

The Export Dilemma of China under the WTO Framework: An Anti-Dumping Study on the Determination of Market Economy Status

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Abstract: As China emerges as a dominant force in the global economy, the issue of non-market economy status has become a key issue, particularly in the face of biased anti-dumping measures enforced by other nations. These measures have seriously affected China's export-oriented economy by creating substantial trade barriers. The essay utilizes a blend of literature review, comparative analysis, and data examination, drawing on historical experience and the legal principles and rules as outlined in the WTO agreements. The results show that although China has achieved certain advancements in pursuing acknowledgment of its market economy status, it still faces significant challenges due to political and economic factors. This essay will discuss anti-dumping measures exert considerable pressure on businesses operating within developing economies, and on this basis, it will provide corresponding thoughts and suggestions for China to secure the market economy status, and for Chinese enterprises not to be hit by it as far as possible.

Keywords: Non-Market Economy Status, Chinese Multinational Enterprises, Anti-Dumping Measures.

1. Introduction

When a product is sold at an export price that is below the comparable domestic price, it is regarded as being introduced into the importing country's market at a price below its normal value, under typical trade conditions, for a similar product intended for consumption in the exporting country. If such a domestic price is unavailable, the product's price is considered lower if it is below either the highest comparable price for export under standard trading conditions to a third country, or based on the production costs in the originating country with an appropriate addition for selling expenses and profit [1]. At this point, the reduced prices of imported goods will inevitably affect the sales of local products, thus adversely affecting domestic enterprises. The concept of anti-dumping was born, which was supposed to be a relief measure to safeguard the growth of domestic businesses. However, in the current World Trade Organisation, certain countries, mainly led by developed countries, are implementing unjust anti-dumping measures, with the designation of non-market economy status being a crucial element in this.

2. The Status of Non-market Economy and Its Relation to Anti-dumping

To grasp the connection between China's market economy status and anti-dumping investigations, it's essential to first examine the definition of non-market economy (NME) status and understand how the determination of dumping is influenced when a country is classified as an NME.

2.1. Non-Market Economy Status within the Framework of the World Trade Organization

Non-market economy status means that a country or economy is considered to have prices, costs and production factors in international trade that are not entirely governed by market supply and demand, but are subject to government intervention or control.

In simpler terms, the key features of non-market economy status are evident in the following aspects. Firstly, the Government has a significant influence related to the output, pricing, and expense factors of enterprises. For example, the government will intervene in the market through subsidies, tax incentives or price controls. As a result, market supply and demand do not dictate the prices of goods and services; instead, they are shaped by government policies and directives. A possible consequence is that, as a result of government intervention, firms' cost data may be untrue or unreliable and fail to reflect true market conditions.

2.2. Origins of the Issue of Non-market Economy Status

The term 'market economy status' was initially an economic concept, not an international law concept, and there was no relevant definition or interpretation in international law [2]. Following the conclusion of the Second World War, the global economy required significant reconstruction and recovery. To prevent a recurrence of the pre-war errors of trade protectionism and economic blockades, the international community decided to establish a multilateral trading system to support the promotion of free trade. GATT (General Agreement on Tariffs and Trade) came into being, with the primary goal of fostering international trade through lowering tariffs and dismantling trade barriers. The initial focus was negotiating and reducing tariffs and establishing a multilateral trading system. In the 1970s, the United States and a few other countries applied the provisions of their domestic laws on 'market economy status' to their economic and trade relations with socialist countries such as China, thus making it a political tool that transcends the economic sphere.

The provision on non-market economies first appeared in the Tariff Act of 1930 of the U.S. In 1974, the U.S. Trade Act specifically listed 406 provisions on market disruption for socialist countries, for example, the Soviet Union and China, which the U.S. considered to be planned economies in which the government regulated all aspects of production and distribution, and the market had no role to play in socialist countries. The United States believes that these socialist countries are planned economies where the government regulates all aspects of production and sales, and the market plays no role in socialist countries.

