

BDI position on the issue of China's market economy status

External Economic Policy
International Markets

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- China has become one of German industry's most important economic partners, both with regard to reciprocal trade relations as well as cross-border direct investment. For numerous companies China has now developed into their biggest sales market. Good cooperation between China and the EU or between China and Germany is of central importance for German industry, along with the question of how open and fair world trade can be safeguarded.
- Today China bears a greater responsibility than ever before for the proper functioning of the global economy. When China acceded to the WTO in 2001, the country did not even account for four percent of global gross domestic product. Today a good 13 percent of world economic output originates from China. Since its accession to the WTO, China has opened up to a large extent, particularly in trade. However, trade obstacles and restrictions for foreign investors persist. Here there must be further improvements. Moreover, the Chinese government should accelerate structural change in China and reduce excess capacities, particularly in the case of steel and ceramics, but also with regard to aluminum and other non-ferrous metals. The conclusion must therefore be that in some areas China has embarked on the path to the market economy but still falls short of being what we understand as a market economy.
- In order to safeguard fair competition, German and European industry depend on effective and balanced trade defense instruments (TDI), which ensure fair and globally equal competitive conditions for manufacturers and importers based in the EU. When applying TDI, the EU must take into account the interests of EU manufacturers, EU processing firms, and also EU users.
- Even after the expiry of the transitional period laid down in Section 15 of China's Protocol of Accession to the WTO (Section 15, sub-paragraph (a)(ii)) on 11th December 2016, the anti-dumping instruments must be in a position to effectively protect German and European industry against dumped goods from China. The trade defense instruments must not be allowed to fall below the current level of protection.
- WTO law is binding for all WTO members. The obligations deriving from China's WTO Protocol must be complied with by all sides. This applies both to China's WTO commitments on market opening as well as the obligation of the EU with regard to the expiry of transitional periods under China's Protocol of Accession to the WTO. In any revision of the anti-dumping law, the EU must ensure that also in the future it continues to be compatible with WTO rules.

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- At present, when anti-dumping investigations are conducted against Chinese enterprises, these enterprises must prove that they produce under market economy conditions so that Chinese domestic prices can be used as a reference point for calculating the anti-dumping margin. The option for shifting this burden of proof to EU institutions or enterprises creates great and understandable concern in some areas of German industry, since on account of the lack of transparency in the Chinese market it would not be possible to establish this proof. Equally understandably, other parts of German industry fear that retaining the onus of proof in its present form could be an infringement of WTO law and could consequently provoke a dispute at the WTO. When it comes to proving market economy conditions, criteria to be laid down in the Anti-Dumping (AD) Basic Regulation should be applied. The investigation should be carried out in a comprehensible and transparent manner. In the process it would be incumbent upon the Chinese side to make the necessary information available. In cases that one or several of these criteria are not met, it must be possible to calculate the dumping margin by applying a calculation approach that diverges from the standard method.
- With regard to the reform of its trade defense instruments and the question of China's market economy status, the EU should coordinate its actions with important partner countries such as the United States, Canada and Japan. Divergent applications in these countries of the provisions of Article 15 of China's Protocol of Accession to the WTO harbor the risk that they might result in significant diversions of trade flows.

Background

Today China's economic policy has a major influence on the global economy. The country has undergone extensive opening, especially in trade, and has become an important economic partner of German and European enterprises. China must be given credit for its substantial efforts to comply with its WTO obligations. However, foreign investors continue to be faced with comparatively severe restrictions. The protection of intellectual property can also be difficult in China. It is also a matter for regret that China has still not acceded to the WTO agreement on public procurement. Today in many areas the Chinese economy still remains state-controlled. Excess Chinese capacities in numerous sectors (above all in steel and ceramics along with aluminum and other non-ferrous metals), which result in such products forcing their way onto world markets at dumping prices, have become a serious problem for German and European producers.

With the aid of the Trade Defense Instruments (TDI) – anti-dumping (AD) and anti-subsidy measures – the EU can protect itself against unfair trade. In the EU this is governed by Regulation 2016/1036 of the European Parliament and the Council relating to protection against dumped imports from countries that are not members of the European Union (AD Basic Regulation). Normally, goods are classified as dumped when their export price is lower than the price of like goods intended for consumption in the exporting country in the ordinary course of trade (so-called normal value). AD measures can be introduced if the imports are dumped, if there is material injury to the EU branch of industry affected, if there is a causal connection between the dumped imports and the significant injury, and if the AD measures do not run counter to the interests of the EU. In AD procedures against

imports from countries in which pricing does not take place under market economy conditions, the EU has so far applied the reference price calculation (so-called analogue country method). The determining of the normal value is correspondingly based on the price or the calculated proposed value in a third country with a market economy or the price at which the goods from such a third country are sold to other countries or to the EU.

The WTO regulates the anti-dumping and anti-subsidy measures in Article VI of the General Agreement on Tariffs and Trade (GATT) as well as in the AD agreement and the agreement on subsidies and compensatory measures. In addition, in China's WTO Accession Protocol, Section 15 (Price Comparability in Determining Subsidies and Dumping), specific provisions were laid down for determining subsidies and dumping. The heart of the matter is the calculation method for the normal value in AD procedures. Under Section 15, sub-paragraph (a)(ii), in an AD procedure against China a WTO member can diverge from Chinese domestic prices and costs, if no market economy conditions can be proved. In place of Chinese domestic prices and costs, the prices and costs of an analogue country can be adduced to determine the normal value.

On December 11th, 2016 this sub-paragraph expires (the rest of the section, including the chapeau, remains in force). Legal experts take differing views on what consequences this will have for AD procedures against China. Some of them argue that this entails a basic obligation for all WTO members not to apply a comparative price calculation in AD procedures against China any longer. In consequence, the EU would have to revise its AD basic regulation to the effect that it no longer lists China as a Non-Market Economy (NME). According to other interpretations, even after December 11th comparable prices and costs can still be applied in AD procedures against China. The EU would then possibly not be under any obligation to end its listing of China as a NME any longer. The advocates of both camps invoke credible and well-grounded arguments.

A definitive legal clarification can only be brought about by a WTO dispute settlement procedure that China could initiate after December 11th. In view of the importance of the country for world trade, BDI takes the view that waiting for the outcome of a possibly very protracted WTO procedure is not the right strategy.

A number of branches of industry that are members of BDI see their continued existence jeopardized by massive dumped exports by China to the EU. Other branches and enterprises see the danger that they will be hit by Chinese retaliatory measures if there is a trade conflict with China. Some branches are also afraid that, by tightening up its anti-dumping instruments, the EU could contribute to a global trend, which would then curtail the opening up of world markets that has already been achieved. This would consequently do more harm than good to the export-dependent German industry.