



## NON MARKET ECONOMIES AT WTO: THE ROLE OF CHINA

### *ECONOMÍA PLANIFICADA EN LA OMC: EL PAPEL DE CHINA*

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#### ABSTRACT

This paper investigates how China entered in the WTO and what are the major problems that the country faced due to its non-market economy (NME). Thus, the paper analyzed the main critics and advances in China since its entrance on WTO. Above all, to answer the following questions: what is China's role in WTO? What aspects the country believe that should be improved? Through the hypothetical-deductive method, this paper intends to understand China's position, as a state capitalist country in an Organization that seeks global free trade, indicating its efforts, hurdles, necessities and failures in its path to adapt to WTO requirements, as well as, how China can contribute to the development of the Organization through its proposals.

**Keywords:** China, World Trade Organization, non-market economy, international trade.

#### RESUMO

Este artigo investiga o ingresso da China na OMC e quais foram os maiores problemas enfrentados pelo país dada a sua economia de não mercado. Dessa forma, o artigo analisou as principais críticas e avanços chineses desde sua entrada na OMC.





Sobretudo, para responder as questões: qual o papel da China na OMC? Quais aspectos o país acredita que devam ser melhorados? Através do método hipotético-dedutivo, o artigo examina a posição chinesa, país capitalista de estado, em uma Organização que busca o livre comércio global, indicando seus esforços, obstáculos, necessidades e falhas em seu caminho para se adaptar aos requisitos da OMC e, através de suas propostas, investiga como a China pode contribuir para o desenvolvimento da OMC.

**Palavras-chave:** China, Organização Mundial do Comércio, economias de não mercado, comércio internacional

## RESUMEN

Este artículo investiga la entrada de China en la OMC y cuáles fueron los mayores problemas que enfrentaba el país debido su economía planificada. Así, el trabajo analizó las principales críticas y avances chinos desde su ingreso a la OMC. Sobre todo, para responder a las preguntas: ¿cuál es el papel de China en la OMC? ¿Qué aspectos cree el país que deben mejorarse? A través del método hipotético-deductivo, este trabajo examina la posición de China, como país capitalista de estado en una Organización que busca el libre comercio global, señalando sus esfuerzos, obstáculos, necesidades y fracasos en su camino para adaptarse a los requisitos de la OMC y cómo China puede contribuir al desarrollo de la Organización a través de sus propuestas.

**Palabras clave:** China, Organización Mundial del Comercio, economía planificada, comercio internacional.

## 1. INTRODUCTION

China has experienced astounding economic growth over the course of the last forty years, by creating world-class industries the country is marching towards a global technology leadership. In this development path, after 15 years of negotiations, China joined WTO in 2001 and nowadays performs a central role in international trade.

China's government influence in economy is considered a hurdle to a multilateral trading system that seeks free trade, so as a requirement in order to join WTO, China has undertaken obligations to remodel its economy from a non-market to a market one. Even after the reforms, the State still plays an important role in China's economy raising several conflicts within the Organization. For this reason, this paper seeks to answer the following





questions: what is China's role in WTO? What aspects the country believe that should be improved? After all, China's is the world's second-largest economy and the major commodity exporter, therefore, analyze China's hybrid economy, its role and proposals in WTO are not only important to improve international trade but also to understand what are the consequences of having a major global economy with non-market traits within a multilateral trading system.

In order to achieve the proposed objectives, this paper is divided into three parts. First, through the historic method the non-market definition will be analyzed, as well as, how these economies adapted to multilateral trading systems, from GATT to WTO. All of this, to provide enough context to investigate China's WTO Accession Protocol and its main requirements. In the next part, through historical and observational methods, China's role in WTO was analyzed, highlighting its constant conflicts with the US, illustrated through WTO disputes. Also, China's advances towards a market economy were indicated, as well as, its main critics regarding government interference in trade, especially the ones related to anti-dumping rates and countervailing duties. In the last part, through historical and observational methods, China's proposed WTO reforms were analyzed in order to understand what points the country belief should be improved within the Organization. At last in conclusion, the proposed questions were answered.

## 2. NON-MARKET ECONOMIES AT GATT AND WTO

Although several Organizations and countries highlight the government influence in economic decisions as an essential attribute to classify a non-market economy (NME), there is no consolidate and clear definition of what in fact is this economy model.

Some organizations such as the United Nations Conference on Trade and Development (UNCTAD) defines a NME as "a national economy in which the government seeks to determine economic activity largely through a mechanism of central planning".





Others like the World Bank and the World Trade Organization (WTO) don't present a clear definition, just some patterns analyzed through papers and researches, classifying them as "countries in which the State does not play an active role to promote competition and avoid monopolies" therefore establishing "a complete or substantially complete monopoly of its trade where all domestic prices are fixed by the State"<sup>1</sup>.

However, it remains clear that NME are opposed to market economies (ME), a national economy of a country that relies heavily upon market forces to determine levels of production, consumption, investment and savings without government intervention. The difficulty to define a country as a NME boosted after the fall of the Soviet Union and the collapse of communist regimes. Nowadays, countries have at most a mixed economy with ME and NME traits<sup>2</sup>.

In this scenario, the first successful attempt to establish a multilateral trading system was the General Agreement on Tariffs and Trade (GATT), a multilateral treaty created after the World War II as a provisional solution until the creation of what it was supposed to be the International Trade Organization (ITO)<sup>3</sup>.

Seeking to promote international trade liberalization, mainly through tariff reduction the first major problem faced by GATT was Czechoslovakia transition to a centrally planned economy (and therefore a NME) in the '50s. The Agreement did not provide any proper alternative for calculating the normal value of goods in the domestic market of centrally planned economies, which could cause disturbances in dumping<sup>4</sup> margins

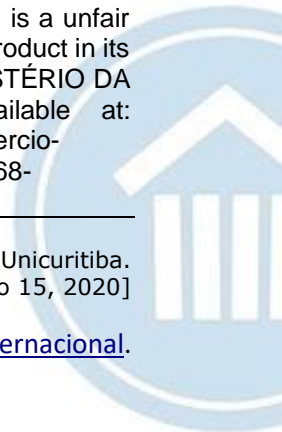
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<sup>1</sup> THORSTENSEN, Vera; RAMOS, Daniel; BERTOLACCINI, C. M. E. F. OMC e economias não de mercado: o caso híbrido da China. **Revista Brasileira de Comércio Exterior**, Rio de Janeiro, v. 116, p. 72-100, dec./2005. p. 75 and 78.

