

Is anti-dumping a big deal? China and developing country exporters of textiles and clothing



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'The removal of WTO safeguards on exports of textiles and clothing from China takes place on 31 December, 2008.

The imposition of anti-dumping duties, as a result of China's non-market economy status, may offer some respite to other developing country exporters, but this may be short-lived'

Anti-dumping rules and duties are likely to come under scrutiny in 2009. A change in the rules governing China's textile and clothing exports, which means the expiration of US and EU quotas, could put increased competitive pressure on other producers. This could lead to more recourse to anti-dumping by developed countries concerned at the threat to domestic producers.

When China joined the World Trade Organization (WTO) in 2001, there were fears that the country's textile exports would swamp the global market. As a result, a 'textiles safeguard' clause was written into China's accession agreement. This clause expires on 31 December, 2008.

While the global financial crisis may increase consumer demand for cheaper clothes in the EU and USA, developed countries may become more protectionist to favour their domestic producers.

Many governments already take action against 'dumping' – the export of products at prices lower than those charged in a home market – to defend their domestic industries (see Box 1 for the process). A country that is subject to anti-dumping investigations is classified as either a 'market economy' (ME) or a 'non-market economy' (NME). A total of 18 countries have been designated as NMEs by both the US Department of Commerce (DoC) and the European Commission (EC).

The consequence of being classified as a NME is that 'constructed prices', or the prices from so-called 'analogue' countries, are used to determine whether or not dumping has occurred and the appropriate dumping duties to be applied. The use of analogue country data often leads to higher dumping duties, and the choice of analogue country is a significant source of bias.

The US DoC reports that the choice of analogue country is based on identifying one or more market economies 'that are (i) at a level of economic development comparable to that of the NME country; and (ii) significant producers of comparable merchandise'. The European Commission has no detailed rules governing analogue country selection, beyond saying that

Box 1: Anti-dumping, from complaint to application of duties

1. Producers in the 'home' country make a complaint against 'unfair' price competition.
2. An investigation is launched by the Ministry responsible for Trade (DG Trade in the case of the EU; Department of Commerce in the case of the USA).
3. If the 'source' country is classified as a market economy, costs of production within it are used to calculate anti-dumping duties, which can be no more than the price differential between the cost of production on the 'source' country and the price charged for the same product in the 'home' country.
4. If the country is classified as a non-market economy, costs of production are used from an 'analogue' market economy country, which have, typically, higher costs. This means that the differential, and in turn, the anti-dumping duties, are higher.
5. If the 'source' country has been found to be 'dumping', anti-dumping duties are applied on products that enter the 'home' country, retrospectively, from the date of complaint.
6. This results in the product being higher priced and, therefore, less competitive.

that the country should be 'appropriate' and selected in a 'not unreasonable manner'. In practice, lack of EC criteria often seems to lead to selection of EU countries or the USA as the analogues. Detlof and Fridth (2006) report that 14 of the 35 EU cases they examined used the USA as the surrogate country.

Nine countries have 'graduated' from NME to ME status according to both the US DoC and EC, including Russia in 2002. But a number of transition, emerging and developing countries remain classified as NMEs by both the US DoC and the EC, including Albania, Cambodia, China, Kazakhstan and Vietnam. Cambodia and Laos are both classified as NMEs by the US DoC, but not by the EC.

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European assessment of ME status

Assessment of the EC's Market Economy Status (MES) criteria is hampered by non-transparent procedures. Very few documents are public. The approach of the EC has changed somewhat since formal rules for the treatment of non-market economies were first drafted in 1979. 'Market Economy' criteria were incorporated into legislation in 1988 to reflect the fact that market economy conditions may exist within certain industries (to be granted Market Economy Treatment: MET) or specific firms (to be granted Individual Treatment: IT) in a non-market economy. The country-wide MES criteria to determine whether a country is a full market economy for anti-dumping investigations are similar to those applicable to individual companies, set out in Article 2(7) of the basic Regulation as follows:

1. degree of government influence;
2. absence of State-induced distortions in the operation of enterprises;
3. existence and implementation of a transparent and non-discriminatory company law;
4. existence and implementation of a coherent, effective and transparent set of laws;
5. existence of a genuine financial sector.

These criteria are broad, vague and undefined. What is, for example, a 'genuine' financial sector? While it is recognised that market economy conditions may exist for some industries and/or firms in NMEs, not all countries are eligible. Those countries whose firms are eligible for such treatment include those 'which have had reforms which have led to the emergence of firms for which market conditions might prevail' and any 'non-market economy country which is a member of the WTO at the date of the [anti-dumping] investigation'. They include China.

The procedure through which market economy treatment is granted to individual firms has been dubious. In its assessment of MET and IT, the EC rarely states how or why certain criteria were met. There is a lack of data and indicators to allow independent observers to follow the logic of assessment, constraining the ability to make any meaningful comparison between countries and industries. The lack of transparency in decision-making on this issue is relatively well known. So too is the cost of being classified as a NME, as a result of the use of analogue countries to calculate dumping duties. Detlof and Fridth (2006) reviewed 200 MET applications from NMEs – including 180 from China and eight

from Vietnam – and found that MET status was only granted in 38% of cases (36% of all cases for China and 25% of all cases for Vietnam). Of the remaining cases, 75% were granted MET. On average, the dumping duties applied to NME firms compared to MET firms was around 28% higher.

Although the US Department of Commerce is more transparent in its method of assessing countries and firms (operating within a particular industry), anti-dumping duties applied to firms operating within non-market economies are higher, typically, than those applied to market economies. The US Government Accountability Office (GAO) (2006) recently reviewed a number of cases where duties were applied to the same product originating from China and other market economies. The review found an average China country-wide margin of 98%, compared to 37% for other producers in market economies.

The removal of safeguards on Chinese exports of textiles and clothing at the end of December may result in increased anti-dumping complaints against Chinese producers. The likelihood that the EU and USA will take anti-dumping action against China, and that the dumping duties imposed will be high as a result of China's classification as a NME may provide some respite to other developing country textile and clothing exporters. But such respite could be short-lived because it is politically sensitive.

There is a need to tackle the pitfalls within the methodology that is used to determine both NME status and the level of anti-dumping duties, to use more appropriate analogue countries and to ensure greater transparency in decision-making in the case of the EU.

This would facilitate the independent and well-informed observation of the process, thereby upholding core WTO principles of accountability, transparency and predictability. It would also assist NME countries that are seeking to graduate to market economy status by ensuring that the process is based on realistic comparisons.

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