The Price of Tea in China: Analogue Price Methodology in Anti-Dumping Investigations After the Expiry of Section 15(a)(ii) of China's WTO Accession Protocol

Josephine Williams*

I. Introduction

The expiry of Section 15(a)(ii) of China's Protocol of Accession to the World Trade Organization (WTO) leaves many unsettled legal questions. Prime among these are: (1) whether or not the remaining elements of Section 15 continue in force after 11 December 2016; (2) whether importing WTO Members are still permitted to treat China as a non-market economy under their national laws after 11 December 2016; and (3) whether China continues to be a non-market economy. This article examines each of these questions and ultimately finds that authority to determine market economy status is delegated to WTO Members under Article VI of the 1994 General Agreement on Tariffs and Trade (hereinafter "GATT 1994"). WTO Members are permitted to use alternative price methodologies under national laws when market-determined, comparable prices in the ordinary course of trade are unavailable.

II. Background

Dumping occurs when a product is sold below its cost of production or below its price on the domestic market.[1] To calculate dumping margins, investigators subtract the price at which a product is sold in the export market from the

* B.A. Wellesley College, J.D. University of California, Los Angeles. Special thank you to my UCLA Law mentor, Asli Bali and Tim Billbright of Georgetown Law.

1 Peter Van den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* (2nd edn, Cambridge University Press 2008) 698–702.

product's price in the domestic market. Dumping margin calculations are, however, complicated in the case of non-market economies. For the purposes of this article, non-market economies are defined as economies that exhibit price distortions due to substantial governmental interference with market forces. Since 1947, there has been a presumption that prices are distorted in non-market economies where the state controls factors of production and interferes with market conditions.[2] Domestic prices are therefore thought to be unreliable in non-market economies, which leads importing countries to use alternative prices in their anti-dumping calculations.

Upon accession to the WTO, China committed to a provision that would allow WTO members to calculate dumping duties using analogue or surrogate values, constructed based on third country prices for 'normal value'.[3] Section 15(a)(ii), a subsection of the agreed protocol, was to expire after the passage of 15 years, on 11 December 2016.

On 15 December, 2016, China brought a complaint (DS516)[4] in the WTO alleging that, following the expiration of Section 15(a)(ii) on 11 December, 2016, Articles 2(1) to 2(7) of the Basic European Union (EU) Regulation on dumping investigation are inconsistent with Article I:1 of the GATT 1994, Articles 2.1 and 2.2 of the Anti-Dumping Agreement, Article VI:1 of the GATT 1994, and the second paragraph of the Second Note *Ad* to Article VI:1 of the GATT 1994 ("Second

[2] See United States Trade Representative (USTR), 'European Union – Measures Related to Price Comparison Methodologies (DS516) – Legal Interpretation – GATT 1994 Article VI:1 – Second Note Ad Article VI:1 – Practice of GATT Contracting Parties – Accessions to GATT – ADA Article 2 – and Section 15 China WTO Accession Protocol' (USTR, 13 November 2017) <https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/wto-dispute-settlement/pending-wto-dispute-32> accessed 13 September 2018. Here, the history of Article VI as basis for alternative price comparability in cases of non-market economies is pointed out. At page 19 specifically, it is noted that the proposed amendments after 1947 and accession protocols for non-market economies after 1947 established the incontrovertible interpretation of Article VI:1 of GATT 1947 as permitting a rejection of non-market economy prices. Also see: See WTO, *European Union — Measures Related to Price Comparison Methodologies* (10 July 2017) WT/DS516.

[3] WTO, *Accession of the People's Republic of China – Decision of 10 November 2001* (23 November 2001) WT/L/432, Section 15(a)(ii): Importing WTO Members were, subject to certain conditions, exceptionally permitted to use a methodology based on a strict comparison with domestic prices or costs in China. Also see WTO, 'Transitional Review Mechanism Pursuant to Section 18 of the Accession of the People's Republic of China – Questions from the United States' (23 October 2003) G/ADP/W/436, 5.

[4] WTO, *European Union – Measures Related to Price Comparison Methodologies* (10 July 2017) WT/DS516.

Note").[5] Furthermore, China alleges that after expiry of Section 15, Article 2(7) of the EU Basic Regulation[6] breaches the most-favoured-nation treatment required under Article I:1 of GATT 1994. China asserts that its economy does not fit the provisions of the Second Note, which is the only legal authority for non-market economy treatment.

The United States (US) has a substantial trade interest in this matter because, like the EU, it also applies alternative, surrogate methodology to its dumping margin calculations for China; it therefore joined case DS516 as a third party with a substantial trade interest in the outcome of the case. China brought a similar case against the US in case DS515/1 (concerning the expiration of Section 15(a)(ii) of the Protocol on the Accession of the People's Republic of China).[7]

III. China Continues to be Bound by Section 15 After 11 December 2016

On 6 December 2017, Ambassador Zhang Xiangchen made an opening statement before the dispute settlement panel in case DS516. He invoked *pacta sunt servanda*, the fundamental principle that 'agreements must be kept',[8] to argue that WTO Members are no longer authorised to reject Chinese prices or costs in anti-dumping investigations after 11 December 2016. Zhang argued that WTO Members were obligated by the terms of Section 15(d) of China's accession protocol to cease all 'analogue country' dumping calculation methodologies. In support of China's interpretation, Zhang cited the *Fasteners*[9] dispute, in which the Appellate Body decided that "paragraph 15(d) of China's Accession Protocol establishes that the provisions of paragraph 15(a) expire 15 years after the date of China's accession".[10] As a result, China contends that it has discharged its sole obligation under Section 15, which was to endure fifteen years of non-market

[5] WTO, *The Legal Texts: The Results of The Uruguay Round of Multilateral Trade Negotiations* (Cambridge University Press 1999); General Agreement on Tariffs and Trade (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 3 (hereinafter "GATT 1994"); The Second Note Ad is an exception to Articles 2.1 and 2.2 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994. It permits a Member to depart from a strict comparison with domestic (Chinese) prices if the Member satisfies the two conditions set forth in the Second Note.

