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Euromines
External Newsletter

January 2016

China's Market Economy Status
A Crucial EU Trade Issue

European Association of Mining Industries, Metal Ores & Industrial Minerals

Introduction - focused on China 1/2016

Commonly affected by the potential granting of Market Economy Status (MES) to China

According to previous negotiations China is looking forward to being granted MES by the EU by the end of 2016 depending on the fulfilment of certain criteria.

The five criteria:

- Allocation of economic resources by the market: NO
- Removal of Barter trade: YES
- Corporate Governance: NO
- Property Rights (real property, IP, bankruptcy, competition): NO
- Open Financial Sector: NO

China is not a Market Economy

as China has not fulfilled the promises it made in 2001

- China acceded to the WTO on 11 December 2001.
- A Protocol of Accession (dated 11 November 2001) set out the terms.
- The Protocol set out all China's committments.
- Some committments were to phase out non-market features of the economy.
- Other committments (like tariffs etc) were immediate.

China has not complied with its WTO Accession Protocol

as Prices in China are not set by the market

Price Controls
China shall, subject to paragraph below, allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services shall be eliminated.

Limited exceptions:
tobacco; edible salt; natural gas; certain pharmaceuticals; grain; vegetable oil; fertilizer; silkworm cocoons; cotton; health and related services; professional services; transport charges; bank charges; selling and renting residential apartments.

Industry Position 1/2016

Hence, several sectors joint efforts at regional and national level and created industrial alliances trying to correct such a potential decision. One such Alliance is AEGIS Europe, bringing together nearly 30 European associations. Other alliances include not only the US level one but several others in Poland, Slovakia, France etc.

AEGIS Europe

AEGIS Europe is a grouping of nearly 30 industrial associations dedicated to ensuring that EU policymakers work towards free and fair international trade. AEGIS members are leaders in sustainable manufacturing and account for more than €500 billion in annual turnover and millions of jobs across the EU. www.aegiseurope.eu.

AEGIS Members

Industry position

As expressed by the industry, China is not a market economy according to the EU law and there is no indication that it will become one any time soon.

The WTO has general rules to allow members to address unfair trade. Special rules are needed to calculate dumping margins of imports from non-market economies because costs and prices in a non-market economy are distorted by government interference. Under Section 9 of its WTO Accession Protocol China made the general commitment to allow all prices „to be determined by market forces". It has not honoured that commitment. If it had, then there would be no need for special dumping calculation rules for imports from China.

The debate on interpretation of the Protocol is whether these special rules can continue to apply to China after December 2016, once subparagraph 15(a)(ii) will have expired, even if China has not become a market economy and prices continue to be distorted by government interference. How should the remaining provisions of Section 15 be interpreted? And should importing WTO members not interpret the Protocol the same since the Protocol language is the same for all?

As China's Protocol of Accession is a WTO document, the WTO is the only organisation competent to give a global and definitive interpretation of the Protocol. Until the WTO establishes an agreed interpretation, no WTO member can be sure that its own interpretation of one part of the Protocol is correct.

Despite that, some in the European Commission seem keen to press ahead with a unilateral interpretation of the Protocol and propose that China be considered a market economy. In practice, this would translate into amendments to the Basic EU Anti-dumping Regulation to mandate the use of Chinese prices and costs as the basis for determining the „normal value" for purposes of the calculation of dumping margins.

European magnesite producers position (Euromines)

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European magnesite producers position (Euromines)

One of the sectors concerned is the European magnesia industry. Granting China Market Economy Status (MES) starting December 2016 would threaten the competitiveness and survival of many European companies, especially SMEs, undermine the effectiveness of the EU's trade defence system and expose the EU magnesite/magnesia sector to potentially unlimited Chinese dumping.

- China currently violates the five EU market economy status criteria;
- China's currently existing overcapacity when exported to Europe would suffocate the European magnesite/magnesia industry;
- Granting market economy status to China would lead to the loss of several thousand jobs, most of them in regions already facing serious economic and social issues (Spain, Slovakia, Greece and the northeast part of the Netherlands);
- Granting market economy status to China will lead to a decrease in the research and development investments in the European operations;
- Production in China is not compliant with the EU sustainable development value chain requirements (energy and climate change, environmental standards and the social license);
- If China was considered a market economy status, any anti-dumping measures would have to be recalculated to the disadvantage of the European industry;
- The anti-subsidy instrument has never been effective in the face of the distortions of the Chinese economy.