2.3. The Drawbacks Associated with being Classified as a Non-market Economy

The identification of a market economy has important implications in international anti-dumping. If the exporting country of a product is recognised by the importing country as a non-market economy country, the importing country, when conducting an anti-dumping investigation, can refer to the price data of a third country (i.e. a "substitute country") which it deems a 'market economy country' for the purpose of determining the normal value of the product in question in the exporting country (region). The normal value of the product in question, and then assess the extent of dumping. The investigating authorities of importing countries often choose as "substitute countries" countries whose domestic

selling prices or production costs are much higher than those of the exporting country under investigation.

Take the following case as an aid to understanding. In a particular case of mushroom trade with the United States, the United States imposed anti-dumping measures on China and used Indonesia as a substitute country. Although Indonesia and China are both developing countries, the mushroom product is mainly grown in the temperate zone, while Indonesia is in the tropics. Therefore, Indonesia's mushroom product has to be grown in special air-conditioned rooms, and the cost is much higher than that of China's product. The cost thus calculated is obviously much higher than that of China, and it is not appropriate to find China's dumping margin on this basis.

The purpose of recognising non-market economy status has been made clear from the discussion of the foundations as above. When considering anti-dumping investigations, against non-market economies, importing countries often determine that market prices and costs in these countries do not reflect true supply and demand. Data on prices or costs of similar products in a substitute country (usually a market economy) are then used to determine “normal value”. Higher dumping margins typically occur because substitute country costs are often higher than those in the non-market economy, leading to increased anti-dumping duties that reduce the competitiveness of the exporting country's products. Worse still, because of the use of substitution country data, it is difficult for firms in non-market economies to justify their prices, and thus they can easily be found guilty of dumping.

3. China's Market Economy Status Determination

Powered by economic globalisation, China rapidly grew into the world's second-largest economy and a primary engine of global growth. In 2023, China's GDP reached \$17.8 trillion, accounting for about 17 per cent of global GDP [3]. In addition, China's manufacturing value-added accounts for about 30% of the global share, ranking first in the world for 14 consecutive years [4]. The data reveal that China is a global leader in economic size and is widely recognised for its key role in the global industrial and supply chains. Consequently, examining the effects of anti-dumping measures and market economy status on China's exports is crucial. This paper therefore chooses China as the object of discussion.

3.1. China is Facing Difficulties Caused by Anti-dumping

WTO Global Trade Prosperity Index report shows that in 2018, the growth rate of world trade slowed down, reaching only 3.9 per cent level. Amid global economic challenges, countries have employed trade protection measures to support their domestic growth. Globally, between 1995 and 2020, about 6,300 anti-dumping investigations were conducted, China accounted for a staggering proportion of 23.46 per cent, twenty-six consecutive years in the anti-dumping encountered by the largest number of countries in the list of first [5]. The investigation covers 18 categories of commodities, including minerals, chemicals, light industry, textiles, agricultural products, machinery and electronics, and medical care. In order to limit the market share of Chinese products in their markets, foreign countries, especially some developed countries, use the excuse that China is a “non-market economy country” to impose discriminatory anti-dumping on China, which not only harms the interests of consumers in importing countries, but also has a significant impact on the economic benefits of Chinese export enterprises, and causes huge losses to China's economy. This has caused great losses to our economy.

In view of the above, it is necessary to analyse the influencing factors of China's frequent encounter with anti-dumping.

3.2. China's History on the Certification of Market Economy Status

China's "market economy status" issue first surfaced in 1980 during the U.S. anti-dumping case on menthol, where China was classified as a "state-controlled economy", and "market economy status" provisions were applied to "non-market economy" countries. This case marked the U.S.'s initial use of the substitute country principle for "non-market economies", a critical precedent in China's anti-dumping history that has continued to influence later cases. Although this paper mainly addresses U.S. anti-dumping actions against China, other entities, including the European Union and Japan, have similarly used these measures to maintain anti-dumping sanctions.

