



China’s Status as a Nonmarket Economy (NME)

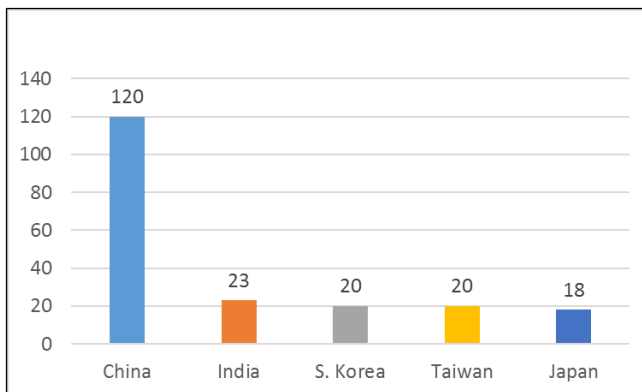
When China joined the World Trade Organization (WTO) in 2001, it agreed to allow other WTO members to continue to use an alternative (surrogate country) methodology for assessing prices and costs on products subject to anti-dumping (AD) measures. This occurred because other WTO members argued that distortions in the Chinese economy caused by government intervention would make it impractical in many cases to use Chinese prices and costs for determining dumping margins. China contends that language in its WTO accession protocol required all WTO members to terminate their use of the alternative methodology by December 11, 2016, including the United States, which has classified China as a nonmarket economy (NME) for trade remedy cases since 1981. The United States and other WTO members argue that that the WTO language did not automatically obligate them to extend market economy status (MES) to China. On December 12, 2016, China initiated a WTO dispute settlement case against the United States and the European Union for not affording China MES status.

The Mechanics of NME Treatment and Dumping

U.S. AD measures provide U.S. firms and workers a mechanism to seek relief from the potential injurious effects of foreign firms that attempt to sell products in the United States at less than fair value, which generally means at prices below those sold in their home market. If the Commerce Department determines that dumping has occurred, and the U.S. International Trade Commission (USITC) finds that it has caused or threatens to cause “material injury” (such as declining profits or market share) to a U.S. industry, Commerce issues an order imposing additional duties on the targeted imports that attempts to offset the market distorting effects of the dumping. China is the largest target of U.S. AD orders, which totaled 120 through December 14, 2018 (34% of total).

Figure 1. Major Targets of U.S. AD Orders

(In place as of December 14, 2018)



Source: U.S. International Trade Commission.

Since 2007, the Commerce Department has also employed countervailing duty (CVD) measures against NMEs to counter subsidies given to their exporters. Commerce often initiates both AD and CVD investigations against Chinese and other entities for the same products and issues separate AD and CVD duty rate orders.

Under U.S. law, a NME means any foreign country that the U.S. Department of Commerce deems not to “operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.” The NME designation is significant because the use of a surrogate country to construct a product’s “normal value” in an AD investigation is thought by many analysts to often result in the imposition of higher AD rates than would occur if the producer’s/exporter’s prices and costs were used. In AD cases for NMEs, Commerce assumes that market mechanisms do not exist for the calculation of prices and costs for the products subject to an AD investigation and imposes a NME country-wide AD duty rate against all imports except for those firms that can demonstrate that they are operating in absence of government control in law and in fact (they may receive a separate AD rate). For the country-wide AD rate, Commerce seeks to determine which market economies (MEs) are closest to the NME in terms of development, based on the World Bank’s measurements of gross national income on a purchasing power parity basis. In the case of China, Commerce, in recent AD cases, has identified Bulgaria, Ecuador, Romania, South Africa, Thailand, and Mexico as meeting this criterion. From this list, Commerce seeks to identify a country that manufactures products similar to the targeted products made by the NME under investigation. It then takes the prices and costs in the surrogate country and compares them to the prices of the goods exported by the NME to the United States to determine the AD margins, which are imposed if the material injury test is also met.

How Can China Achieve MES Under U.S. Law?