1. China violates the five EU Market Economy Status criteria

The Chinese government's 2013 Consolidation Plan stands proof of the direct policy intervention in magnesia and refractories. There is a clear collusion and price coordination between producers -- in the case of refractories, this policy is actually written down in the Articles of Association of China Refractories Industry [ACRI]. The industry obtained loans which means Chinese producers can claim 'reduced' financial costs and gain an unfair competitive advantage.

In the Chinese electricity value chain, end-users buy electricity from one of the two state-owned grid companies, which each hold a regional monopoly over both transmission and distribution. The retail tariff is regulated by the state government.

The Chinese container-shipping industry is government owned.

2. China's overcapacity exported to Europe would suffocate the magnesite/magnesia industry

The Chinese dead-burned magnesia (DBM) capacity is 11 million mt/year, 2.2 times the actual production in China, while the electro-fused magnesia (EFM) capacity is 3.6 million mt/year, 2.1 times the actual production in China.

Currently, the Chinese capacity surplus of DBM of 6 million mt/year for DBM is 12.5 times the EU production of natural dead burned magnesia. The export of such large quantities to Europe will therefore have a great impact on the European industry.

If China was granted market economy status, Chinese steel could replace 10-15% of the EU steel production and, as a consequence, would make a similar percentage of the EU refractories production obsolete.

European magnesite producers position (Euromines)

3. Granting market economy status to China would lead to the loss of several thousand jobs

Euromines estimates that the EU magnesia industry offers about 6500 well-paid direct jobs in the EU. Including indirect employment, the overall estimate reaches around 20.000 jobs found in most cases in countries and regions already facing serious economic and social issues (Spain, Slovakia, Greece and the northeast part of the Netherlands).

China being treated as a market economy would lead to the shut-down of several companies, the loss of a couple thousand jobs and a severe negative impact on the development of these regions.

4. Granting market economy status to China will lead to a decrease in the research and development investments

European producers are spending considerable effort and capital in developing state-of-the-art technologies. Such investments lead to higher quality products. Magnesia is often used in 'green' or 'clean-tech' applications, either in environmental protection and restoration or in energy reduction processes.

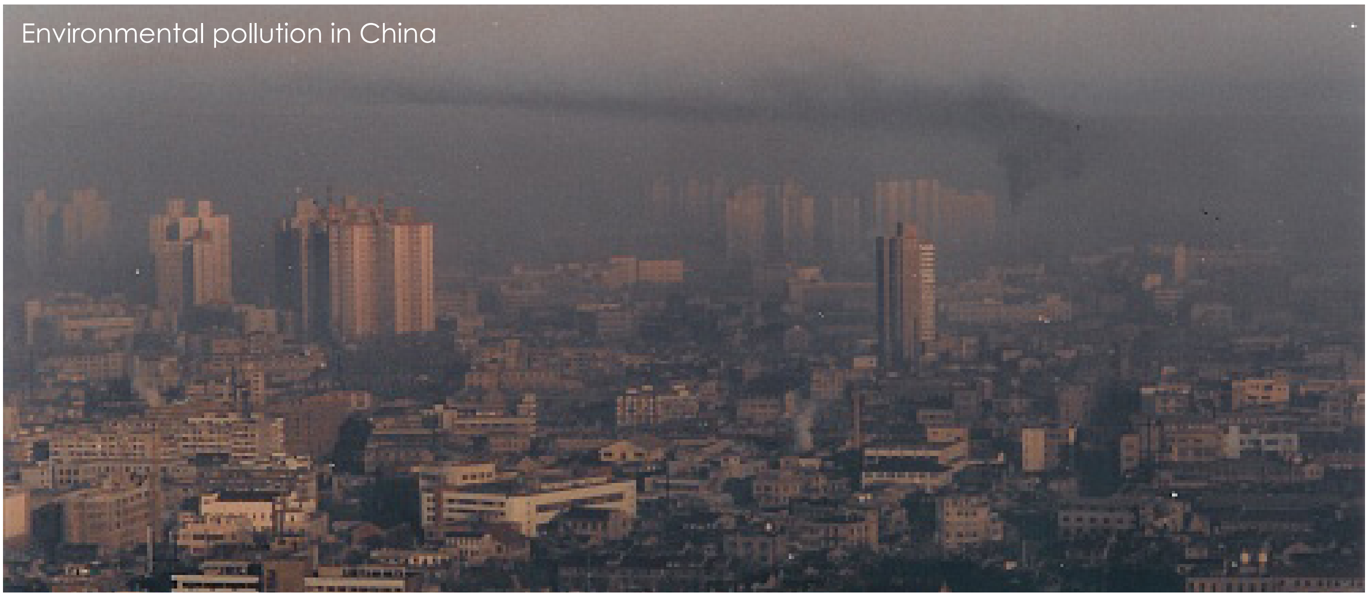
At the same time the development of future magnesia applications is also discussed, such as carbon-negative and environmentally friendly cements, 'Eco-concrete' floor panels, Mg-ion batteries, instead of lithium, photovoltaic/thermal systems with magnesia-water nano-fluids flowing over silicon solar cells, recent fluid advances for the completion phase of deep-water projects.