Until 2001, when China joined the WTO, the Chinese side advocated that countries should abolish the recognition of China as a "non-market economy" and give it fair treatment, but this did not happen in the end. At that time, China accepted the negotiation result: accept the discriminatory treatment to continue to exist for 15 years, that is, until 2016 China still retains its non-market economy status determination. After the expiration of 2016, countries should regard China as an ordinary WTO member and treat China as an equal member of the WTO, and no longer take discriminatory anti-dumping measures to treat it.

However, this article is somewhat controversial in terms of its legal nature. The original text of Article 15 provides for "price comparability in determining subsidies and dumping" and the issue of substitute countries, but it does not explicitly state that China will be able to obtain market economy status 15 years after its accession to the WTO. Many people regard this article as "China can obtain market economy status after 15 years of WTO accession", which is actually a misunderstanding without precise legal basis. The World Trade Organisation does not have a strict definition of "market economy status" or the right to adjudicate on it, which gives some countries that do not want China to obtain market economy status a chance to take advantage of it. On the day immediately after Article 15 of the Protocol on China's Accession to the WTO expired, China filed a complaint at the WTO against the United States and the European Union (EU), respectively, seeking the restoration of China's "market economy status". An advisory panel of experts was assembled for the case against the EU in July 2017, but in 2019 China proposed to suspend the panel proceedings, and one year later, China did not request the resumption of the panel proceedings, meaning that the case was officially terminated. Consequently, China did not obtain market economy status as had been hoped.

3.3. Reasons For Excessive Anti-dumping Actions Against China

In order to explore and think about how to incorporate the previous understanding of anti-dumping in the context of anti-dumping, it is necessary to first find the reasons for the current excessive anti-dumping policies imposed on China by other countries, led by Europe and the United States. Combined with the previous explanation of anti-dumping, it can be broadly explained as the following factors.

3.3.1. Economic Factor

Dubbed the "World's Factory", China has been the largest manufacturer globally for 14 consecutive years since 2010, producing around one-third of the world's total manufacturing output [6]. Starting in 2002, China's foreign trade has expanded swiftly, with growth rates of 34.6 per cent and 35.4 per cent in 2003 and 2004. Although the export growth rate declined after the financial crisis in 2009, it quickly rebounded to 31.3 per cent in 2010. In 2018, a year of trade friction between China and the United States, China's export growth rate was also 6.5 per cent [7]. Export trade has grown exponentially with the growth of the manufacturing sector, leading to a decline in the industrial advantage of importing countries, thus increasing the need for trade protection.

On the basis of the large volume of exports, it is important to note that export commodities are often accompanied by low-cost qualities. This tends to be concentrated in goods produced by labour-intensive industries, as China has a large labour force. This has led to the flow of relatively low-cost products into overseas markets, making it easy for other countries to define China's inflow of low-cost goods as dumping.

3.3.2. Political Factor

Western political culture, led by the United States, is deeply rooted in the core values of liberal democracy and capitalism. From individual freedom, private property rights, market economy to multi-party democracy. All of this is in fundamental opposition to the collectivism, extensive state control of the economy, and single-party model of governance espoused by socialist countries. Western capitalist countries generally view socialist ideology as suppressing individual freedom, undermining market efficiency, and leading to government overreach, and are therefore deeply distrustful and hostile to it.

It's not just a clash of values, with the rise of China, especially its increasing dominance in the global economy as mentioned earlier, Western capitalist countries increasingly see China as a major geopolitical rival. China's rapid economic development and expanding global influence are seen as a challenge to the existing international order. For this reason, these countries use trade protection measures such as anti-dumping investigations as a political tool to limit China's economic influence and uphold its leading position in the international arena. If the United States recognises China's "market economy status", it will bring great convenience to China in international trade, and the rise of this emerging power will seriously encroach on its trade interests and national sovereignty.