[6] Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [2016] OJ L 176/21 (hereinafter, "EU Basic Regulation").

[7] WTO, *United States – Measures Related to Price Comparison Methodologies* (12 Dec 2016) WT/DS515.

[8] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (hereinafter "VCLT 1969"), Article 26.

[9] WTO, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, (28 July 2011) WT/DS397/AB/R, para 289.

[10] ibid. See also Weijia Rao, 'China's Market Economy Status under WTO Antidumping Law after 2016' (2013) 5(2) TCLR151, 165.

economy treatment in anti-dumping investigations in exchange for unconditional market economy treatment under all WTO agreements after 11 December 2016.

The WTO Dispute Settlement Understanding[11] provides that WTO agreements such as China's Accession Protocol are to be interpreted in accordance with "the customary rules of interpretation of public international law".[12] Among the customary rules recognised for WTO treaty interpretation is Article 31 of the 1969 Vienna Convention on the Law of Treaties (hereinafter "1969 VCLT").[13] Article 31 states that a "treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[14] It further states that "interpretation must be based above all upon the text of the treaty".[15]

With respect to the ordinary meaning of the expiry clause, China interprets the ordinary meaning of the words "in any event" in the second sentence of subsection 15(d) as establishing a categorical conclusion to non-market pricing methodology, subject to no conditions and requiring no performance on the part of China.[16] In sum, China believes its sole obligation under Section 15 is to wait fifteen years to automatically 'graduate' to market economy status after 11 December 2016.

A. Section 15 contains provisions not subject to expiry

China's proposed interpretation of Section 15 leaves only China with the benefit of its bargain, while it deprives WTO Members of the terms they negotiated in the Protocol. First, China suggests that the entire chapeau found at subsection 15(a) expired along with subsection 15(a)(ii). Nothing in the text of Section 15, however, supports this interpretation. The chapeau at subsection 15(a) is not subject to expiration dates, nor are exceptions or derogation from subsection 15(a) admitted. Countries are constrained in Section 15(a) to either use Chinese prices or costs *or* an alternative methodology that does not take into account

[11] WTO, 'Understanding on Rules and Procedures Governing the Settlement of Disputes', Annex 2 of the Marrakesh Agreement Establishing the World Trade Organization (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 401 (hereinafter, "Dispute Settlement Understanding").

[12] Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (15 April 1994) 1867 UNTS 14, 33 ILM 1143 Annex 2, Article 3.2; see also WTO, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (24 August 1998) WT/DS79/R, 47.

[13] WTO, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (24 August 1998) WT/DS79/R 45.

[14] 1969 VCLT, Article 31.

[15] See, for example, *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v Chad)* (Judgment) [1994] ICJ Rep 6 at 22, para 41.

[16] WTO, 'Opening Statement by Ambassador Zhang Xiangchen as a part of the Oral Statement of China at the First Substantive Meeting of the Panel in the dispute: European Union – Measures Related to Price Comparison Methodologies (DS516)' (6 December 2017) <http://images.mofcom.gov.cn/Wto2/201712/20171213174424357.pdf> accessed 4 January 2018.

Chinese domestic prices or costs. Hence, the chapeau applies indefinitely during the pendency of China's membership or until China can prove its market economy status pursuant to subsection 15(d). No mention is made anywhere in the Protocol of modifications or revisions to the chapeau after any period of time.

Secondly, China erroneously argues that the chapeau is subordinate to its subsection; therefore, expiry of one subsection vitiates the entire chapeau. This interpretation is, however, contrary to the Appellate Body's opinion in *United States – Standards for Reformulated and Conventional Gasoline*, where the Appellate Body rejected interpretations that would "empty the chapeau of its contents" and render the remaining paragraphs of a provision meaningless.[17] In fact, Section 15(a) serves a preambular function by announcing the overall object and purpose of the Section. It lays the foundation for rules to determine whether an importing Member must use Chinese costs of production or prices to determine antidumping duties within Chinese industries under investigation or whether alternative methodology such as third country prices are appropriate. Contrary to China's construction, the provisions of Section 15 are sequenced in a logical order according to their level of importance. Section 15(a) provides the overarching framework for price comparability. This framework is *implemented in* the rules of subsections 15(a)(i) and 15(a)(ii), which are an extension of the framework, but it is erroneous to assume that subsection 15(a) derives its authority from 15(a)(ii). Rather, subsection 15(a) is the logical extension of Article VI of GATT 1994, and the Anti-Dumping Agreement referenced in the preceding paragraph.

Thirdly, while China focuses all its attention on the second sentence of subsection 15(d),[18] it overlooks the plain language of the first[19] and third[20] sentences which provide the interpretive context for the second sentence. China's proposed interpretation renders the first and third sentences of subsection 15(d) meaningless, since they condition termination of "the provisions of subparagraph (a)" on China's performance of market reforms to the satisfaction of WTO Members under their municipal laws. The use of the plural, "provisions", stands in stark contrast to the second sentence in 15(d), which references termination of subsection 15(a)(ii) only.

[17] WTO, *United States – Standards for Reformulated and Conventional Gasoline* (29 April 1996) WT/DS2/AB/R. Para 23

[18] *Accession of the People's Republic of China* (n 3), Section 15(d): "…In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession…"

[19] ibid, "…Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession…"

[20] ibid, "…In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

This deliberate distinction between the various provisions of subsection 15(a) leads to the logical conclusion that if the contracting parties had intended all of the provisions of subsection 15(a) to terminate within 15 years, they would have done so explicitly.

Fourthly, a textual analysis of the first and third sentences of subsection 15(d) reveals that, to gain the benefit of market economy status, China is still bound to meet the unfulfilled promises it made upon accession. The principle of *pacta sunt servanda* requires China to either meet its obligation of showing its market economy status under WTO Members' national laws, or submit to alternative pricing valuation. Expiry of subsection 15(a)(ii) left in effect 15(a)(i), by which Chinese producers must show the prevalence of market conditions to merit a deviation from the presumption of non-market economy status. Similarly, taken as a whole, subsection 15(d) reinforces the notion that, to merit market economy treatment, China bears the burden of clearly showing it has completed the transition to market economy status to the satisfaction of Members' national laws.