The above-mentioned investments lead to an increase in the overall product costs which are considerably higher than the ones reported by the Chinese magnesite/magnesia sector lacking such projects. Implicitly, the overall quality of the products brought to Europe will decrease if low cost but also low quality products will enter the European market and replace the current ones.

5. Production in China in not compliant with the EU sustainable development value chain

According to the Nature Climate Change Journal, products from China are causing a substantial cost to the environment due to their higher carbon dioxide emissions as compared to similar products produced in other countries, including Europe. The researchers noted that the several products being exported by Chinese high level carbon producing industries, including steel mills, mineral processors and petrochemical plants may also contribute to huge carbon emissions from the country.

Quite the opposite, the EU and the EFTA countries are subject to severe environmental regulations, including, for example an ETS system for greenhouse gas emissions.


Environmental pollution in China

European magnesite producers position (Euromines)

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6. The anti-dumping measures would have to be recalculated to the disadvantage of the European industry

The magnesia value chain would be severely weakened by eventually necessary new anti-dumping measures, recalculated on the basis of cost of production, rather than 'normal value'.

China has repeatedly practiced dumping in dead-burned magnesia, in refractories, in steel and in caustic calcined magnesia and has consequently been the country mostly targeted in anti-dumping investigations regarding these products. Should China obtain MES and thus be able to base a price comparison on costs and selling prices inside China -- dumping in dead-burned magnesia, in refractories, in steel and in caustic calcined magnesia will be intensified while anti-dumping investigations will be severely weakened.

In the two Council Regulations [EC] of 2005, imposing a definitive Anti-dumping duty [on imports of CCM and of DBM respectively] originating in China, the EC had established, that '…since the People's Republic of China is an economy in transition, normal value had to be based on information obtained in an appropriate third-country market economy in accordance with Article 2(7) of the basic Regulation.'

Unlike DBM, there is no downstream control of the CCM value chain by EU CCM producers, not even partially. Hence, at prices such as the above, EU CCM producers will not be able to sustain any production of animal feed and fertiliser.

7. The anti-subsidy instrument has never been effective in the face of the distortions of the Chinese economy

Given the distortions of the Chinese economy, the challenges of countervailing imports from China make it unrealistic to think that anti-subsidy measures could be effective to address dumped imports. This is borne out in the level of measures resulting from EU anti-subsidy investigations of imports from China where almost half of the investigations have been closed without the imposition of measures, and the average rate of anti-subsidy duty has been 6.4%. Duty rates around 6% or less are clearly inadequate to deal with Chinese distortions, as they are absorbed by Chinese exporters who do not have to worry about the effect of low pricing on profitability.

Why do we care about Chinese dumping?

China makes up **>50%** of all EU anti-dumping cases

80% of all EU anti-dumping and anti-subsidy investigations are against China

Global anti-dumping and anti-subsidy actions against China have increased by **60%** since 2010

Illegally dumped imports from China represent a significant share of EU

AEGIS EUROPE

MES for China? 1/2016

Insisting on the necessity of a full and formal impact assessment of a possible grant of market economy status to China

The social impact of granting MES in terms of EU jobs lost is very substantial whatever the economic methodology used to calculate them. The Commission believes that the only jobs at risk are those direct jobs related to the specific products covered by anti-dumping duties in force, i.e. around 250 000 jobs. Moreover, they further contend that the importance of anti-dumping measures can be gauged by the very small volume of imports from China which is subject to these duties, i.e. 1.38% of total imports from China. Both premises are wrong. It is important to calculate both the direct and indirect (upstream and downstream) job impact, as well as the deterrence effect of maintaining an effective anti-dumping instrument (which would be lost if MES were granted).

