimination, there are some exceptions to special anti-dumping procedures against certain former State-trading nations, arguing that in transition economies, prices do not fulfil the same function as in market economies, thus being an unreliable indicator for the purpose of anti-dumping calculations [Trommer 2007, p. 565].

The protocol of China's Accession to the WTO provides for a 15-year transition period to grant China Market Economy Status [Messerlin 2004, p. 29]. China still does not have that status, and the protocol to join the WTO stipulates China's status as "non-market economy" (NME). This means that China's economy is defined as "centrally controlled from the pervasive influence of the government on prices, exchange rate and other aspects of the economy" [Lou 2010, p. 162]. A country considered a "market economy" should, *inter alia*, be characterized by floating exchange rate, free market, a clear definition of property rights and insolvency law [Gajdos, Bendini 2013]. No market economy status facilitates the application of anti-dumping procedures against China. It also means that the normal price can be considered the price of dumped goods on a different market than the Chinese market [Snyder 2010, pp. 252, 253]. Until Chinese firms prove that they operate under market economy conditions, they will be treated in a different way than other market economy companies. The application of these procedures against the PRC causes considerable loss of Chinese manufacturers and facilitates. According to China's WTO accession protocol, China should receive such a status in 2016. China's potential receipt of a Market Economy Status in December 2016 will, in practice, mean dealing with imports from China in the same way as with any other member of the WTO with a Market-Economy Status.

Why is this issue so sensitive for many WTO members including the two biggest Chinese trade partners: the European Union and the United States? There is no one simple answer. Price competition from China seems to be a relevant threat for Chinese trading partners. First of all, most consumer goods are produced in Asia, some of them in China and exported on European and American markets. That can cause injury to domestic industries. But on the other hand, part of those products are produced for European and American companies. What is more, the vital branch of the European and American economy is import. The open question is: when an investigator places antidumping duties on an imported good from China, who will be hurt the most: the Chinese producer or a foreign importer? This example shows that granting China a Market Economy Status is not a zero-sum game. The interests of importers and producers on the domestic market are completely different. Importers of semi-finished products and consumers' goods are mostly against antidumping duties. On the other hand, domestic producers of similar goods strongly support the idea of antidumping duties. The European Commission must take under consideration the interests of both sides. What is more, they cannot forget about

consumers and their interests. Most of them want to buy as cheap as possible. On the other hand, there are also groups of consumers which support local and regional companies, which do not import from Asia and are ready to pay more for locally produced goods, especially for food.

China's Accession Protocol to WTO allows WTO members to judge according to their domestic law whether China should reach a Market Economy Status or not. MES requests are evaluated on the basis of five criteria which aim to establish whether the economic conditions in the country concerned have evolved to the extent that prices and costs can reliably be used for the purpose of trade defence investigations. From a legal point of view the EU has five criteria to grant MES: allocation of economic resources by the market, the removal of barter trade, corporate governance, property rights and an open financial sector. According to O'Connor "China has met only the removal of barter trade" [Vincentini 2016].

Among the MES criteria, the criterion on exchange rates seems to be especially sensitive and vital for China's MES. As long as China uses an artificial exchange rate for their currency, the yuan, they will lead a pro export policy. This kind of currency manipulation helps Chinese's exports to be more competitive compared to American or European products.

To sum up, policy-makers will face both domestic and international factors in their decision to grant China a MES or not. Among the domestic factors, the most important seems to be different WTO members' interests in important sectors, such as the steel and textile industry. Except the EU, the main countries which still consider China as a NME are the USA, Canada, Japan, Mexico and India. Most of those countries are actively using trade remedies against China. What is more, the United States government is pressing the EU not to grant China MES automatically at the end of 2016. The US administration can use the TTIP negotiations to influence the European Union's decision.

#### **4. Conclusions**

To sum up, dumping and antidumping is a mixed picture and there is no simple solution to this problem. This issue is sensitive and relevant for a number of reasons. It brings a big challenge for both EU governments and other global leaders. On the one hand, the EU leaders have to protect the European economy but, on the other, their national interest and good relations with China are also very important for most of them. China is a big and important market, so the question is: for how long can the European Union postpone the time for granting the Market Economy Status for China?

The open question is what will happen if the EU and the USA do not grant China a market economy status treatment in 2016? In such a situation China would be very likely to bring WTO disputes against the US and EU if they continued to withhold MES after that date. Because China argues that due to Protocol of China's Accession

to the WTO by the end of 2016 all WTO members are required to grant MES. How the WTO dispute panels would decide if China brought such a case to the panel can only be guessed. For sure starting such argue may bring exacerbation of trade relations with China both for the European Union and the United States. According to the WTO dispute settlement body such a dispute can last more than a year.

It is worth noting that another controversial WTO member, the Russian Federation, has been granted MES, from both major trade partners European Union and United States in 2002. The question is whether Russia's economy is more of a market economy than that of China. For the purpose of anti-dumping proceedings, Russia has, to date, not been considered as having a market economy because of the extent of state influence on individual companies but after granting the status of market economy the calculation of dumping margins, costs and prices is based on Russian producers or the Russian market. Market economy status only matters in trade defence policy and it is relevant that on the European market there are not a lot of "made in Russia" products. EU and US companies do not have to compete with Russian products on their markets, so granting a Market Economy Status to the Russian Federation did not bring a real threat for those markets. According to this example the Chinese government may accuse the European Union and the United States of using double standards. It is highly debatable whether Russia meets the EU's market economy criteria and whether it is more market economy than China. This has political and economic relevance for how the European Union will deal in the case of such accusations.

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