China's continuing obligations are reflected in the context and ordinary meaning of subsection 15(d). The first sentence of subsection 15(d) establishes the termination of subsection 15(a) "provided that the importing Member's national law contains market economy criteria as of the date of accession". The ordinary meaning of the expression "provided that" conditions removal of subsection 15(a) on the existence of national legislation that sets forth criteria to determine market economy status. The third sentence creates an identical obligation but allows China to make an industry-specific showing. Therefore, the first and third sentences of subsection 15(d) create two obligations: (1) China must establish that it is a market economy; and (2) China must satisfy market economy status criteria under the national laws of WTO Members.

China argues that the first and third sentences of subsection 15(d) only apply before 11 December 2016; yet, there is no textual evidence for this proposition. The word "once" in the first sentence of subsection 15(d) means 'as soon as'. "Once" denotes conditionality and marks the period of time that commences after the requirement has been met by China. Therefore, the first sentence is not subject to expiry on any particular date; rather, it terminates after satisfaction of the requirement.

Similarly, the third sentence is not subject to any timeframe but is conditioned on China's performance since it reads "should China establish… that market conditions prevail". Under both the first and third sentences, China bears the burden of making an affirmative showing of its market economy status to the satisfaction of an importing WTO Member provided that the Member has clear national criteria regarding market economy status. Hence, the first sentence permits

China to establish market economy status vis-à-vis individual WTO Members *at any time* before or after the fifteen-year mark.[21]

Finally, China relies on *Fasteners* as proof that the Appellate Body has already determined that all of Section 15(a), including the chapeau, was to expire after the passage of fifteen years. In support of this argument, China relies on a statement by the Appellate Body in *Fasteners* to the effect that "[p]aragraph 15(d) of China's Accession Protocol establishes that the provisions of subsection 15(a) expire fifteen years after the date of China's accession".[22] The issue of the effect of subsection 15(d), however, was not before the Appellate Body in the *Fasteners* dispute. Subsection 15(d) provides only for the expiry of subsection 15(a)(ii). Therefore, the general statement the Appellate Body made regarding expiry in *Fasteners* is limited to subsection 15(a)(ii). The remaining provisions of subsection 15(a) and subsection 15(d) remain in force after 11 December 2016.

B. The negotiating history of section 15 confirms that china must complete its transition to merit market economy treatment

Article 32 of the 1969 VCLT allows interpreters to look to preparatory work surrounding a treaty provision and the circumstances of its inclusion in cases of ambiguity.[23] Zhang cited the negotiating history and high-level public statements made by EU and US officials to support the understanding that the non-market economy methodology would cease after fifteen years. During the course of negotiating China's Accession Protocol, China rejected inclusion of a non-market economy clause, and only acquiesced on the condition that the clause would expire fifteen years after the date of accession.[24] Therefore, China argues that the original purpose of including the fifteen-year deadline was to strike a deal whereby China would accept fifteen years of discriminatory non-market economy treatment in exchange for full termination of its non-market status as of 11 December 2016.

Where Zhang sees a 'ticking clock' burdening China with unfair discrimination, the EU and US interpret Section 15 as a major concession to China. In exchange for improved trade relations with China, WTO Members negotiated Section 15(a) to

[21] For instance, Australia and other countries have recognised market economy status, see Annex II.

[22] WTO, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (28 July 2011) WT/DS397/AB/R, para 289.

[23] VCLT 1969 (n 8), Article 32: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

[24] Rao (n 10) 157.

encourage industry-level reforms during the first fifteen years of China's accession. This explains why subsection 15(a) addresses *producers* within particular industries, rather than *China*. Subsection 15(a) thus incentivised bargaining and facilitated transactional relationships between WTO Members and private *Chinese producers*. Subsection 15(a)(ii) authorised Members to *presume* Chinese producers benefited from non-market conditions without relying on any additional affirmative findings for the first fifteen years of China's membership.[25] Upon expiry of subsection 15(a)(ii), however, Members must rely on their national laws, which permit them to make industry-specific market economy determinations regarding particular Chinese producers under subsection 15(a)(i). To gain recognition of a successful nationwide or sector-specific transition, subsection 15(d) requires China to clearly show it has graduated to a market economy under Members' national laws.

Thus, the provisions of subsection 15(d) shift the burden from private producers to *China* (the sovereign) to prove its market economy status under Members' national laws. Far from conferring the windfall China argues it deserves, Section 15(d) creates a balance of power that favours WTO Members' right to make a determination regarding China's market economy status *at any time*. In other words, subsection 15(a)(ii) offered a WTO-brokered presumption that no further market economy findings were necessary to support a Member's non-market determination. After expiry of subsection 15(a)(ii), however, Members are bound to make affirmative findings of market economy status with respect to Chinese producers under subsection 15(a)(i) and with respect to China under subsection 15(d). In this way, Section 15(d) reflects the object and purpose of encouraging market reforms in China after expiry of subsection 15(a)(ii) and advancing bilateral relationships until full completion of the transition.

Also worth noting is the requirement in Section 15(d) that Members have existing market economy criteria under national laws *at the time of China's accession* ("as of the date of accession"). In this way, China was assured that its economy would be measured by unbiased standards in assessments of its market economy status even after expiry of the presumption rule in 15(a)(ii).

Zhang's interpretation disregards the continuing force of sentences one and three of subsection 15(d). Instead, he characterised both provisions as "early termination" provisions that only applied *before* 11 December 2016.[26] However, use of the words "once" and "should" in sentences one and three unambiguously denote *ongoing* requirements, conditional only on China's performance. In this

[25] See USTR (n 2) para 8.6.5.1: "One of those circumstances—rejecting Chinese prices and costs without any additional affirmative finding when the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product—is time-limited."

[26] WTO, 'Opening Statement by Ambassador Zhang Xiangchen' (n 16), para 11.

sense, expiry of subsection 15(a)(ii) was indeed a 'ticking clock',[27] but rather than accruing unilateral benefits to China, the 'clock' counted down the days until China fully completed its transition to market economy pursuant to Section 15(d).

