USCBC

THE US-CHINA BUSINESS COUNCIL

美 中 贸 易 全 国 委 员 会

Trade facts | CHINA'S NONMARKET ECONOMY STATUS

When China joined the World Trade Organization (WTO) in 2001, its government's pervasive intervention in the economy meant that China's trading partners could not trust data on production costs to determine a fair market value in antidumping cases. A provision in China's WTO accession agreement resolved this issue by allowing other WTO member countries to use special tariff calculations, known in the US as nonmarket economy (NME) calculations, in China cases—for 15 years. As a result, the US could use a formula to determine the value of antidumping tariffs to apply to Chinese goods sold at unfairly low prices. That provision expires December 11, 2016. **Here are the five things you need to know about China's nonmarket economy status and what needs to happen this December.**

1 What is a nonmarket economy?

According the US law, a nonmarket economy does not operate on market-based principles and its prices for final goods do not reflect fair value. In practice, however, any country under communist control in 1974, when the law that created the designation was enacted, was classified a NME. At present, that includes China, Vietnam, and several former Soviet states (but not Russia — it was taken off the list in 2002).

The WTO does not specify what a nonmarket economy is. It leaves those decisions to individual WTO member countries; but only until the end of this year in China's case.

2 Is China a market economy?

No. While many sectors of China's economy operate under market conditions, many others do not. By its own admission, China has significant overcapacity in sectors such as steel and aluminum, driven by subsidies and other government intervention, with a detrimental effect on international and domestic markets.

3 Does the US have to automatically designate China a market economy after Dec. 11?

No. According to its WTO accession agreement, after December 11 countries can no longer use NME methodology in dumping cases involving products from China. But the agreement does not state that countries must designate China as a market economy. In fact, there's no such thing as a "market economy" in US law or the WTO's rules — in the US, trading partners are either on the nonmarket list or they aren't.

4 Did the US commit to stop treating China as a nonmarket economy?

Yes. The language in China's WTO entry agreement is clear on this, and three successive US administrations — all that have served during and since China joined the WTO — have stated in public and in official documents that the ability to use NME calculations ends after 15 years. As late as 2012, the Obama Administration affirmed this point in its annual report to Congress on China's WTO compliance.

5 What should the US do?

Fortunately, the US can honor the commitment we made 15 years ago and still have ways to deal with China when it tries to export its overcapacity problem or use other unfair practices against us. As allowed under last year's Trade Preferences Extension Act, Commerce can use an alternative methodology to calculate duties in cases involving sectors with market distortions — whether it be China or any other country. A rigorous process is needed to ensure a sector or producer merits the use of an alternative methodology, and the alternative methodology would need to be WTO compliant, but this approach is the right way forward. We would no longer use the NME methodology, but we would still be able to protect against Chinese dumping. If we do not uphold our promise, the United States will be sending a message to China that it is OK to break commitments — a signal which is not in our interests to convey.