4. Resolution of the Issue of China's Market Economy Status

So far, over 80 nations, including Russia, Australia, New Zealand, Brazil, and South Africa, have recognised China's market economy status. However, major economies like the European Union and the United States have not yet formally done so. The decision to recognise China's market economy status has significant legal and economic implications, especially in terms of anti-dumping investigations and tariffs.

Based on China's experience in obtaining market economy status and the analysis of the reasons for the discriminatory anti-dumping measures taken against China by the United States, Europe and other countries, the author hereby puts forward the following suggestions to the Chinese government and MNEs involved in import and export, with a view to obtaining market economy status in the United States and Europe and other countries so as to reduce the discriminatory anti-dumping measures, and at the same time, to reduce as much as possible anti-dumping in the case of not being able to obtain the market economy status. measures if they are unable to obtain market economy status.

4.1. Chinese Government to Actively Acquire Market Economy Status

4.1.1. Diplomatic Negotiations with Relevant States

The first and foremost first step in addressing the issue of international recognition is, of course, to open diplomatic negotiations with China's major trading partners who are currently in dire need of its endorsement, notably the United States and the European Union. The whole negotiation should start with common interests, find ways in which the countries concerned can join hands with China to benefit together, and consult with other countries through appropriate negotiation methods. Since some of the reasons for imposing harsh anti-dumping measures on China are motivated by interests,

the interests should be used to attract other countries. After decades of development, China has the world's most promising consumer market and is likewise the world's largest manufacturing plant. This is the bottom line that China can now fully demonstrate its ideas. With the current globalisation of the world economy, the best option is to work together for a win-win situation.

4.1.2. Continuing to Deepen Market Economy Reforms and Improve Core Competencies

Although the prejudice caused by ideological differences cannot be eliminated, further deepening of market economy reforms can effectively reduce the opportunities for unfriendly targeting by other countries. Since the reform and opening up of China, China has made great changes, and can be said to have transformed from a planned economy to a socialist market economy. All that remains to be done is to deepen the reforms.

On the one hand, it is necessary to relax market access, reduce administrative approvals, lower the threshold for market entry and encourage more enterprises to participate in market competition. It is necessary to gradually reduce the government's direct intervention in the market, strengthen the market's decisive role in the allocation of resources, and promote market-oriented reforms in prices and factors. On the other hand, it is necessary to promote industrial upgrading, guide traditional industries to develop in the direction of high-end and intelligentisation, support emerging industries, and accelerate industrial transformation and upgrading. At the same time, we should improve supply chain efficiency, strengthen upstream and downstream industry chain coordination, optimise supply chain management, reduce production costs and improve product quality.

Not only that, it should also promote enterprise innovation, encourage enterprises to increase R&D investment in high-precision science and technology, enhance their technological innovation capacity, and develop high value-added products. Promote co-operation between universities, scientific research institutions and enterprises, accelerate the transformation of scientific and technological achievements into productivity, and improve the technological content and market competitiveness of products. Eventually, through the brand strategy, enhance the brand value of products and expand brand influence. The day China's products have irreplaceability, other countries will never be able to use harsh anti-dumping measures to oppose the inflow of products, which can effectively promote diplomatic activities.

4.1.3. Rational Use of the World Trade Organisation to Help Resolve Disputes

As per the WTO accession agreement, the U.S. and EU were to recognise China's market economy status. Despite the agreement's expiration, the United States and European Union continue to exploit legal loopholes, aiming to obscure the facts. Such illegal behaviour should be sanctioned by the WTO. As China has already done, a panel of experts was set up in 2017 to resolve disputes in this area. Although the result was unsatisfactory at the time, the WTO cannot be abandoned as an effective means of safeguarding national rights. As a member of the WTO, China deserves to be protected by the WTO. However, the WTO does not have a hard binding force, in contrast to the powerful countries inevitably appear weak, China should be prepared to fight a protracted war.