Zhang's opening statement cites numerous government statements that are consistent with interpretation of subsection 15(a)(ii) as a transition methodology, which would be replaced by determinations under national laws. Zhang notes that then-US Trade Representative Charlene Barshefsky and US Senator Feinstein both noted that "the special anti-dumping methodology" was to last for fifteen years.[28] The EU Commission also remarked that the "specific procedures for dealing with cases of alleged dumping by Chinese exporters" would "remain available for up to fifteen years".[29] Yet these examples only strengthen the view that subsection 15(a)(ii) established a WTO-brokered procedure which did not affect the remaining provisions of Section 15. None of the statements reflect an understanding that subsection 15(a)(ii) would nullify determinations of market economy status under national laws. Neither do the statements show an understanding that Members would lose the fundamental, sovereign right to make market economy comparisons under Article VI of GATT 1994 after fifteen years. All of these statements are mere summations of the presumption granted under subsection 15(a)(ii). They do not address the provisions of subsection 15(d). None of the cited statements discharges China of its duty to make a showing of its market economy status under subsection 15(d). Hence, the public remarks referenced by Zhang are fully compatible with the understanding that, after 11 December 2016, competence for price comparability falls to WTO Members under their national laws.

IV. Section 15 Does Not Supplant Articles VI:1 and VI:2 of GATT 1994

A. China misapplies lex specialis

China relies on a *lex specialis* analysis of Section 15, arguing that Section 15 is a derogation from price comparability rules under Article VI and the *Anti-Dumping Agreement*.[30] *Lex specialis* is a longstanding norm of customary international jurisprudence whereby special rules override general rules ('*lex specialis derogat legi generali*').[31] The traditional reasoning for prioritising the specific over the general

[27] ibid, para 6.

[28] WTO, 'Opening Statement by Ambassador Zhang Xiangchen' (n 16), para 11.

[29] WTO, 'Overview of the Terms of China's Accession to WTO' (October 2003), para 55 <http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111955.pdf> accessed 4 January 2018.

[30] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (adopted 15 April 1994, entered into force 1 January 1995) 1868 UNTS 201, Article 2.1.

[31] Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (1997) 49, 56

is that particular circumstances are regulated with more clarity and certainty by special rules than by general ones.[32] Under China's *lex specialis* analysis, Section 15 adds greater precision to the general treatment given to non-market economies in Article VI:1, VI:2, Second Note of the GATT 1994 and the Anti-Dumping Agreement.[33] Hence, in China's formulation, Section 15 overrides GATT VI:1 and VI:2.

China's interpretation, however, is a misapplication of the norm of *lex specialis* exception. In fact, there are two types of *lex specialis*: (1) specialised rules that constitute exceptions to general rules; and (2) specialised rules that elaborate on the application to be given to a general rule in a particular circumstance. China erroneously argues that Section 15 operates under type (1) when in fact it has every characteristic of a rule of application under type (2). Since the rules in Section 15 are an application of Article VI and they derive their authority from Article VI, they cannot be understood as an exception.

B. Negotiating history of GATT 1994 and subsequent practice

As mentioned above, Articles VI:1 and VI:2 of GATT 1994 require "comparable prices, in the ordinary course of trade".[34] Since only market economy prices can be understood as comparable and because state control distorts the ordinary course of trade, Article VI is the legal source of alternative price methodologies. Article VI leaves price comparability at the discretion of WTO Members. Negotiating history and subsequent practice confirm this understanding. The negotiating history of the Second Note Article VI:1 confirms the longstanding practice of empowering WTO members with the authority to

[32] ILC, 'Report of the Study Group on the Fragmentation of International Law – finalized by Martti Koskenniemi' (13 April 2006) UN Doc A/CN.4/L.682, 29 <http://legal.un.org/ilc/sessions/55/pdfs/fragmentation_outline.pdf> accessed 12 January 2018.

[33] GATT 1994 (n 5); The Interpretative Second Note of Article VI from Annex I allows for alternative methodologies in countries where domestic prices are fixed by the state and the state enjoys a complete or substantially complete monopoly over trade. It states:

> Paragraph 1
>
> 1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.
>
> 2. It is recognised that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

[34] ibid.

make market economy determination under their national laws. The Working Party Sub-Group convened in 1955, drafting a report that considered Article VI:1 to contain the "flexibility and authority to reject non-market determined prices for purposes of determining dumping".[35]

Furthermore, the US Third Party submission clarifies that the Second Note merely identifies one situation (a "substantially complete monopoly") in which it may be particularly difficult to determine price comparability. Yet, the situation described in the Second Note is not the exclusive test for determining price comparability.[36] Rather, the negotiating history of the Second Note itself reveals that Members intended price comparability to flow from Article VI:1 and VI:2. Therefore, no modification to Article VI was deemed necessary at the time the Second Note was added. This is also reflected in the plain language of Article VI which requires "comparable prices" in "the ordinary course of trade" for computation of dumping. Both the terms comparable price and in the ordinary course of trade have been historically interpreted as market economy requirements.

As early as 1957, when the GATT Secretariat undertook a largescale review of application of Article VI under WTO Members' national laws, it found that a majority of members interpreted Article VI as requiring market economy status to reach comparable prices.[37] This understanding was expressed in national legislation of Canada, South Africa, Rhodesia, the United States, Belgium, Sweden, Australia, Norway, and the United Kingdom which used expressions such as 'having a free economy', 'freely offered for sale', "market price', 'in the ordinary course of trade', 'in the open market under fully competitive conditions', and 'fair market value'. Furthermore, the Secretariat itself inserted a discussion of "the state trading problem"[38] in which it recognised that WTO members often instituted the practice of alternative methodologies to make fair price comparisons: "countries levying anti-dumping or countervailing duties on imports from State-trading economies very often rely on the price situation in comparable third markets or on consultations with the exporting country".[39]

Other accession protocols also confirm the understanding that Article VI:1 and VI:2 are the source of alternative methodologies. Poland, Romania, and Hungary were each subject to alternative anti-dumping methodologies after accession under Article VI. Therefore, Article VI itself has historically been understood to stand outside of accession agreements as the underlying legal

[35] USTR (n 2) para 4.8.3.3.

