

CHINA AND MARKET ECONOMY STATUS

AUSTRALIAN INDUSTRY GROUP



FURTHER INFORMATION

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Background

In October 2003 Australia entered into a Trade and Economic Framework (TEF) agreement with China. The first task under the Framework is to undertake a joint feasibility study into a possible free trade agreement (FTA). The study will examine the costs and benefits of an FTA and will allow both Governments to consider whether to proceed with FTA negotiations. The study will be completed by March 2005.

The Trade & Economic Framework agreement notes that, when the Australian government considers whether to enter into FTA negotiations, it will also need to consider whether to recognise China as a market economy. The Trade and Economic Framework states that FTA negotiations will “only follow Australia's formal recognition of China's full market economy status”.

Market economy status, or MES, will have a direct impact on Australia's anti-dumping practices. Presently, China is regarded as an “economy in transition” (EIT), meaning it is in the process of moving from a centrally planned economy to a market model. This recognition enables the Customs Minister to determine the normal value of goods other than in an exporter's home market using more flexible methods (third country pricing information), if price influence (by a Government) is found to exist. Significantly, the EIT provisions provided a clear definition of what constitutes a price control situation.

What does it mean for Australia?

The Australian Industry Group has received legal advice which confirms that changes to Australia's anti-dumping regime associated with granting MES to China under an FTA would effectively diminish Australia's anti-dumping powers in relation to China.

As part of any granting of MES to China, the Government has stipulated that the Minister for Customs would need to add China to schedule 1B of the Customs regulations which lists countries to which Economy in Transition (EIT) provisions do not apply for the purposes of anti dumping.

The joint Senior Council Opinion now received by Ai Group confirms that this removal of China from EIT provisions would “effectively weaken Australia's anti-dumping legislation by diminishing the Minister's powers”.

The Opinion also points out that in exceptional circumstances there are other provisions in the legislation on which the Minister could rely to determine prices and costs using surrogate (third country) values. However, this effective weakening of the powers under the Act in relation to China confirms Ai Group's view that additional changes to Australia's anti-dumping regime would be necessary if China was granted Market Economy Status.

These legislative or administrative changes would be needed to ensure that Australian industry retained sufficient powers to effectively undertake action against predatory-priced imports dumped on the Australian market.

The Ai Group is working with the Government in a constructive way to ensure that Australia's legislation fully addresses the range of situations where it is necessary to determine the prices of a product allegedly causing injury to an Australian industry.

Closer engagement with China presents enormous opportunities for Australia. Ai Group looks forward to being actively involved in strengthening relations between Australian and Chinese business and industry.