4.1.4. Adoption of Appropriate Trade Countermeasures

In order to safeguard China's interests, China can take a certain degree of countermeasures in accordance with the law. This is not unfair treatment, but merely a means of response when other countries take discriminatory measures that effectively infringe upon China's interests. Trade retaliation is a kind of economic behaviour, but in fact it is also a kind of legal behaviour, and there are relevant provisions on this in international law and domestic law [8]. There are relevant provisions

in international law and domestic law. The use of trade retaliation can serve as a constraint on other countries to a certain extent.

However, it must be stressed here that trade sanctions in any form and for any reason should not be an act to be encouraged and promoted. Trade retaliation should be used only as a countermeasure to discriminatory treatment and never on its own initiative. Even as a countermeasure, they should not be used arbitrarily as a last resort, lest they be abused and impede the path of global economic development, which will ultimately be to their own detriment.

4.2. Businesses Also Need to be Introspective and Learn to Hedge Their Losses

4.2.1. Optimisation of Diversified Market Layout

Enterprises need to avoid overdependence on a single market. By exploring emerging markets, enterprises can diversify their risks and mitigate the impact on their overall business when they encounter anti-dumping investigations in a particular market. Apart from the conventional European and American markets, enterprises are encouraged to explore new opportunities in emerging markets, including Southeast Asia and Africa, which are not only experiencing rapid growth in demand, but also have lower trade barriers relative to developed markets.

At the same time, the discovery of the domestic market should also be paid attention to. Against the background of increased uncertainty in the international market, enterprises can consolidate their domestic market share by strengthening the construction of domestic sales channels and reduce the impact of international market fluctuations on their operations. The stability of the domestic market can provide enterprises with a solid backing and play a cushioning role in the event of external market shocks.

4.2.2. Strengthening International Cooperation

Through co-operation with industry associations and peer enterprises, enterprises can work together to face the challenges of the external market, share information and resources, and improve their overall ability to respond to anti-dumping investigations. For example, industry associations can organise enterprises to jointly participate in responding to anti-dumping cases by providing legal support and coordinating resources, thus enhancing the industry's overall resilience.

In addition, Chinese enterprises can co-operate with local enterprises in importing countries to establish joint ventures or carry out co-production. This approach not only reduces the risk of Chinese enterprises being targeted for external dumping, but also enhances their competitiveness in the target market. By deeply integrating into the local economy, enterprises can gain more market share and policy support, further reducing the risk of anti-dumping. Direct investment in enterprises in the importing country is also a way to be considered to cope with the situation.

4.2.3. Changes In the Enterprise Itself

Enterprises should actively promote their own internal structural changes, improve their own operational mechanisms, and minimise their dependence on the government. At the same time, legal compliance in export management is crucial to preventing anti-dumping investigations. Enterprises should ensure that all export processes, documents and operations are in compliance with the law in order to avoid unnecessary investigations triggered by process loopholes. Especially in the context of increasingly complex international trade, enterprises should establish an effective export early warning mechanism, pay close attention to changes in policies and regulations in target markets, and make timely adjustments to their export strategies.

In addition, when encountering anti-dumping investigations, enterprises should actively cooperate with the investigating authorities to provide detailed and accurate data and evidence to prove that the pricing and export behaviour of enterprises is reasonable. Enterprises should also cooperate with professional international trade lawyers to provide effective legal defences during the investigation process to ensure that their rights and interests are not infringed.

5. Conclusion

At a time of economic globalisation and upholding the principle of free trade, China should work together with other trading bodies to maintain the stability of global economic development. When subjected to discriminatory anti-dumping measures, the WTO is one of the backings that China can effectively use to fully grasp the rules of the WTO, and take appropriate legal means to safeguard their rights and interests. It is hoped that the suggestions provided in this paper can help China and MNEs to maintain their place in the international competition.

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