[36] ibid.

[37] ibid para 5.1–5.10.2 (citing GATT, Anti-dumping and Countervailing Duties: Secretariat Analysis of Legislation (23 October 1957) L/712 < https://www.wto.org/gatt_docs/English/SULPDF/90710019.pdf> accessed 12 January 2018).

[38] ibid 10–11.

[39] USTR (n 2) para 5.2.2.

authority for price comparability determinations in anti-dumping calculations for Members after accession.[40]

In sum, Article VI:1 of the GATT is the legal authority that underpins the Second Note, the Anti-Dumping Agreement, and Section 15 of China's Accession Protocol. The Accession Protocol merely provides a particular application of Article VI, but it does not supplant Article VI.

C. The plain language of section 15

The plain language of Section 15 indicates that the non-market economy price comparisons agreed in China's accession are derived from Articles VI:1, VI:2 GATT 1994. China argues that the Second Note is the sole and exclusive legal authority that provides for rejection of normal prices and costs. The EU points out in its brief, however, that the Anti-Dumping Agreement implements and applies the relevant provisions of the GATT 1994. The two Agreements must be interpreted and applied together in a manner that is harmonious and consistent, so as to give meaning to all provisions in both agreements.[41] The EU points out that contrary to China's argument that the Second Note provides the exclusive list of circumstances in which surrogate prices may be used in comparing export and normal prices, there are at least twenty-seven such abnormal situations arising under the provisions of Article VI:1, VI:2 of the GATT 1994, Article 2 of the Anti-Dumping Agreement, the Second Note *Ad* to Article VI, and Section 15 of China's Accession Protocol. Furthermore, the EU notes that Article 2.4 of the Anti-Dumping Agreement requires a "fair comparison" which requires comparable, market-based prices, in the ordinary course of trade, in line with the provisions of Article VI:1(a).[42] Both agreements authorise Members to use alternative price methodologies where they call for comparable prices in the ordinary course of trade.

China argues that Section 15 creates an exception to the Article VI and the Anti-Dumping Agreement. The introductory paragraph of Section 15 clearly states, however, that price comparability flows from Article VI and the Anti-Dumping Agreement.[43] The introductory paragraph makes clear that Section 15

[40] ibid.

[41] WTO, *European Union — Measures Related to Price Comparison Methodologies* (14 November 2017) WT/DA516 First Written Submission by the European Union (EU Brief) 8 <http://trade.ec.europa.eu/doclib/docs/2017/november/tradoc_156401.pdf> accessed 18 January 2018.

[42] See the Second Note Ad GATT 1994 Article VI:1, the Practice of the GATT Contracting Parties in the Application of GATT 1994 Article VI:1, 230 <https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art6_e.pdf> accessed 18 January 2018.

[43] See Accession Protocol Section 15 (n 2), introductory paragraph: Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [Anti-Dumping Agreement] "the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member".

does not stand alone or in contradiction to prior agreements, but rather it must be interpreted in a manner "consistent with" the framework provided by Article VI and the Anti-Dumping Agreement. The phrase "consistent with" means compatible with. "Consistent with" does not denote an exception, but rather consonance. [44] The plain language of the introductory paragraph makes clear that the special procedures provided for in Section 15 were not intended to supplant any commitments under GATT. Therefore, China's interpretation of Section 15 as *lex specialis* that overrides price comparability assessments under GATT or the *Anti-Dumping Agreement* is inconsistent with the ordinary meaning of the introductory paragraph.

D. Application of general rules in the presence of significant ambiguities or gaps in special rules

Even in the unlikely eventuality that the panel finds Section 15 is *lex specialis* with respect to Article VI, the instant dispute shows that Section 15 has significant gaps or ambiguities; therefore, the general rules should prevail. China argues that all non-market treatment under Section 15 expires on 11 December 2016, and the EU and US argue that only Section 15(a)(ii) expires after 11 December 2016. Thus, there is sufficient ambiguity in the interpretation of Section 15 to rely on Article VI. Given the competing interpretations of Section 15, it is only logical that general rules should fill in the gaps left in the special rules.

Finally, in the unlikely event that the panel finds that the entirety of Section 15 is nullified by expiration of subsection 15(a)(ii), the panel can still find the EU Basic Regulation permissible because the Basic Regulation is in line with the EU's rights under the *Anti-Dumping Agreement*. The EU invokes its right to seek an authoritative interpretation of the provisions of a covered agreement through decision making under the WTO Agreement, pursuant to Article 3.9 the Dispute Settlement Understanding.[45] The EU will argue that Section 15 *itself* is proof that Members unanimously agreed to interpret Article VI and Article 2 of the Anti-Dumping Agreement as permitting Members to reject domestic prices and costs to make a fair comparison. Article 31(3)(a) of the Vienna Convention states that subsequent agreements such as Section 15 should be considered in interpreting a previous agreement such as Article VI and the Anti-Dumping Agreement.

Therefore, even if the panel finds that analogue methodologies may no longer be used in evaluating China's domestic prices and costs under Section 15, the EU

[44] USTR (n 2).

[45] Dispute Settlement Understanding (n 11), Article 3.9: "The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement."; also see: First Written Submission by the European Union (n 41) 76.

points out that the panel may still rely on the special standard of review under *Anti-Dumping Agreement* 17.6(ii), whereby a panel may uphold *a permissible interpretation* of a treaty even where customary rules of interpretation of public international law may otherwise favour a different interpretation.[46]

V. Economic Analysis Reveals China Continues to Operate as a Non-Market Economy

A. China's steps towards a market economy status

Beyond purely legal arguments, China may also proffer economic evidence of the opening of its markets, of growth in transparency and of substantial restructuring over the past fifteen years, such that the Second *Note Ad* substantial monopoly provision should no longer apply to it. While these gains have been well documented, there is still evidence that China's transition is incomplete.

