



April 28, 2017

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RE: Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws [Docket ID: ITA-2017-0002]

Dear Ms. Wils-Owens:

The Coalition for a Prosperous America (CPA) appreciates the opportunity to comment on whether China should continue to be treated as a non-market economy under U.S. antidumping and countervailing duty laws. CPA is a nonprofit organization representing farmers, ranchers, manufacturers, and labor groups, working on a national trade strategy that is more conducive to jobs and growth.

For the reasons that follow, the Department of Commerce (Department) should conclude that China is not a market economy under the Tariff Act of 1930, as amended. There are six factors enumerated by section 771(18)(B) of the Act, which the Department must take into account in making a market/nonmarket economy determination. We comment upon each of these factors.

1. Currency convertibility: “the extent to which the currency of the foreign country is convertible into the currency of other countries”

Given the role that exchange rates and currency values play in markets and international trade, it is critically important not only to assure that a currency can be converted into other currencies, but also to assure that such currency trading helps reveal a realistic value for the currency in question. For example, when it granted Special Drawing Rights (SDR) status to the renminbi (RMB), the IMF noted that the RMB meets the IMF requirement that SDR currencies must be “freely usable” – that the RMB is “widely used to make payments for international transactions, and widely traded in the principal exchange markets.” However, as the IMF also noted, the fact that a currency is widely traded in exchange markets does not necessarily mean that the “currency is either freely floating or fully convertible.”

While the renminbi is technically “*convertible into the currency of other countries*”, the following problems indicate that the renminbi’s current exchange rate is not based on truly free market transactions:

1. China today holds \$3 trillion of foreign exchange reserves, the vast majority of them in dollars. The only other government institution that holds such a sum in U.S. assets is the U.S. Federal Reserve system, which is legally responsible for managing the U.S. financial system. The effect of China's vast holdings of U.S. dollars is to raise the value of the dollar and depress the value of the RMB, leaving it at a valuation that is not truly free market.
2. China's tariff and non-tariff barriers make it difficult for the Chinese to import as much as they might otherwise import. This reduces the value of the RMB.
3. Similar problems arise on the capital/financial account of the balance of payments. Although Chinese citizens can transfer some capital abroad, restrictions often force them to jump through costly additional hoops such as buying real estate abroad to "justify" the transfer. Such capital restrictions further reduce the renminbi's value, thereby distorting domestic prices.
4. Although the Government of China now allows Chinese banks to convert more renminbi into dollars than before, tight controls still exist, and this reduces the renminbi's value.
5. The Government sets trading ranges for currency transactions. This limits the role that market forces play in determining conversion rates, potentially distorting domestic prices expressed in dollars.
6. The Chinese economy operates based on state capitalism. Consequently, prices of goods and services are determined, not just by market forces, but also by an intricate network of state-influenced priorities, preferences, subsidies, and the like. This is not a true market economy.

Although the renminbi has met IMF criteria for inclusion in the SDR basket and is increasingly being converted into the currencies of other countries, the RMB is not "fully convertible" to the extent required to the extent that truly free market prices can consistently be the norm. As a result, the Department should find that the RMB is not fully convertible.

2. Wages: "the extent to which wage rates in the foreign country are determined by free bargaining between labor and management"

Bargaining rights mean little without labor rights, and such remain scarce for Chinese workers. Chinese laborers lack freedom of association or the right to strike, and China has not ratified the International Labor Organization conventions on freedom of association and collective bargaining. Independent trade unions are illegal, with all union activity run through the All-China Federation of Trade Unions, which is chaired by a member of the Politburo and is a vessel

of the state. Collective bargaining is rare and for it to cover anything other than wages is rarer still¹.

According to the Congressional Executive Commission on China, “Chinese government officials and international observers reported a significant increase in worker actions such as strikes and protests, and the majority of these actions involved disputes over wage arrears. The situation of labor rights advocates and non-governmental organizations (NGOs) has worsened in recent years, particularly in Guangdong province, where authorities detained over a dozen labor rights advocates and NGO staff, arresting four. Labor abuses related to dispatch and intern labor, as well as workers above the retirement age, continued. According to government data, workplace accidents and deaths continued to decline, while reported cases of occupational illness increased. International observers continued to express concern regarding workplace safety in China.”²

China Labor Watch (www.chinalaborwatch.org) consistently reports mistreatment of workers, sweatshop abuse, child labor and other violations of the rights of workers.

Therefore, the Department should find that wage rates in China are not determined by free bargaining between labor and management.