<sup>2</sup> THORSTENSEN, Vera; RAMOS, Daniel; BERTOLACCINI, C. M. E. F., op. cit., p. 88.

<sup>3</sup> WORLD TRADE ORGANIZATION. **The GATT years: from Havana to Marrakesh**. Available at: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm). Access on: 24 mar. 2020. Access on: 29 apr. 2020.

<sup>4</sup> According to the Brazilian Ministry of economy, industry, foreign trade and services dumping is a unfair trade practice in which a company exports a product at a price below to the price of this same product in its domestic market. To offset this practice some countries use anti-dumping measures. In: MINISTÉRIO DA ECONOMIA, INDÚSTRIA, COMÉRCIO EXTERIOR E SERVIÇOS. **Dumping**. Available at: <http://www.mdic.gov.br/index.php/comercio-exterior/defesa-comercial/205-assuntos/categ-comercio-exterior/defesa-comercial-e-interesse-publico/defesa-comercial-2/o-que-e-defesa-comercial/1768-dumping>. Access on: 29 apr. 2020.





calculations. As a solution, Czechoslovakia proposed an average comparable price for the like product for export by third countries. Although GATT contracting members did not accept the proposal, this solution was in fact used as a common alternative methodology<sup>5</sup>.

In the '60s Yugoslavia, already a NME, in order to join GATT was compelled to adapt its trade policies as regards the elimination of state intervention in the activities of companies and private business decisions, the adoption of customs tariffs, promoting a reform of the price-fixing system, allowing free prices for a range of commodities and removing certain price limits for basic industries and the decentralization of investment resources, reducing the government's role in investment financing.

In 1966, although Yugoslavia was still clearly a non-market economy, the country joined GATT. Although the official argument is that the reforms undertaken by the country were sufficient to allow its participation in the multilateral trading system, it is speculated that its acceptance was politically triggered, in order to contain Soviet influence in the region.<sup>6</sup>

In the next year, Poland joined GATT. Besides making the same adaptations as Czechoslovakia, the negotiation of its concessions was made on the basis of import quotas, as well as, a safeguard mechanism was created allowing import restrictions from Poland products, fearing its increase based on non-market conditions of exportation. These adaptations were also made when Romania joined in 1971 and Hungary in 1973<sup>7</sup>.

As a result of the GATT Uruguay Round in 1995, the WTO was created and opposed to its predecessor the Organization was not seeking to adapt its system in order to accommodate ENM countries. In addition, after the end of the Cold War (in 1991) the countries that decided to join WTO were in fact willing to undertake significant economic reforms to transform their systems into market-oriented economies<sup>8</sup>.

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<sup>5</sup> THORSTENSEN *et al.* Acesso da China à OMC: a questão da economia de não mercado. **FGV EESP - CCGI - Papers**. p. 1-19, 2014. Available at: <http://hdl.handle.net/10438/16363>. Access on: 19 sep. 2019. p. 02 and 03.

<sup>6</sup> THORSTENSEN *et al*, op.cit., p. 03

<sup>7</sup> *Ibidem*, p. 04.

<sup>8</sup> *Ibidem*, p. 04.





Therefore, in order to join WTO, some countries were required to transform its economies to a market-oriented model, based on the following topics: exchange, state ownership and privatization, pricing policies, commercial rights, subsidies, industrial policy, state-owned commercial enterprises and transparency. For this purpose, the WTO established a deadline to execute some of these obligations, based on the need of each country. As a result, former NME countries such as Mongolia, Bulgaria, the Kyrgyz Republic, Latvia, Estonia, Albania, Croatia, Georgia, Lithuania and Moldova joined the Organization. The first major former NME economy to join WTO was China in 2001, followed by Vietnam in 2007 and Russia in 2012<sup>9</sup>.

The negotiation process that leded China to join WTO lasted 15 years. Among several hurdles, the USA - China bilateral agreement concluded in 1999 was one of the main elements that paved the way for China's accession<sup>10</sup>. According to Wei Liang, the USA - China agreement can be divided into three phases, starting from China's attempt to rejoin GATT in 1986 to seek, among other goals, greater defenses against protectionism, unconditional most-favored-nation treatment and improvement of export and foreign direct investment<sup>11</sup>.

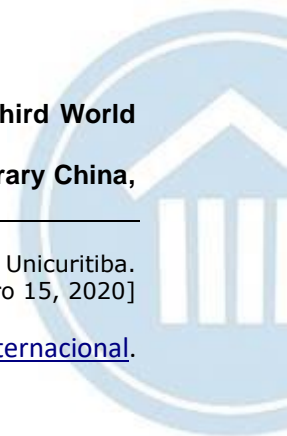
Based on its financial contribution to the organization, its voting strength and relevance in the world economy, the US was the leading state that negotiated terms with China. Considering that GATT rules were made on the premise to be followed by market economies, a GATT Working Party was organized to learn more about China's trade regime, laws and regulations. However, after the end of the Cold War, the west has changed its approach towards China, the last important holdout of the communist ideology. Moreover, motivated by the incident with the protest in Tianamen Square, the

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<sup>9</sup> THORSTENSEN *et al*, op.cit., p. 05

<sup>10</sup> LAI, Hongyi Harry. Behind China's World Trade Organization Agreement with the USA. **Third World Quarterly**, United Kingdom, v. 22, n°. 02, p. 237-255, Apr./2001. p. 237

<sup>11</sup> LIANG, Wei. China's WTO Negotiation Process and its Implications. **Journal of Contemporary China**, v. 11, n° 33, p. 683 - 719, aug./ 2010. p. 683-685





US implemented economic sanctions against China in 1989, tracing obstacles in the second phase of negotiation<sup>12</sup>.