In the Third China Round Table of 2015, Yuan Yuan reviewed China's accomplishments thus far. As proof that China has embraced market forces over a command economy, Yuan pointed out that in 2013 the number of investment projects subject to government ratification was cut by 60% from the 2004.[47] Yuan indicated that China has liberalised its banking and financial sector, opened itself up to foreign investment, increased both its export and import portfolios, reduced tariffs and trade barriers, made multilateral trade agreements, declaring that an "open economic system compliant with both the WTO rules and its national situation has taken shape in China".[48]

Many statistics appear to back up Yuan's claims. Jonathan Eckart writing for World Economic Forum calls the private sector is the main driver of growth and employment in China with private sector firms producing between two-thirds and three-quarters of China's GDP.[49] China is now the world's biggest producer of concrete, steel, ships, and textiles, and has the world's largest automobile market.[50] One expert calls China a "commodities powerhouse" because it imports over half of the world's annual consumption of aluminium, and nearly half of its nickel,

[46] First Written Submission by the European Union (n 41) para 279.

[47] Yuan Yuan, 'Looking Back 14 Years after Accession: Case of China' (WTO, 2 June 2015) 5 <https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback-14yearafter.pdf> accessed 18 January 2018.

[48] ibid 6.

[49] Jonathan Eckart, '8 Things You Need to Know about China's Economy' (*World Economic Forum: Annual Meeting of New Champions*, 23 June 2016) para 12 <https://www.weforum.org/agenda/2016/06/8-facts-about-chinas-economy/> accessed 19 September 2018.

[50] John Ikenberry, Zhu Feng and Wang Jisi (eds), *America, China, and the Struggle for World Order: Ideas, Traditions* (Palgrave Macmillan 2015).

copper, zinc, tin and steel. China's stock market is the third largest in the world.[51] China also touts a leap in its middle class. In 2016, real urban income rose by 5.8% and a recent study found that 55% of Chinese consumers are confident that their income will continue to rise in the next five years.[52]

China may also point to a vast reduction of government control since its accession to the WTO. Since 2001, China has engaged with the US to increase economic liberalisation within the frameworks of the Joint Commission on Commerce and Trade as well as the Strategic and Economic Dialogue.[53] According to Eswar Prasad of the Brookings Institute when testifying to Congress, China has been "selectively and cautiously dismantling" government control over both the inflow and outflow of capital, resulting in a freer movement of capital both domestically and in its international portfolio.[54] The government has a stated goal of shifting "foreign exchange holdings [to] the people" (and away from the central bank).[55] As such, many holdings have moved from government entities to private households and corporations. Furthermore, China has made major currency and banking reforms as it transitions from a centrally controlled exchange rate to one more market-determined. For example, as recently as August 2015, the People's Bank of China (PBC) moved away from bank-determined opening prices on the Chinese stock market, instead pegging them to the previous day's performance at closing.[56] Furthermore, "bank deposit and lending rates have now been fully liberalised", with commercially owned banks now free to set their rates based on market forces instead of government edict.[57] Scholars speak of China as a dynamic emerging economy, stimulated not through government subsidy and regulation but by domestic consumer confidence and international investor excitement.

[51] Frank Holmes, 'How China went from Communist to Capitalist' (10 Oct 2015) *Business Insider* <http://www.businessinsider.com/how-china-went-from-communist-to-capitalist-2015-10> accessed 20 January 2018.

[52] 'China's Consumers: Still Kicking' (30 April 2016) *The Economist*, <https://www.economist.com/news/business-and-finance/21697597-free-spending-consumers-provide-comfort-troubled-economy-consumption-china-resilient> accessed 20 January 2018.

[53] US Government Accountability Office, 'US-China Trade: United States Has Secured Commitments in Key Bilateral Dialogues, but US Agency Reporting on Status Should Be Improved' (11 February 2014) <https://www.gao.gov/products/GAO-14-102> accessed 6 June 2018.

[54] Ewar Prasad, 'China's Economy and Financial Markets: Reforms and Risks' (*Brookings Institute*, 27 April 2016) <https://www.brookings.edu/testimonies/chinas-economy-and-financial-markets-reforms-and-risks/> accessed 6 June 2018.

[55] ibid.

[56] ibid.

[57] ibid.

B. China argues its market economy status is irrelevant

The EU currently uses an analogue country methodology for calculating the level of dumping for products originating in China. This means that the EU uses prices from third countries rather than use Chinese prices in normal value calculations.[58] Article 2(7) of the EU Basic Regulation lists China, Vietnam, Kazakhstan, and any non-market-economy country as being subject to a presumption of non-market economy. This non-market economy status has no end date and is applied indefinitely by the legislation. To overcome this presumption, producers must sufficiently substantiate a claim that market economy conditions prevail with respect to the manufacture and sale of their product.[59]

China argues that Article 2(7) of the EU Basic Regulation does not comport with the EU's obligation to not discriminate under Article I:1 of the GATT 1994 because it creates a presumption that Chinese products originate in a non-market economy. After 11 December 2016, China has argued that this presumption is no longer supported by the Accession Protocol. In China's view, its obligation under Section 15 was not to complete its transition to market economy, but rather to simply wait for the fifteen years to pass. In fact, Zhang asserted that the matter of China's market economy is "irrelevant" in determining whether WTO Members have the right to use alternative price methodology.[60] Therefore, in China's view, the EU's trade defence laid out in Article 2(7) is discriminatory and constitutes a breach of Section 15.

C. China's actual market economy status is essential

However, China's argument defies logic. The principal object and purpose of Section 15 is to encourage China to complete its market reforms, not to provide a loophole for China to remain a state-run economy while reaping the benefits

[58] See for example, Erdal Yalcin, Gabriel Felbermayr and Alexander Sandkamp, 'New Trade Rules for China? Opportunities and Threats for the EU' (*European Parliament's Committee on International Trade*, 29 January 2016) 12 <http://www.europarl.europa.eu/RegData/etudes/STUD/2016/535021/EXPO_STU(2016)535021_EN.pdf> accessed 25 January 2018. It is explained that EU anti-dumping margins tend to be lower than in the US because the EU uses US prices as an analogue rather than countries with similar levels of development, wages, and per capita income.