3. Foreign Investment: “the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country”

The OECD’s 2014 FDI Regulatory Restrictive Index rated China’s foreign direct investment (FDI) regime as the most restrictive in the world.³ Technology, aerospace, and automotive firms seeking market access to China are invariably required to engage in a joint venture with a Chinese firm. These relationships enable the Chinese partners to gain access to proprietary technology, positioning the Chinese firms ultimately to dispense with the non-Chinese partner and produce these valuable products on their own. Even during the existence of the joint venture, the relationship is one-sided with regards to intellectual property. Foreign licensors are expected to protect the Chinese licensor against IP infringement, but not the other way around, while the Chinese licensor is entitled to own improvements they make on licensed technologies and sell them to any market.

¹ Export.Gov. (2017, January 9th). China – Labor. Retrieved April 18, 2017, from <https://www.export.gov/article?id=China-Labor>

² Congressional Executive Commission on China, Annual Report 2016, Published Oct.6, 2016, pg. 79.

³ OECD. FDI regulatory restrictiveness index: 2014. Retrieved April 28, 2017, from, <http://www.oecd-ilibrary.org/docserver/download/3015041ec032.pdf?expires=1493394715&id=id&accname=quest&checksum=DAC3C24700D67C8EDC80FCA6BD780BD4>

According to a recent report from the U.S. Trade Representative’s office, China has shown little sign of relaxing these restrictions on foreign investment, and in some ways has moved in the opposite direction. “Although China has repeatedly affirmed its plans to further open China to foreign investment, including in the November 2013 Third Plenum Decision and in other key policy documents, such as the November 2015 Fifth Plenum Decision and the 13th Five-year Plan, released in March 2016, China has not followed through on these promises, except in limited instances, and in the case of some promises it seems to be going backwards on access. China also has pursued other actions that discriminate against or otherwise disadvantage foreign investors, including an administrative approval system providing a case- by-case review of any foreign investment. Foreign investors also have expressed great concern that draft Chinese laws and policy statements seem to suggest that China intends to pursue a broad definition of “national security,” to include “economic security,” under its national security review regime.”⁴

The Department should find that joint ventures and other foreign investments in China are not permitted to the extent required to find market economy status.

4. State Ownership: “the extent of government ownership or control of the means of production”

The Chinese economy continues to be dominated by state-owned enterprises (SOE), many of which have unassailable competitive positions due to state subsidies, low-cost loans from state-owned banks, and preferential rights for land use and other important resources.

One analyst testified to the US Economic and Security Review Commission that China’s accession to the WTO was followed by increased state role in the economy, not less:

Following China’s WTO entry, it is widely understood that the leadership of Hu Jintao and Wen Jiabao had moved China’s economic development increasingly in a state-centered direction. In the words of political scientist Minxin Pei, this is when “China’s reform died... so much for the prognostication that WTO accession would spur reform.” The rebound of the state was so universally obvious after 2001 that native speakers coined a new idiom to describe the phenomenon: “guo jin min tui,” or, “the state advances while the private sector retreats,” a play on Jiang Zemin’s market reform slogan from the 1990s.⁵

⁴ USTR, 2016 Report to Congress on China’s WTO Compliance, Jan. 2017, pg. 101

⁵ Dr. Adam S. Hersch, “Testimony before the U.S.-China Economic and Security Review Commission on China’s Shifting Economic Realities and Implications for the United States,” February 24, 2016, https://www.uscc.gov/sites/default/files/Panel%20IV_Hersh%20statement_022416.pdf

According to one estimate, there are some 150,000 SOEs in China. Most significant are the largest SOEs, which dominate many key industries including oil and gas, telecom networks, banking, and others. SOEs hold an estimated 40% of Chinese assets and employ some 20% of Chinese employees⁶. 76 of the 98 Chinese companies on Fortune Magazine's Global 500 list are state-owned. They include such behemoths as State Grid with revenue of \$330 billion, China National Petroleum with revenue of \$299 billion and Sinopec Group with revenue of \$294 billion.

The ranks of state-owned industry in China are expected to grow over time. At a 2013 meeting of the State-Owned Assets Supervision and Administration Commission, economist Hu Angang forecast that the number of SOEs on the Fortune list would rise to reach 130 by 2020. Not content with supporting the loss-making SOEs solely by government subsidy, the Chinese government has also allowed the growth of a wealth management industry, now holding some \$4.4 trillion dollars of Chinese savers' assets, which recycles investment funds to help sustain loss-making SOEs in industries like coal, steel, and real estate.

The USTR's 2016 National Trade Estimate offers further support for the proposition that state control of the means of production in China is increasing, not decreasing, stating:

China continued to pursue industrial policies in 2015 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources, and regulatory support to Chinese industries. The principal beneficiaries of these policies are state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.⁷

The Department should conclude that state ownership and influence in the Chinese economy far exceeds the levels needed to find market economy status.