Furthermore, against China's desire, Taiwan applied to join GATT in 1990, rushing China's eagerness to break the deadlock in negotiations. Taking advantage of the situation the US negotiated new compromises with China. However, some of the US demands were rejected by China, mainly regarding its status as a developed country instead of a developing one and a commitment to move to a full market economy, as well as, other measures regarding its planned economy. With not enough concessions, China entered in another deadlock in 1994<sup>13</sup>.

In the last phase, already concerning the WTO accession, China decided to use more flexible and realistic methods which resulted in bilateral market access negotiations with nearly 20 WTO members in 1997. As a result, in March of 1999, a consensus in many past issues between China and the US led Premier Zhu to meet President Clinton in order to conclude the negotiation. However, motivated by the US Congress' disapproval, Clinton decided to not sign the agreement. One month later, a North Atlantic Treaty Organization (NATO) bombing of the Chinese Embassy in Belgrade delayed the negotiations in four months, resumed after a compensation payment. Finally, in November of 1999, the US-China bilateral agreement was concluded. Followed, in less than a year, by the EU-China agreement, these two agreements paved the way to China join the organization<sup>14</sup>.

Above all, as a requirement to join WTO, an Accession Protocol<sup>15</sup> was made covering points which the Chinese economy must change in order to be a market-oriented one. Among them, some will be highlighted to understand the core of the WTO disputes involving China.

Regarding foreign individuals and enterprises, China must treat them under the WTO non-discrimination principle, granting no less favorable treatment than that offered

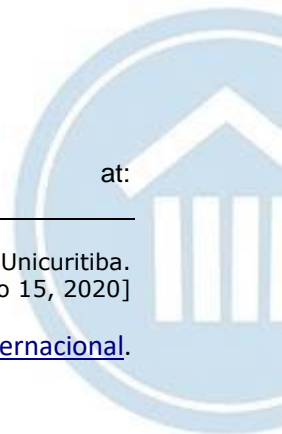
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<sup>12</sup> Ibidem, p. 688 e 693

<sup>13</sup> LIANG, Wei, op. cit., p. 693, 694, 695 and 698

<sup>14</sup> Ibidem, p. 706 - 711.

<sup>15</sup> WORLD TRADE ORGANIZATION. **China**. Available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_chine\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm). Access on: 29 apr. 2020.





to the national market (article 3). Based on the same principle, according to article 5, all Chinese enterprises progressively shall have the right to trade (export and import) all goods throughout the customs territory of China, with some exceptions listed in this same Protocol<sup>16</sup>.

Considering the State role in the NME economies the Protocol requires in its article 6 that import purchasing procedures of state trading enterprises are fully transparent and refrain from taking any measure to influence or direct state trading enterprises. Moreover, China shall eliminate and cease to enforce trade and foreign exchange balancing requirements through laws, regulations or other measures, ensuring the distribution of import licenses, quotas, tariff-rate quotas, or any other means of approval for importation or investment by national and sub-national authorities (article 7)<sup>17</sup>.

Furthermore, based on the difficulties to identify subsidies in ENM economies, as well as, arbitrate their specificity during investigations of compensatory measures the Accession Protocol article 10 classifies subsidies<sup>18</sup> provided to state-owned enterprises as specific if, state-owned enterprises are the predominant recipients or receive disproportionately large amounts of them<sup>19</sup>.

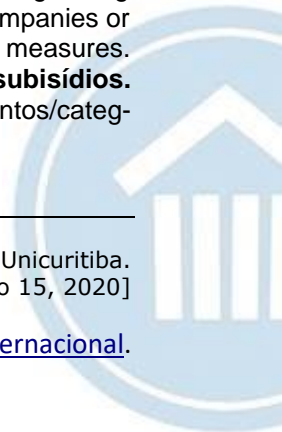
Regarding prices for traded goods and services in every sector, China shall allow them to be determined by market forces (article 9). To anti-dumping and countervailing measures investigations the Protocol in, its article 15, foresee mechanisms in which special rules can be used to determine price comparability, since prevailing terms and

<sup>16</sup> THORSTENSEN *et al*, op. cit, p. 02 and 04.

<sup>17</sup> THORSTENSEN *et al*, op. cit., p. 05

<sup>18</sup>According to Brazilian Ministry of economy, industry, foreign trade and services subsidy is the practice of grant benefits trough any form of income or price support that, directly or indirectly, contributes to increase exports or reduce imports of any product or the existence of financial contribution by a government or public body, within the territory of the exporting country. A subsidy is considered specific when the granting authority, or the legislation in force, explicitly limits access to the subsidy to one or a group of companies or industries, branches of production, or geographic regions. Subsidies are offset by countervailing measures. In: MINISTÉRIO DA ECONOMIA, INDÚSTRIA, COMÉRCIO EXTERIOR E SERVIÇOS. **Os subsídios**. Available at: <http://www.mdic.gov.br/index.php/comercio-exterior/defesa-comercial/205-assuntos/categ-comercio-exterior/defesa-comercial-e-interesse-publico/defesa-comercial-2/o-que-e-defesa-comercial/1775-medidas-os-subsidios>. Access on: 29 apr. 2020.

<sup>19</sup> THORSTENSEN *et al*, op. cit, p. 07







conditions in China may not always be available as appropriate benchmarks. These provisions shall expire 15 years after the date of accession (until 2016) likewise China shall ensure that market economy conditions prevail over non-market ones<sup>20</sup>.