In terms of indirect jobs affected, most industries estimate that there are 3-4 indirect jobs lost for every direct job that disappears. This immediately places the total number of jobs in imminent danger, if MES is granted, at levels exceeding one million, just with regard to jobs tied to the specific products currently under measures. And, this is without taking any account of the clear deterrence effect of effective anti-dumping rules, with exporters knowing that injurious dumping could be met with anti-dumping measures that reduce their export volumes substantially.

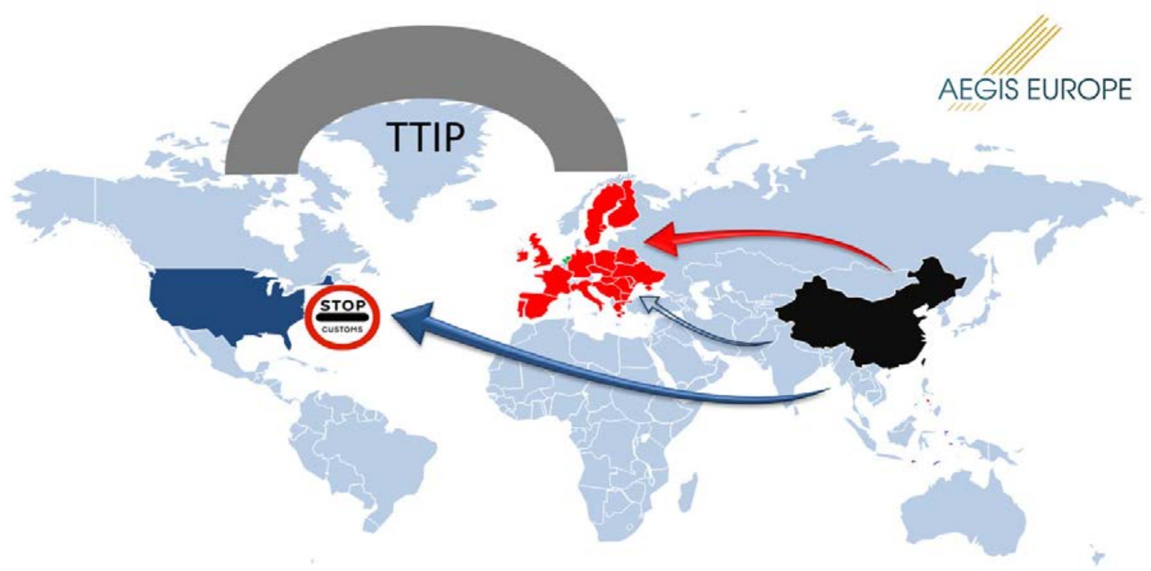
In this context, an additional economic impact, the negative effects of granting MES on future EU industry investments, in particular in the growing area of „smart manufacturing", also needs to be assessed.

There would also be other consequences of granting MES. The environmental impact of granting MES is also hugely significant. Chinese manufacturing (which is 80% based on coal) is much more detrimental to the environment than EU production (28% based on coal). Does it make sense to replace the much cleaner European domestic production by Chinese coal based imports? A striking example is that the replacement of European domestic steel production by Chinese steel imports effectively raises carbon emissions by around 43%. The same effect applies to the aluminium industry and others.

The political impact of the decision on MES is also significant. Some argue that the Bilateral Investment Treaty (BIT) negotiations with China could be negatively affected by not granting MES, while others also argue that TTIP could be negatively affected and used by China to make the EU the "Trojan horse" for exporting their dumped exports to the United States. These issues need to be fully analysed.

Unilateral EU action could jeopardise EU-US TTIP negotiations

TTIP creates loop-hole for China to redirect dumped goods to the US market



European Commission - Fact Sheet 1/2016

College orientation debate on the treatment of China in anti-dumping investigations

On 13th January 2016 the Commission had a first orientation debate on whether, and if so how, the EU should change the treatment of China in anti--dumping investigations after December 2016. The debate arises because of the expiry, in December 2016, of certain provisions in China's Protocol of Accession to the WTO. The discussion covered all implications surrounding this issue, in particular the potential impact on jobs in Europe. No decision was taken yet, and the Commission will continue developing the options for the way forward in this matter.