Currently, there are 11 countries designated by Commerce as a NME, including Belarus, Georgia, the Kyrgyz Republic, the People’s Republic of China, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Moldova, the Republic of Tajikistan, the Republic of Uzbekistan the Socialist Republic of Vietnam, and Turkmenistan. Several countries have had their NME status changed to MES by Commerce over the years, such as Poland (1993), Russia (2002), and Ukraine (2006). In order for a NME to have its designation changed to MES, the government of that country must make a formal request for review, or back a claim by a respondent in a U.S. AD investigation that the country has a ME. The Commerce Department must investigate the request and consider six major factors: (1) the extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign

country are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administering authority considers appropriate. Commerce could declare that certain industries are operating under market conditions while continuing to apply the NME methodology to other sectors. Commerce last conducted a review of China's status in October 2017. Commerce concluded that China was still a NME because "the state's role in the economy and its relationship with markets and the private sector results in fundamental distortions in the Chinese economy." Commerce determined that it still could not rely on Chinese prices and costs for the purposes of its anti-dumping analysis. Some critics contend that the U.S. criteria for conveying MES is too broad and fails to offer guidance on how to weigh each factor.

U.S. AD Orders of Chinese and ME Products

The table below provides 10 AD cases from 2010 to June 2016 where AD orders were issued against the products of China and one or more MEs. In six of these cases, some Chinese exporters were able to show that they operated under market conditions and obtained separate AD rates, and in every case these were lower than the China-wide rate. In one case, the AD rate levied on the products of a firm from a ME country was higher than the China-wide AD rate. In all 10 cases listed, CVDs were also imposed against Chinese products, ranging from 2% to 256%.

Table I. Sample of U.S. AD Rates Imposed on Chinese and ME Products

Product and year	China-Wide Rate	China Separate Rates	ME Rates
Corrosion-resistant steel, 2016	210	None	3-92
Certain cold-rolled steel, 2016	266	None	71
Certain polyethylene terephthalate resin, 2016	126	105-118	8-19
Certain uncoated paper, 2016	149	84	2-222
Melamine, 2015	363	None	173
Non-oriented electrical steel, 2014	408	None	7-205
Certain crystalline silicon photovoltaic products, 2014	165	27-78	12-28
Certain coated paper, 2010	136	8	20
Magnesia carbon bricks, 2010	236	128	58
Narrow woven ribbons, 2010	248	124	4

Source: U.S. Department of Commerce press releases.

Conflicting Opinions on the NME Issue

The Chinese government and some analysts contend that China's 2001 Protocol of Accession contains language (Section 15(a)(ii)) that effectively requires WTO members to end their use of NME methodologies to calculate AD margins on imports from China after 15 years (i.e., December 11, 2016). During his State visit to the United States in August 2015, Chinese president Xi Jinping called on the United States to recognize China's MES. In December 2015, a Chinese Foreign Ministry official stated that continued use of the NME methodology after December 2016 would mean treating Chinese firms "in an unfair, unjust, unreasonable and discriminative manner." China is the largest target of global AD investigations among WTO members and thus, obtaining MES from its trading partners appears to be a major Chinese priority.

Other analysts contend the language in Section 15 of China's WTO Protocol is vague at best. Some argue that even after the expiration of Section 15(a)(ii), WTO Members can continue to treat China as a NME until China can demonstrate under each country's laws that it is eligible for MES. Others point to Section 9 of the Protocol where China pledged (with certain exceptions) to "allow prices for traded goods and services in every sector to be determined by market forces," arguing that because China has failed to live up to this provision, WTO members can continue to treat China as a NME.

U.S. policy on this issue has been somewhat unclear. At a February 2000 congressional hearing, then-USTR Charlene Barshefsky stated that the bilateral agreement with China on its WTO accession would enable the United States to maintain its ability to utilize its existing NME methodology in the application of U.S. antidumping laws "for 15 years after the date of China's accession to the WTO." During his confirmation hearings in June 2017 to be the U.S. Trade Representative, Robert Lighthizer said that a WTO ruling against the United States on China's NME status would be "cataclysmic for the WTO."

Stakeholder Concerns

Some U.S. groups support giving MES to China, in part to avoid complicating trade relations with China and/or to use the issue as leverage with China on various commercial issues. Others support MES for China because they see the NME methodology in AD cases as harmful to U.S.-importing firms and consumers. Others oppose granting China MES status, contending that it would weaken the ability of the United States to effectively counter China's dumping practices, especially at a time when many Chinese industries (such as steel) are facing significant overcapacity and could flood global markets with low-priced products, harming U.S. firms and workers. On September 30, 2018, Canada joined the United States and Mexico to reach the U.S.-Mexico-Canada Agreement (USMCA). Article 32.10 of USMCA would require a party to the agreement to notify the other parties if it intends to enter into a free trade agreement (FTA) with a nonmarket economy. If the first party concludes an FTA with a nonmarket economy, the other two parties could withdrawal from the USMCA and form a bilateral FTA.

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