However, even years after China has joined WTO, there are still debates on whether or not China has become a true market economy. Given the lack of a unified definition, some countries as the United States still classify a few WTO members as a NME, more specifically, under US Law the following countries are considered non-market economies: Belarus, Georgia, the Kyrgyz Republic, the People's Republic of China, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Moldova, the Republic of Tajikistan, the Republic of Uzbekistan, the Socialist Republic of Vietnam, and Turkmenistan<sup>21</sup>.

Although US classification is not a consensus (Brazil, for example, considers China a market economy since 2004<sup>22</sup>) it is a common judgment among other relevant China trade partners such as India, Europe Union, Canada and Mexico<sup>23</sup>.

Thus, in an attempt to analyze China's role in WTO, the next part will investigate some of China's advances and in which points is criticized, as well as, some of the disputes in which China take part, measuring the hurdles and consequences of a major non-market economy in a multilateral trading system.

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<sup>20</sup> Ibidem, p. 06 and 09.

<sup>21</sup> MERCATUS CENTER GEORGE MASON UNIVERSITY. **Is China a Non-Market Economy?**. Available at: <https://www.mercatus.org/bridge/commentary/china-non-market-economy>. Access on: 19 sep. 2019.

<sup>22</sup> THORSTENSEN *et al.*, op. cit., p. 83

<sup>23</sup> PUCCIO, Laura. Granting Market Economy Status to China. **Members' Research Service**. European Union, p. 01 - 28, nov./2015. Available at: <https://op.europa.eu/en/publication-detail/-/publication/cbc9d72b-b9c0-11e5-8d3c-01aa75ed71a1/language-en>. Access on: 29 apr. 2020. p. 08





### 3. CHINA AS A WTO MEMBER

Considering China as a major driver of global economic growth and trade, its adequacy towards an economy oriented by market forces was an important step in WTO history. Since its entrance in the organization, the country assumed an important role, evolving from a timid and defensive position to an assertive and demanding stance.<sup>24</sup>

According to WTO Police Trade Review<sup>25</sup>, China has made some improvements headed for a market economy:

"Under the 13th Five-Year Plan (2016-2020), the authorities intend to continue the process of structural economic reform, which includes the promotion of private sector participation in the economy, as well as the reform of SOEs, while keeping the preponderance of public ownership. Other measures mentioned in the Plan include the promotion of competition, fiscal reform, financial sector reform to increase private capital participation in banking and expand the provision of financial services, and making the exchange rate and interest rate more market-oriented".

Furthermore, in 2016 the People's Bank of China (PBOC) changed to a more market-based approach of conducting monetary policy, involving closer management of liquidity in the banking system. Although major monetary policy decisions on benchmark lending and deposit rates continue to go through the State Council, PBOC set rates on money market instruments and uses a corridor or an interest rate band, adjusting liquidity in the money markets, PBOC can influence its position within the corridor. According to WTO, "the upper limit is set by its overnight seven-day and one-month standing lending facilities, while the lower rate is the interest paid by the PBOC on excess deposit reserves"<sup>26</sup>.

<sup>24</sup> PERES, Ana Luísa Soares; DAIBERT, Leticia. A China e a Organização Mundial do Comércio. In: **Direito Chinês Contemporâneo**, 2015. p. 387-412. p. 399

<sup>25</sup> WORLD TRADE ORGANIZATION. **TRADE POLICY REVIEW**. REPORT BY THE SECRETARIAT: CHINA. WT/TPR/S/375/Rev.1, 14 sep. 2018. Available at: [https://www.wto.org/english/tratop\\_e/tpr\\_e/tp475\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tp475_e.htm). Access on: 19 sep. 2019. p. 09

<sup>26</sup> WORLD TRADE ORGANIZATION. **TRADE POLICY REVIEW**. op. cit, p. 19





In the multilateral trade sector, China's President Xi Jinping announced the Belt and Road Initiative (BRI) that includes a network of ports, roads, railways, airports, power plants, oil and gas pipelines and refineries, as well as, free trade zones. According to WTO Trade Policy<sup>27</sup> the Initiative aims to increase connectivity between the Asian, European and African continents and therefore "enhancing trade flows and spur long-term regional economic growth and development, benefiting all those involved".

Other measures described includes: an Anti-Monopoly Law which introduces provisions on the prevention of unfair competition activities carried out by technological means on the Internet, such as malicious interference and the elimination of price controls on certain items in 2017 including explosive materials, tobacco leaves, certain drugs, and some construction projects<sup>28</sup>.

Regardless of these advances, China is still a target of anti-dumping measures, since the country is still considered a NME by some WTO members (even after the provisions of the Access Protocol had expired in 2016). According to the US, Japan and EU some distortions in the Chinese economy caused by government intervention would make it impractical in many cases to use Chinese prices and costs for determining dumping margins<sup>29</sup>.

Among these distortions, China is criticized for consecutive devaluations of the Yuan. Soares and Daibert<sup>30</sup> argued that China constantly intervenes in the exchange rate to prevent the appreciation of the Yuan, since the exchange rates have a direct effect on imports and exports, these interventionist monetary policies are important instruments to protect domestic producers, which contributes to the growing Chinese trade surplus. Moreover, the authors highlighted government intervention on Yuan since the '90s:

"From 1994 to 2005, the Chinese government kept the Yuan's exchange rate constant at 8.28 against the dollar. After external pressure, China appreciated its currency somewhat and the rate, in 2010, was 6.83 against the dollar. The same

<sup>27</sup> Ibidem, p. 18.

<sup>28</sup> Ibidem, p. 09 and 12

<sup>29</sup> MERCATUS CENTER GEORGE MASON UNIVERSITY, op.cit.

<sup>30</sup> PERES, Ana Luísa Soares; DAIBERT, Leticia, op.cit., p. 401.





occurred with the rate yuan /euro after many years devalued, suffered a small appreciation, mainly after the financial collapse. However, the Chinese currency remains, at a much lower value compared to those of other economic powers" (translated)

Recently, due to the Trade War between China and USA, the Yuan has seen three phases of devaluation since the beginning of 2018, especially the two sharp devaluations in 2019 were generally interpreted as a response to the announced US tariffs on all Chinese imports since they were preceded by announcements of new US import duties on Chinese goods.<sup>31</sup>

Although according to Braml and Steininger<sup>32</sup> China uses the devaluation of the Yuan as leverage in the trade dispute, as well as, US President Donald Trump once in a while accuses China of currency manipulation, the International Monetary Fund (IMF) does not see any signals for currency manipulation in the sense of an artificially low exchange rate<sup>33</sup>.