What are anti-dumping duties and how are they calculated?

Under World Trade Organisation (WTO) rules, the EU can impose anti-dumping duties on products from third countries if an investigation demonstrates that these products enter the EU at dumped prices that cause injury to the EU industry.

Under standard rules for normal market circumstances, dumping is calculated by comparing the export price of a product to the EU with the domestic prices or costs of the product in the exporting country.

In contrast, owing to state influence, in a non-market economy prices and costs are artificially low and hence do not reflect normal market forces. Therefore, for non-market economies, domestic prices are not used as a benchmark against which to compare export prices. Instead, WTO (and EU anti-dumping) rules allow the use of data from another market economy country – an „analogue country" - as the basis for calculation. This is referred to as the „Non-Market-Economy" methodology.

Does this mean that „Market Economy Status" is about how to calculate anti-dumping duties?

Yes. **The debate about Market Economy Status for China is not about whether the country is a market economy or not - but about the method to be used to calculate dumping rates in anti-dumping investigations concerning that country after December 2016 (see below). A decision about which method is the most appropriate one for a particular country must take into account a number of aspects.**

What do the existing rules say?

Under its Protocol of Accession to the WTO of 2001, China is not considered a market economy in anti--dumping proceedings. The EU anti-dumping rules contain similar provisions, and as a result use prices or costs from an "analogue country" to calculate the level of dumping of Chinese products[1]. Some provisions of the Protocol of Accession will expire in December 2016 and the Commission is currently looking at the implications.

How much trade is involved?

Currently there are 52 anti-dumping measures in force against China, covering 1.38% of EU imports from that country. The main industries concerned today are steel, mechanical engineering, chemicals and ceramics. There are presently about 250,000 jobs in industries in the EU directly covered by the measures against dumping from China.

Why does the College hold an orientation debate at this moment in time?

Certain provisions of China's Protocol of Accession to the WTO relating to this issue will expire in December 2016, and the Commission is currently looking at the implications.

A change in the status of the Chinese economy under the EU anti-dumping rules would also change the methodology of calculating anti-dumping duties which, in turn, would have an impact on the European economy. Therefore, the Commission is carefully assessing the potential impact of any change in methodology on jobs in the European Union. All relevant stakeholders - including industry - will be fully involved.

European Commission - Fact Sheet 1/2016

This assessment will take some time as it will cover all relevant sectors and all Member States. The objective of the orientation debate being held by the College today is, therefore, not to take a formal decision on this subject at this early stage but to have an open discussion about the way forward.

Will the position of major trade partners - like the US – influence this process?

The Commission welcomes any relevant information which can inform its assessment. Indeed, when carrying out its analysis, the Commission relies on a wide range of sources and information. The Commission intends to exchange experience and closely liaise with trade partners on this issue.
At the same time, each country's legal framework on this matter is different. The EU lists countries that are non-market economies[1] in its legislation. This is not necessarily the case for other WTO Members, like the US.

What would be the legal procedure in case of such a change of the methodology in calculating dumping rates?

Changing methods to calculate dumping margins with regard to any country would require changing the EU anti-dumping rules. This would need to be done under the standard legislative procedure where the European Parliament and the Council decide on the basis of a Commission proposal.

Is granting of Market Economy Status a unilateral or a multilateral decision in the WTO framework?

There is no common WTO definition of „Market Economy Status". How a Member grants this status to any given country depends on the Member's own internal rules and procedures. This also applies to the EU.

More information about the EU's Trade Defence policy and measures can be found on the DG Trade website, http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/.

[1] The other non-market economies include Vietnam, Kazakhstan, Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, and Uzbekistan.

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Euromines

Euromines is the recognized representative of the European metals and minerals mining industry. The members' main objective is to promote the industry and maintain their relations with European institutions at all levels. Euromines provides services to its members with regard to EU policy and forms a network for cooperation and the exchange of information throughout the sector within Europe. The association also supports contacts with the mining community throughout the world.

Euromines members are large and small companies who with their subsidiaries in Europe and in other parts of the world provide jobs to more than 350,000 people. Their activities and operations produce more than 42 different metals and minerals.

Published by Euromines
Av de Broqueville 12
B-1150 Brussels
Tel 32 (0)2 775 63 56
Fax 32 (0)2 770 63 03
secretariat@euromines.be

www.euromines.org