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**— China did not automatically gain market economy status at the WTO three years ago,**according to an interim panel report seen by POLITICO.

**WHY CHINA PULLED BACK ON BID TO BE NAMED A MARKET ECONOMY:**When China pulled back a suit it filed against the EU earlier this year, it certainly had reason to do so.

An interim panel report dated March 27 and seen by POLITICO shows that the end decision in a dispute over the EU’s old anti-dumping methodology and — more importantly — China’s status as a (non-)market economy would not have gone as China intended.

**Gaining market economy status** was long one of China’s overarching goals in joining the WTO. Being a market economy would stop members such as the U.S. and the EU from slapping anti-dumping duties on cheap Chinese goods such as steel and bikes based on a specific calculation method. Beijing maintained that it would automatically gain this status 15 years after joining the WTO and went on to sue Brussels over its old anti-dumping methodology (which has now been changed to align with WTO rules). But before the report was issued to parties other than the EU and China, Beijing opted to row back on its lawsuit against the EU so that the panel’s reasoning remained locked away.

**Here’s what the ruling would have said:** The interim panel report argued that in order for China as a whole or any specific industry to be treated as operating under market economy conditions, there first needs to be proof. Each WTO member will be entitled to “determine the normal value of Chinese imports … when the importing member finds, on the basis of its own positive and objective determination, that market economy conditions do not prevail in the industry under investigation,” the report said. It also said the EU’s former treatment of imports from China was not in line with WTO law for labeling Beijing a non-market economy by default.

**What’s this about:** Before Beijing joined the WTO in 2001, it dedicated a considerable amount of time to negotiating how its status would be settled in the Geneva-based organization. The deal it struck in part expired 15 years after China’s accession. Beijing long argued that this would automatically grant it market economy status.

The EU in the meantime set up a new anti-dumping methodology that doesn’t look into whether an exporting country is a market or non-market economy but instead focuses on whether “significant distortions” exist due to state interference — meaning that even if China would have gained market economy status, it had its workaround ready and prepared. Read more [here](https://politico.us8.list-manage.com/track/click?u=e26c1a1c392386a968d02fdbc&id=b1bdcb5a4d&e=8ff7776da7) or below.

**How China’s push to be a market economy hit the rocks**

— By Maxime Schlee

No wonder Beijing has pulled back on its bid to be designated as a market economy in global trade terms. POLITICO has seen a World Trade Organization report from earlier this year that reveals why China has rowed back on its lawsuit in Geneva against the EU over market economy status. It makes for grim reading for Beijing. Obtaining market economy status at the WTO was long one of most China’s hallowed goals. Beijing saw the designation as a geopolitical coming of age, which would also make it far harder for Western countries to slap tariffs on Chinese goods — like steel and bicycles — that they reckoned were being exported at below the cost of production. China argued it was automatically entitled to market economy status in December 2016 under the terms of its accession protocol to the WTO 15 years before.

The EU and the U.S. were not going to let China have its way, however. Arguing that Beijing’s government still plays an outsize role in the economy, Brussels in the meantime brought in new provisions that would enable it to keep slapping relatively high tariffs on cheap Chinese goods. The easiest way to impose anti-dumping tariffs is to compare a product such as Chinese steel with the same product from a third-country, where you think it is manufactured at a market rate. That so-called “analog-method” would no longer be possible if China were classed as a market economy at the WTO. Right after the 15-year countdown expired in December 2016, China took the EU to the WTO’s dispute settlement over the method Brussels applied for calculating anti-dumping duties on states seen as non-market economies. The interim report of the panel on the case came as a hard blow for China’s line of argument, though. Broadly, it argues that WTO members are free to make their own judgments, from December 2016 onwards, on whether Chinese goods are produced at market rates. Each WTO member will be entitled to “determine the normal value of Chinese imports … when the importing member finds, on the basis of its own positive and objective determination, that market economy conditions do not prevail in the industry under investigation,” it said. The report also stressed that Brussels only has to treat China as a market economy if Beijing or an importing country can offer cast-iron proof that Chinese goods are produced at market levels.

The confidential report dated March 27 was issued to the parties directly involved earlier this year. China, however, conceded that parts of the ruling would have been so detrimental that it suspended the case and asked for the report to not be published, keeping the panel’s reasoning locked away. “To have an adopted panel that disagrees on that question would have been a major vexation for the Chinese,” a Geneva official told POLITICO. “Because they negotiated their accession with that idea that it was only 15 years.” In response to questions from POLITICO, Chinese ambassador to the WTO Zhang Xiangchen said he was not in a position to comment since the report is confidential.

**A matter of interpretation**

In fact, the report cuts two ways. There’s bad news for Brussels and Beijing, but it is worse for the Chinese. The report does note that the EU’s former treatment of imports from China was not in line with WTO law for labeling Beijing a non-market economy by default. However, Brussels’ new way of calculating anti-dumping tariffs was already up and running by the time the interim panel report was issued. The reversal of the burden of proof on China is more dramatic, however. Most specifically, the panel found that while some conditions surrounding the treatment of Chinese imports did expire in 2016, the parts of the accession protocol that continue to apply establish that importing countries can use a methodology that isn’t based on Chinese domestic prices and costs if it finds that the investigated industry isn’t operating under market economy conditions, the report said. However, if the importing country doesn’t come to that conclusion, it would have to use Beijing’s domestic prices and costs and treat it as a market economy, the 107-page report added. So while Beijing can’t be described as non-market economy by default, it can be treated as such if there’s evidence. That’s because the parts of the protocol that didn’t expire — notably the part stating that if Chinese producers can show they are working under market economy conditions, then the EU has to treat this specific industry as such — support the argument that China didn’t automatically gain market economy status in 2016 since China still needs to argue its case regarding the status of its economy, the panel reasoned. “Politically, it would have been very difficult, it would have been a major loss,” the Geneva official said. “So it’s better to withdraw it and nobody ever sees it.” While the dispute was still going on at the Geneva-based trade organization, Brussels updated its anti-dumping methodology at the end of 2017. The first tariffs on China under the new methodology were imposed earlier this year. The tweak in the new method for calculating dumped imports is that, instead of singling out countries such as China as non-market economies, it instead looks at whether state interference in the exporting country causes “significant distortions.” “We modernized the anti-dumping legislation and adopted this alternative methodology for special states, which are having difficulties with market-based pricing — so this is not a lex China,” said Bernd Lange, chair of the European Parliament’s trade committee. So either way, Brussels had a workaround for the market economy question ready at hand.

*Jakob Hanke contributed reporting.*