Further, Soares and Daibert<sup>34</sup> argue that currency manipulation is not exclusive to the Chinese government since in the 2008 financial crisis several countries (among them US, EU and Japan) devalued their currencies as a way to encourage economic growth.

Another of the mentioned distortions is the act of taking advantage of Chinese large population, who often works in precarious conditions. Known as social dumping, the use of cheaper labor forces or work exploitation to reduce the cost of the production is considered an unfair advantage since as a result, Chinese products become cheaper and disrupt the competition, as well as, the country attracts new investment and business based on cheaper salaries and poor labor laws. Considering China as a major trade player in the global market, and therefore, a host to several factories of transnational companies,

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<sup>31</sup> BRAML, Martin T.; STEININGER Marina. Giving Away Wealth? Trade Effects of the Yuan Devaluation. **CESifo Forum**. Munich, v. 20, n. 04, dec./2019, p. 32 - 35. p. 32.

<sup>32</sup> Ibidem, p. 32

<sup>33</sup> Ibidem, p. 32

<sup>34</sup> PERES, Ana Luísa Soares; DAIBERT, Leticia, op.cit., p. 401.





efforts towards improving the condition of the Chinese labor force through WTO have been made, nonetheless without results<sup>35</sup>.

Based on the reasons above and in other characteristic NME measures used by China, some countries argue that it is difficult to measure whether China firms are exporting goods below “fair value”, which interferes to arbitrate dumping margins. Therefore, these countries still treat China as a NME in order to be able to use a third country as a price reference and then, determine anti-dumping and countervailing measures<sup>36</sup>.

As a result, China is the main target of US anti-dumping orders, totaling 34% of them through December 14, 2018. Besides the quantity, there is also a difference in rates among China and other market economies (ME). According to an analysis made by the Peterson Institute in 2016, the average anti-dumping duty imposed on cases involving China was 81,4%, whereas on cases involving other trading partners was 54,3%<sup>37</sup>. A press release of the US Department of Commerce also highlight this contrast<sup>38</sup>:

Image 01: Sample of US anti-dumping rates imposed on Chinese and market economies products from 2010 to June 2016

Product and year	China-Wide Rate	China Separate Rates	ME Rates
Corrosion-resistant steel, 2016	210	None	3-92
Certain cold-rolled steel, 2016	266	None	71
Certain polyethylene terephthalate resin, 2016	126	105-118	8-19
Certain uncoated paper, 2016	149	84	2-222
Melamine, 2015	363	None	173
Non-oriented electrical steel, 2014	408	None	7-205
Certain crystalline silicon photovoltaic products, 2014	165	27-78	12-28
Certain coated paper, 2010	136	8	20
Magnesia carbon bricks, 2010	236	128	58
Narrow woven ribbons, 2010	248	124	4

Source: US Department of Commerce press releases.

<sup>35</sup> PERES, Ana Luísa Soares; DAIBERT, Leticia, op.cit., p. 402 and 403.

<sup>36</sup> MERCATUS CENTER GEORGE MASON UNIVERSITY, op. cit., p. 02

<sup>37</sup> MERCATUS CENTER GEORGE MASON UNIVERSITY, op. cit., p. 02.

<sup>38</sup> FEDERATION OF AMERICANS SCIENTISTS. **China’s Status as a Nonmarket Economy (NME).**

Available at: <https://fas.org/sgp/crs/row/IF10385.pdf>. Access on: 19 sep. 2019.





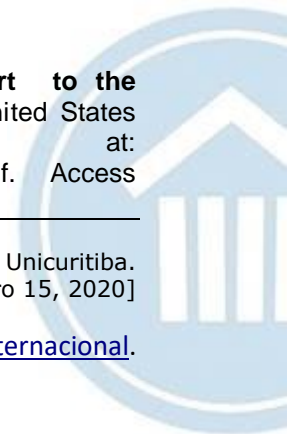
In this analysis, the first and last columns present the difference between anti-dumping rates in China and other market economies, while the middle one are cases in which Chinese exporters were able to prove that its products were traded according to market conditions and therefore, obtained a different rate. Along with notorious higher rates imposed to China and its big difference, if compared to market economies (more than double in most of them), it is also possible to identify that in 5 out of 6 cases in which Chinese exporters had separate rates they were still higher than the ones for market economies, even though both allegedly trade in same conditions.

In addition to these anti-dumping rates, countervailing measures ranging from 2% to 256%, were also imposed in all the cases<sup>39</sup>. Concerned with the impact of state-owned enterprises' (SOE) activities on the proper functioning of international trade, these measures are used by the US, EU and Japan in trade with China, to offset the subsidy allegedly granted to SOEs and favored domestic industries. According to a joint report of the US Trade Representatives and US Department of Commerce, China has repeatedly engaged in delaying tactics in order to avoid its obligation to submit regular subsidy notifications (under WTO Agreement on Subsidies and Countervailing Measures), as well as, consider Chinese State presence in its financial markets a systemic distortion that precludes the use of Chinese interest rates and yield rates for countervailing duty loan benchmarking purpose<sup>40</sup>.

Although China has accomplished significant progress in increasing the operational autonomy of SOE's, over 80% of central SOEs have finalized the process of establishing a board of directors, the Party still play a leadership role in SOEs through the creation of a representative committee (Party Committee) in the enterprises. According to Zhou, Gao and Bai, in their paper regarding China's SOEs reform, they became even

<sup>39</sup> FEDERATION OF AMERICANS SCIENTISTS, op. cit. p. 01 - 02.