[59] EU Basic Regulation (n 6), Article 2(7)(b), provides as follows: "In anti-dumping investigations concerning imports from the People's Republic of China, Vietnam and Kazakhstan and any non-market-economy country which is a member of the WTO at the date of the initiation of the investigation, the normal value shall be determined in accordance with paragraphs 1 to 6, if it is shown, on the basis of properly substantiated claims by one or more producers subject to the investigation and in accordance with the criteria and procedures set out in point (c), that market-economy conditions prevail for this producer or producers in respect of the manufacture and sale of the like product concerned. When that is not the case, the rules set out under point (a) shall apply."

[60] See WTO, 'Opening Statement by Ambassador Zhang Xiangchen' (n 16) 13.

afforded to full market economies.[61] Therefore, nothing is quite as relevant to the question of price comparability as China's progress towards achieving market economy status.

A wealth of economic research supports the finding that China remains a state-run economy. A 2008 European Commission report on China's progress towards graduation to market economy status found that China met only one of Europe's five criteria for market economy status.[62] Similarly, "New Trade Rules for China," a 2013 report by the European Commission, found that the Chinese government continued to distort market conditions.[63] The Commission determined that China imposed restrictions on exports and imports; subsidised inputs; restricted business licenses; exercised direct state influence over corporate decision-making; lacked sound legal regimes such as property rights, bankruptcy and competition laws; and interfered with the independence of Chinese banks.[64] The World Bank issued a 2015 economic update, finding that in China the State's "direct and extensive involvement in allocating resources has no parallel in modern market economies". The World Bank subsequently withdrew the report under pressure from China. [65] Since then, in 2016, the EU Parliament issued another report finding that China has not yet 'graduated' to a market economy.[66]

More recently, in October 2017, the US Department of Commerce issued a comprehensive report concluding that China remains a non-market economy

[61] See analysis of Section 15 above.

[62] European Commission, 'Commission Staff Working Document on Progress by the People's Republic of China towards Graduation to Market Economy Status in Trade Defence Investigations (19 September 2018) 26–27 <http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143599.pdf> accessed 13 September 2018.

[63] Lukas Gajdos and Roberto Bendini, 'Policy Briefing: Trade and Economic Relations with China 2013' (24 April 2013) Directorate-General for External Policies Policy Department <http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491492/EXPO-INTA_SP%282013%29491492_EN.pdf> accessed 13 September 2018. Also see for example, Dr Markus Taube and Dr Christian Scmidknoz, 'Assessment of the Normative and Policy Framework Governing the Chinese economy and its Impact on International Competition' (*Think!Desk China Research and Consulting*, 25 June 2015) <http://www.euroalliages.com/data/1456161539THINK%21DESK%20study%20on%20MES%20to%20China%20-%20Executive%20summary.pdf> accessed 13 September 2018.

[64] Commission of the European Communities, 'Document on Progress by The People's Republic of China: Towards Graduation to Market Economy Status in Trade Defence Investigations' (19 September 2008) SEC (2008) 2503 <http://ec.europa.eu/transparency/regdoc/?Fuseaction=list&coteid=2&year=2008&number=2503&version=ALL&language=en> accessed 20 January 2018.

[65] Mark Magnier, 'World Bank Deletes Section on China from Report on Web' *The Wall Street Journal* (6 July 2015) <https://www.wsj.com/articles/world-bank-deletes-critical-passage-on-china-1435940676> accessed 20 January 2018.

[66] European Parliament, 'Resolution on China's Market Economy Status' (2016) Legislative Observatory 2016/2667 (RSP) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0223+0+DOC+XML+V0//EN> accessed 13 September 2018.

under US criteria.[67] The report found that the government of China's overall relationship with markets and the private sector results in economic distortions. Fundamentally, the Chinese Communist Party controls allocation of resources, with the state directing and channelling economic actors to meet state-planned targets. State control over the economy extends to the largest financial institutions and leading enterprises in manufacturing, energy, and infrastructure. Finally, the Chinese government strategically controls supply and demand relationships, distorting formation of exchange rates and input prices, the movement of labour, the use of land, the allocation of domestic and foreign investment, and market entry and exit.[68]

D. The EU's amended article 2(7)(b) avoids country-specific bias

Moreover, the EU has recently revamped its protocol for determining whether producer members are dumping. In November 2017, the European Parliament adopted amendments to Article 2(7)(b) of the EU Basic Regulation 2016/1036 on protection against dumped imports.[69] This overhaul in the EU's approach to non-market economy determinations removes all mention of specific countries and undertakes a less discriminatory approach that allows the EU Commission to make regular assessments of market distortions in the economies of *all* its trading partners based on the five criteria previously established as well as ILO core labour standards. The results of these assessments will be used to inform dumping complaints lodged by EU industries. In this way, the EU has pre-empted any possible gains China may make in the current litigation before the WTO because the new legislation clearly defines market economy criteria under national law and applies the criteria in a non-discriminatory manner in line with both Section 15 of the Accession Protocol and Articles I:1 and VI:1 of the GATT 1994.

Therefore, under any and all legal standards a dispute settlement panel may apply, it is unlikely that China will make a sufficient showing that market conditions prevail at the macroeconomic level. It is unlikely that any amount of evidence China presents could reverse over fifty years of historical practice by which WTO

[67] 19 US Code § 1677(18) lists six statutory criteria for designation as a non-market economy: "(i) the extent to which the currency of the foreign country is convertible into the currency of other countries; (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labour and management, (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country, (iv) the extent of government ownership or control of the means of production, (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and (vi) such other factors as the administering authority considers appropriate." <https://www.law.cornell.edu/uscode/text/19/1677> accessed 7 June 2018.

[68] See Annex 1.

[69] European Parliament Resolution of 12 May 2016 on China's Market Economy Status (12 May 2016) 2016/2667/RSP <http://www.europarl.europa.eu/sides/getdoc.do?Pubref=-//EP//TEXT+TA+P8-TA-2016-0223+0+DOC+XML+V0//EN> accessed 7 June 2018.