5. Prices, Output and Resource Allocation: “the extent of government control over the allocation of resources and over the price and output decisions of enterprises”:

China continues to engage in widespread management of pricing, output and resource allocation to support industrial policies for domestic “national champion” businesses, many of them state-owned enterprises. According to the USTR report on China's WTO compliance, China has committed to liberalize pricing in industries including electricity, natural gas, oil, transportation,

⁶ Economist. (2015, September 17th). A whimper, not a bang. Retrieved April 18, 2017, from <http://www.economist.com/news/business/21665065-chinas-plan-reform-its-troubled-state-firms-fails-impress-whimper-not-bang>

⁷ 2016 National Trade Estimate Report on Foreign Trade Barriers, Office of the US Trade Representative, pg 84.

telecommunications, and medical devices, yet maintains policies including price controls that effectively discriminate against non-Chinese products.

Medical device development and manufacture is an industry where the U.S. is particularly strong. The USTR report highlighted the restrictive practices of potential Chinese customers: “According to reports from U.S. industry, some plans impose ceiling prices for tenders to be determined in a manner that is unfair and discriminates against imported medical technology products, and some plans require the manufacturers to disclose sensitive data. Certain provincial government plans also impose controls on imported products or limit certain procurements to only domestically manufactured products, and some provincial governments directly subsidize the purchase of domestically manufactured products.”⁸

China continues using a range of policies to influence the allocation of resources as well as price and output decisions. The country has imposed restrictions on foreign information communication (ICT) technology with an apparent long term goal of replacing foreign ICT sources.⁹

The country continues its “indigenous innovation” policy which includes state support for domestic innovation and strong-armed transfer of foreign technology to state influenced enterprises.

[We shall] encourage foreign enterprises especially large-scale multinationals to transfer the processing and manufacturing processes with higher technology levels and higher added value and research and development organizations to China, ... to develop the technology spillover effect, and strengthen the independent innovation ability of Chinese enterprises.¹⁰

The USTR confirmed that, “In 2015, policies aimed at promoting ‘indigenous innovation’ continued to represent an important component of China’s industrialization efforts.”¹¹

Strategic export restraints and export subsidies are integral parts of government interference with resource allocation.

⁸ USTR, 2016 Report to Congress on China’s WTO Compliance, Jan. 2017, pg. 69.

⁹ 2016 National Trade Estimate Report on Foreign Trade Barriers, Office of the US Trade Representative, pg 84.

¹⁰ National Development and Reform Commission, 11th Five Year Plan for Use of Foreign Investment, (November 2006)

¹¹ 2016 USTR NTE, supra at 84.

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies, and jobs to China¹².

The Chinese government also utilizes targeted value added tax rebates to spur its strategic plan for domestic development and export.

[T]he Chinese government attempted to manage the export of many primary, intermediate, and downstream products by raising or lowering the value-added tax rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty, and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum, and soda ash industries.¹³

Further, China's central and sub-national governments focus upon the development of "strategic emerging industries" in sectors including energy saving and environmental protection, new generation information technology, biotechnology, high-end equipment manufacturing, new energy, new materials, and new energy vehicles. They often use local content requirements for the enterprises to access state financial support or other preferences. Government authorities carry out import substitution policies by assisting companies that have the ability to substitute for imports.

The "Made in China 2025" plan, which was announced in May 2015, indicates that the government has no intention to reduce state direction of the economy.

Therefore, the Department should conclude that government control of prices, output and resource allocation in China are inconsistent with that of a free market economy.

6. Other factors: such other factors as the administering authority considers appropriate"

¹² 2016 USTR NTE, supra at 86

¹³ 2016 USTR NTE, supra at 86-7

China continues to show an intentional disregard for the intellectual property rights of western companies within China, as can be seen by numerous legal decisions that have gone against U.S. companies including Apple and Tesla. While the Chinese government makes frequent claims of liberalizing its laws, it is also pursuing policies, such as those in its Made in China 2025 plan, that envisage broadening the focus of its “national champion” industrial policy. That plan includes investing in the growth of domestic industries including semiconductors and others, with the open stated goal of achieving self-sufficiency, which implies little or no opportunity for imported goods in those sectors.

These facts require a conclusion that government intervention in the Chinese economy prevents a finding of market economy status.

Conclusion

Prior to WTO accession, the role of private industry was increasing in China. After accession, however, the state sector increased its role and the private sector was forced to retreat. That trend continues in 2017. China’s policies continue to promote the growth of a state-controlled economy, with self-sufficiency as a key national goal. This goal and the efficiency with which China is marching towards it effectively precludes the establishment of a true market economy.

For these reasons, the Department should find that China continues to be a nonmarket economy under the Trade Act of 1930 as amended.

Sincerely,

A handwritten signature in blue ink that reads "Michael C. Stumo". The signature is written in a cursive, flowing style.

Michael Stumo, CEO