<sup>40</sup> INTERNATIONAL TRADE ADMINISTRATION. **Subsidies enforcement annual report to the congress**: joint report of the office of the United States Trade Representative and the United States Department of Commerce. Available at: [https://eset.trade.gov/eset/groups/public/documents/web\\_resources/seo-annual-report-2018.pdf](https://eset.trade.gov/eset/groups/public/documents/web_resources/seo-annual-report-2018.pdf). Access on: 29 apr. 2020. p. 05 and 13.





more influential in the country's economy, bolstering the state sector and consolidating China's state capitalism<sup>41</sup>.

To the authors the control of SOEs by the State/Party is not a problem itself, however, these enterprises may not behave like private ones, making decisions based on political goals rather than business objectives. In this regard, the WTO Police Trade Review mentions an IMF report which suggests that China should increase the role of market forces by reducing implicit subsidies to SOEs and opening more key sectors to private investment<sup>42</sup>.

As a result, anti-dumping rates and countervailing duties are often discussed through WTO disputes involving China. The disputes chosen indicate a trade conflict with the USA, triggered by other disputes or economic measures used as retaliation and presenting disputes in which the NME traits in China's economy are contested.

In 2009 (DS 399: US - Tyres), China requested consultations with the USA concerning increased tariffs on certain passenger vehicle and light truck tyres. According to the US, this measure is justified under the paragraph 16 of China's Accession Protocol in which a WTO member can apply a safeguard measure in cases where Chinese imports are "increasing rapidly" so as to be a "significant cause" of material damage to domestic industry<sup>43</sup>.

According to China, this allegedly market disruption that injured the domestic industry is not properly justified under the mentioned paragraph, article XIX of GATT 1994<sup>44</sup> and the Agreement on Safeguards, as well as, is inconsistent with the article I also of GATT 1994<sup>45</sup>. However, according to the Panel, in fact, the US was successful in demonstrating that subject imports were increasing rapidly, both absolutely and relatively,

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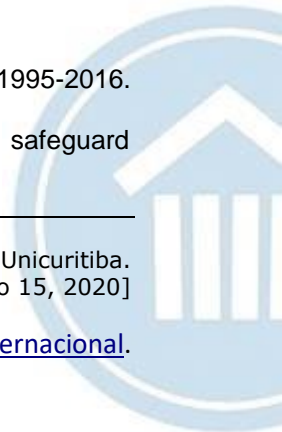
<sup>41</sup>ZHOU , Weihuan; GAO; Henry; BAI, Xue. China's SOE reform: using WTO rules to build a market economy. **International and Comparative Law Quarterly**, Cambridge, v. 68, nº 04, 2019, p. 977- 1022. p.980, 985 and 991.

<sup>42</sup> WORLD TRADE ORGANIZATION, **TRADE POLICY REVIEW**, op. cit. p. 18.

<sup>43</sup> WORLD TRADE ORGANIZATION. **WTO Dispute Settlement**: one-page case summaries 1995-2016. Geneva: World Trade Organization, 2017. p. 245.

<sup>44</sup> Regarding emergency action on imports of particular products, mainly the application of safeguard measures

<sup>45</sup> Regarding general most-favoured-nation treatment





in accordance with the Protocol, being then the "significant cause" of material injury. China appealed but the Appellate Body also upheld the Panel's finding<sup>46</sup>.

One year later, China's application of anti-dumping and countervailing duties in US grain-oriented flat-rolled electrical steel (GOES) gave rise to DS 414 - China GOES. Accused of violations in the Agreement on Subsidies and Countervailing Measures (SCM) China lost the dispute and reinvestigate the matter, as a result, reduced anti-dumping and countervailing duties to all exporters, although for US ones the duties remained the same. The unchanged duties were brought to WTO, which found a number of violations in China's reinvestigation decisions however, the duties measures had already expired<sup>47</sup>.

Zhou and Zhang believe this dispute was likely motivated by retaliation, since earlier the US initiated one of its largest anti-dumping investigations against China's steel pipelines, in order to protect its own domestic industry. The authors add that besides China being the US main target, the country steel industry also endured high anti-dumping and countervailing rates not only from the US but also from the EU, Australia and India.<sup>48</sup>

A similar dispute occurred in DS 427 China - Broiler Products. Known as the Chicken Tariff, in 2010 China imposed different anti-dumping and countervailing duties to US exporters if compared to other countries. Losing the WTO dispute, China made a reinvestigation, decreasing the countervailing measures and increasing the anti-dumping ones to some US exporters<sup>49</sup>. In 2018, the Dispute Settlement Body concluded that the respondent has not complied with the rulings<sup>50</sup>.

According to Zhou and Zhang, this was another escalated trade war between the countries, a retaliation to US ban on the importation of Chinese poultry in 2009 (DS 392 US - Poultry<sup>51</sup>) and the application of safeguard measures (35% import tariff) on certain

<sup>46</sup> WORLD TRADE ORGANIZATION, op. cit., p. 245.

<sup>47</sup> ZHOU, Weihuan; ZHANG, Shu. Anti-dumping Practices and China's Implementation of WTO Rulings. **The China Quarterly**, Cambridge, v. 230, p. 512 - 527, jun./2017. p. 518 and 519.

<sup>48</sup> Ibidem, p. 518 e 519.

<sup>49</sup> ZHOU, Weihuan; ZHANG, Shu, op. cit., p. 521

<sup>50</sup> WORLD TRADE ORGANIZATION, op. cit.

<sup>51</sup> Similar to DS 414 - China GOES by the time WTO decision should be implemented, the measure had already expired.







passenger vehicle and light truck tyres exported from China (DS 399: US - Tyres, mentioned above)<sup>52</sup>.

Since China is the largest exporter of goods, it is natural that the country is also involved in several WTO disputes, after all, it develops the main role within the Organization<sup>53</sup>. However, among the 44 disputes in which China takes part as a respondent, more than half of them (23) have the US as a complainant, indicating a long history of trade conflicts between the countries<sup>54</sup>.