Members have discretion to determine market economy status. Furthermore, by most standards China's economy continues to exhibit significant price distortions caused by government control of the factors of production.[70] Rather than find discrimination in China's continued non-market economy treatment by the EU, the dispute settlement panel will likely find that the EU is entitled to make its own market economy determination under Article VI of the GATT 1994 as well as Section 15 of China's Accession Protocol.

VI. Conclusion

WTO law permits members to formulate their own definition of non-market economy within the framework of the Anti-Dumping Agreement and the Second Note to Article VI:1 of the GATT 1994. Therefore, WTO Members may continue to use alternative price comparability to calculate dumping margins with respect to Chinese products. While China proposes a reading of Section 15 that renders most of its provisions meaningless, the EU and US propose a more logical reading of Section 15 that is consistent with Article VI of the GATT 1994 and the Anti-dumping Agreement.

Furthermore, it is highly implausible that Members sought to bargain away their rights to price comparability in anti-dumping investigations, since they have enjoyed this basic right under Article VI and the Anti-dumping Agreement for more than half a century. The US and EU interpretation relies on the plain language of the text, which clearly states that only subsection 15(a)(ii) expires as of 11 December 2016. All remaining provisions of Section 15 retain their force, including China's obligation to make a clear showing of its market economy status. China argues that it had only to wait fifteen years to gain new status, yet the plain language of Section 15 show China's obligation to show it has completed its transition to a market economy. In the instant dispute China holds the key to its own jail cell. To date, China has not yet made an adequate showing of its graduation to market economy status by US and EU standards. China therefore

[70] See Annex II in Laura Puccio, 'Granting Market Economy Status to China: An analysis of WTO law and of
selected WTO members' policy' (*European Parliament Think Tank*, updated December 2015) <http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA(2015)571325_EN.pdf> accessed 20 January 2018.

still bears the burden of showing sufficient reforms under Members' national laws to merit market economy status.

Annex 1

Summary of US Department of Commerce Report Findings [71]

Factor 1: Despite market-oriented modifications of currency convertibility, the government retains significant restrictions on and ultimate approval power over capital account transactions, intervenes in onshore and offshore foreign exchange markets including limiting extent of price divergence between onshore and offshore markets, and does not disclose pricing criteria used to calculate parity rates their currency.

Factor 2: Despite a finding of variable wages across regions, sectors and enterprises, governmental institutions constrain free bargaining between labour and management. The state prohibits independent trade unions, refuses the legal right to strike, and unions are under control of a government-affiliated Party organ. Legal remedies for labour and wage violations are slim, and labour mobility is controlled by *hukon* (household registration), causing distortions on the supply side of the labour market.

Factor 3: Despite efforts to streamline procedures, significant barriers to foreign investment persist in the form of equity limits and local partner requirements, opaque approval and regulatory procedures, technology transfer and localisation requirements. The government, not the market, is the primary conduit or barrier for foreign investment in given sectors.

Factor 4: The government exerts significant control over ownership and means of production. State-invested enterprises (SIEs) and prevalent and their relative "economic weight" substantial compared to other major economies. The Chinese government allocates resources to, invests in and shields SIEs from market forces to achieve government, not enterprise, objectives. The CCP may appoint key personnel to corporate decision-making bodies. All land in China is the property of the state which controls rural land acquisition and monopolizes distribution of urban land-use rights.

Factor 5: The state allocates resources to influence economic outcomes by means of numerous mechanisms including, *inter alia*, investment approvals, access standards, guidance catalogues, financial supports, and quantitative restrictions. (a) Sectoral-level plans are formulated and executed with the participation of a plethora of state institutions; (b) the government exerts a high degree of control over prices which it wields to effect industrial policy objectives; and (c) the state

[71] US Department of Commerce, 'China's Status as a Non-Market Economy' (26 October 2017) A-570-053 Investigation <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf> accessed 8 June 2018.

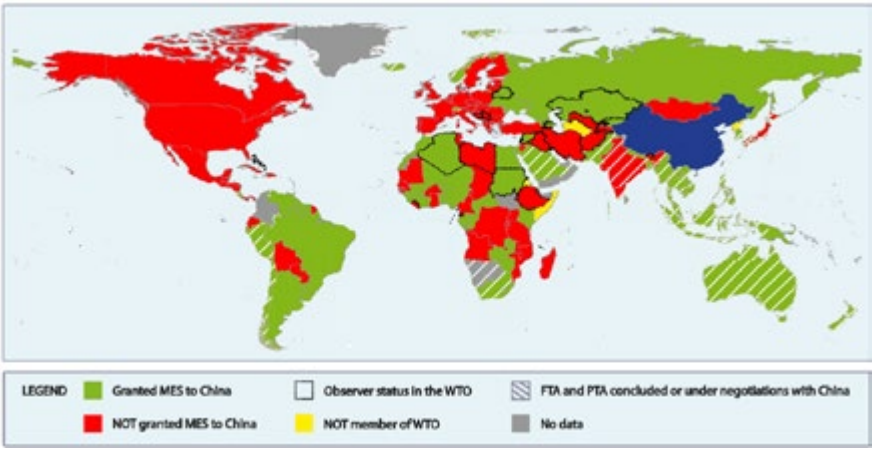
owns the largest commercial banks and oversees the majority of bank, interbank loans and even corporate bond transactions. Credit is allocated to SIEs with regard to state objectives instead of market efficiency.

Factor 6: China's legal system continues to function primarily as an instrument to achieve government and CCP-determined economic outcomes. In addition, corruption or local protectionism continues to impede the ability of firms to obtain impartial outcomes.

Annex II

China's Market Economy Status by Country (2015)[72]

Source: European Parliamentary Service



[72] Laura Puccio, 'Granting Market Economy Status to China: An analysis of WTO law and of selected WTO members' policy' (*European Parliament Think Tank*, updated December 2015) 9 <http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/571325/EPRS_IDA(2015)571325_EN.pdf> accessed 20 January 2018.