Under allegations of not operate in market principles and still being designated by some countries as a non-market economy, China is concerned with multilateral trade remedy rules, specifically addressing the US in some of the issues in its proposal to WTO reform. Above all, China continuously seeks to break off the non-market economy label that, according to the country, should have been abandoned since 2016. Meanwhile, the country explores new approaches to surpass the hurdles that its transition to a market economy left.

#### 4. CHINA'S PROPOSAL ON WTO REFORM

After the EU and the US, China is the biggest respondent in WTO disputes. As a central piece of WTO trade and conflicts, China also has singular traits of non-market economies in its commerce, such as the extensive role of SOEs in the county's state capitalism<sup>55</sup>. With a different economic model and as an influential trade partner, China brings distinct approaches in its WTO proposal reform<sup>56</sup> to improve WTO mechanisms

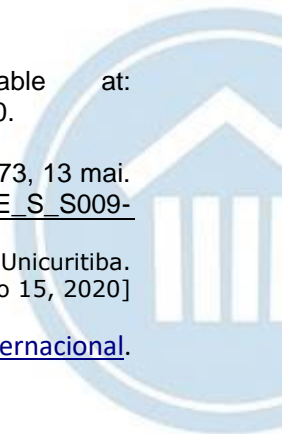
<sup>52</sup> ZHOU, Weihuan; ZHANG, Shu, op. cit., p. 522.

<sup>53</sup> WORLD TRADE ORGANIZATION, op. cit.

<sup>54</sup> WORLD TRADE ORGANIZATION. **Disputes by member.** Available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm). Access on: 29 apr. 2020.

<sup>55</sup> ZHOU, Weihuan; GAO; Henry; BAI, Xue, op. cit, p. 981.

<sup>56</sup> WORLD TRADE ORGANIZATION. **CHINA'S PROPOSAL ON WTO REFORM**, WT/GC/W/773, 13 mai. 2019. Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-)





and solve some of its problems. Among its proposed reforms, the first three are addressed directly or indirectly the US:

China considers crucial and important to solve the impasse of the appointment process of the Appellate Body members. The problem consists of a blockage made by the US, for this reason, the Appellate Body (normally composed of seven members) no longer has the minimum three members needed to hear new appeals, after two of the remaining members' terms expired in December of 2019<sup>57</sup>.

China presented a joint proposal<sup>58</sup> to reform the Appellate Body. Acknowledging the independence and impartiality of the Appellate Body, as well as, the importance to make new appointments with no further delay, the proposed reforms address to transitional rules for outgoing Appellate Body members, 90-day timeframe for appellate proceedings, the status of municipal law, findings unnecessary for dispute resolution and the issue of precedent.

The other two problems specifically mention a certain member that in China's vision has taken actions incompatible to WTO and/or United Nations (UN) rulings such as unilateralist measures of raising trade barriers, the imposition of tariffs in an arbitrary way, the imposition of economic sanctions and the use of national security as a pretext to impose unwarranted tariffs on steel and aluminum products, also threatening to raise tariffs on auto and auto parts.

As a solution, in both cases, China advocates for allowing affected members to be able to take prompt and effective remedies. This measure, together with an acceleration of relevant dispute settlement proceedings, would aid in an enhancement of the multilateral review mechanism, so the unilateralist measures could be constrained. Likewise, it could help an affected member to maintain a balance between rights and

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<sup>57</sup> JURIST. **The WTO Appellate Body Crisis: How We Got Here and What Lies Ahead?**. Available at: <https://www.jurist.org/commentary/2020/04/rathore-bajpai-wto-appellate-body-crisis/>. Access on: 24 aor. 2020.

<sup>58</sup> Together with European Union, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro





obligations under WTO in cases where national security exception is adopted, in which China also suggests that notifications requirements should be enhanced and carry out multilateral reviews.

To Prazeres<sup>59</sup>, the US considered its use of national security exception consistent with WTO regulations, nonetheless it also considers the retaliatory measures as WTO's violations, bringing them its own WTO disputes against it. So according to the author, China's proposal to take effective remedies could provide a member's right to respond trade restrictions without discussing whether the measure adopted is legal under WTO exception of national security or not, as well as, spare WTO system from spin-off cases of national security problems (like the ones initiated by the USA) being, in the author's vision, a timely and effective response to trade measures covered by the allegation of national security and more favorable than waiting to a panel's ruling and the other party's compliance.

Regarding the inclusiveness of the multilateral trading system, China highlights the deficiency in recognizing the systemic gaps between developing and developed Members, considering that development is in the center of WTO's goals. Therefore, special and different treatment measures to developing countries should be properly implemented with provisions more precise, effective and operational, according to China this promotes the reduction of development deficit in trade rules and contribute to the achievement of the Sustainable Development Goals of the United Nations 2030 Agenda.

On this subject, China presented a joint proposal<sup>60</sup> suggesting the following measures<sup>61</sup>:

"First, enhance the implementation and monitoring of existing special and different treatment (S&D) provisions, particularly the implementation of Duty-Free and Quota-Free treatment and the Preferential Treatment to Services and Service Suppliers of the LDCs. Second, provide more targeted and concrete technical

<sup>59</sup> PRAZERES, Tatiana Lacerda. Trade and National Security: Rising Risks for the WTO. **World Trade Review**, Cambridge, v. 19, p. 137-148, 2020. p. 146, 147 and 148.

<sup>60</sup> Together with India, South Africa, the Bolivarian Republic of Venezuela, Lao People's Democratic Republic, Plurinational State of Bolivia, Kenya, Cuba, Central African Republic and Pakistan

<sup>61</sup> WORLD TRADE ORGANIZATION. **CHINA'S PROPOSAL ON WTO REFORM**, op. cit, p. 07.





assistance to ensure the integration of developing Members into the multilateral trading system and global value chains. Third, advance the negotiations on S&D provisions in accordance with the Doha Ministerial Declaration. Fourth, accord adequate and effective S&D treatment to developing Members in future negotiations on trade and investment rules. Fifth, encourage developing Members to actively assume obligations commensurate with their level of development and economic capability".

According to Professor Xiankun Lu<sup>62</sup> China still considers itself a developing economy since its per capita gross domestic product (GDP) is only 1/7 of that of the US and lower than St. Lucia, Grenada and the Maldives. However, the country also understands its position as a large economy, leader in many technological advances and by other measures more developed than the mentioned Grenada or the Maldives. For this reason, the proposal also recognizes that the country should undertake obligations proportionally to its economic level and economic capacity. A position already supported by some recent measures such as the WTO Trade Facilitation Agreement, in which China accepted similar obligations to developed countries.

Another common plead included in the reform proposal refers to the fair competition when SOEs are involved. According to China, SOEs and other enterprises are equal market players. Therefore it considers discriminatory the differentiated rules applied to them, such as the label of "public bodies" within the Agreement of Subsidies and Countervailing Measures<sup>63</sup> which set additional transparency requirements and disciplines for SOEs. Therefore, China proposes an environment of fair competition among enterprises of different ownership based on the non-discrimination principle by discussing discriminatory disciplines on SOE's regarding subsidies and conducting impartial foreign investment security reviews.

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<sup>62</sup> INSTITUTE FOR INTERNATIONAL TRADE OF THE UNIVERSITY OF ADELAIDE. **China's perspectives on WTO reform.** Available at: <https://iit.adelaide.edu.au/news/list/2019/11/26/chinas-perspectives-on-wto-reform>. Access on: 24 apr. 2020.

<sup>63</sup> This Agreement establishes a definition of the term "subsidy". According to the requirements the subsidy is given "by a government or any public body within the territory of a Member". Regarding this matter, China complains that by labeling its SOEs as public bodies the Members could include these enterprises in the subsidy concept and therefore can be subject to countervailing measures. More about the SCM Agreement in: [https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)





In light of the difficulty to measure the impact of NMEs and SOEs in trade and competition, Zhou, Gao and Bai highlight the importance to ensure the WTO transparency principle. Likewise, the authors consider that the information on SOE provided by China's Trade Policy Review (TPR) in 2016 is too sparse, indicating a significant shortage of transparency. The lack of compromise<sup>64</sup> worsened in its last TPR in 2018, in which China provided almost no further information related SOEs and SOEs reform<sup>65</sup>.

The authors also sustain the use of the "public body" designation to Chinese SOEs. In the dispute US - Anti-dumping and Countervailing Duties (DS 449) the Appellate Body ruled that a public body is an entity that has the authority to function as an extension of the government. Although this authority based concept is more severe compared to the ownership approach the authors believe that there is evidence enough to consider China's SOE public bodies. The ongoing reform has divided SOEs in: public welfare, special commercial and general commercial, while the first two play an admittedly role in providing strategies to implement national strategies in the last the Party still participates in the decision-making, used to achieve state policies<sup>66</sup>.

Moreover, China's proposal also includes measures regarding efficiency of WTO subsidiary bodies, compliance of notification obligation, e-commerce, fisheries subsidies, inequity in rules on agriculture, among others.

Allied to its distinctive economy, China's relevance in global trade still rises up discussions in WTO, since the mechanisms offered within the Organization are often not considered enough to deal with an economy that is not fully driven by market forces. As a result, while China seeks fair and equal treatment, the other Members fight against the allegedly market distortions caused by China's trade.

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<sup>64</sup> The mentioned authors highlight that the limitations and ineffectiveness of the WTO transparency mechanisms is generalized. However, due to SOE role in China's economy, the lack of transparency could create bigger challenges to WTO.

<sup>65</sup> ZHOU , Weihuan; GAO; Henry; BAI, Xue. op. cit. p. 1001 and 1002.

<sup>66</sup> The authors specifically mention a State-owned Assets Supervision and Administration Commission of the State Council (SASAC) Party Committee on 3rd January 2017 which mention as a power of the Party "to ensure the implementation of guidelines and polices of the Party and the State by the company, the implementation of major strategic decisions by the Party Central Committee and the State Council".





## 5. CONSIDERAÇÕES FINAIS

After the EU and the US, China is the biggest respondent in WTO disputes. As a central piece of WTO trade and conflicts, China also has singular traits of non-market economies in its commerce, such as the extensive role of SOEs in the country's state capitalism. With a different economic model and as an influential trade partner, China brings distinct approaches in its WTO proposal reform to improve WTO mechanisms and solve some of its problems. Among its proposed reforms, the first three are addressed directly or indirectly the US:

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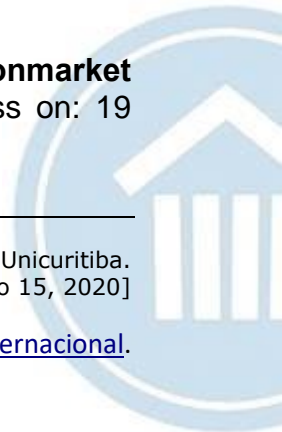
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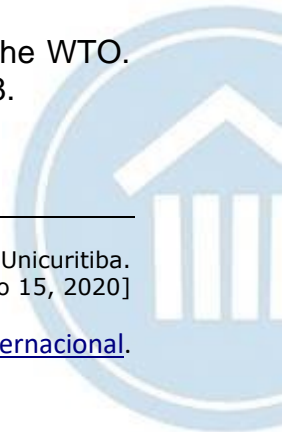
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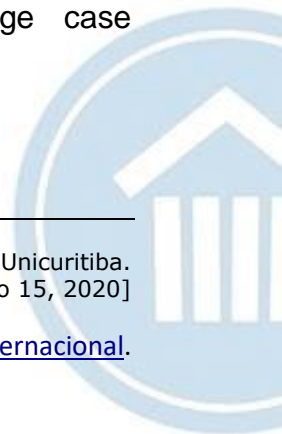
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