

RETHINKING CHINA'S MARKET ECONOMY STATUS IN TRADE REMEDY DISPUTES AFTER 2016: CONCERNS AND CHALLENGES*

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ABSTRACT

This paper discusses and analyzes China's market economy status ("MES") in trade remedy disputes after December 2016. According to the Protocol on the Accession of China to the WTO (China's Accession Protocol), WTO members can treat China as a non-market economy for fifteen years for dumping purposes. As China joined the WTO in December 2001, December 2016 will be the deadline for such a treatment. During the past ten years since China's accession to the WTO, this MES issue has been demonstrated as the biggest challenge for Chinese exporters when they face overseas anti-dumping investigations. However, will this MES issue have a lasting impact on Chinese exporters' response to

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trade remedy disputes after 2016? What will be the new challenge for Chinese exporters in trade remedy disputes after December 2016? This paper will try to identify these challenges by analyzing Sections 15 and 16 of China's Accession Protocol on the one hand, and on the other hand by discussing several latest cases both under the WTO framework and in WTO member states.

Part II of this paper provides a general overview of the issue of the non-market economy status ("NMES") under the WTO framework, specifically in Article VI of the GATT and the Anti-Dumping Agreement 1994. This paper will then move to discuss Sections 15 and 16 of China's Accession Protocol and some relevant paragraphs embedded in the Report of the Working Party on the Accession of China to the WTO. Based upon the analysis on these legal texts, some latest cases regarding this issue will be discussed, including the United States – AD/CVD case and the European Communities – steel fasteners case, which were both resolved under the WTO dispute settlement resolution, as well as the case of GPX International Tire Corp. V. United States, which was ruled by the United States Court of Appeals for the Federal Circuit recently. Some observations and a concluding remark will be offered by pointing out that Chinese exporters will face new challenges in trade remedy disputes in the coming years, and simultaneously the issue of the NMES may continue to play and will have different forms of expression in trade remedy disputes against Chinese exports.

KEYWORDS: *China's market economy status, non-market economy, trade remedy disputes, World Trade Organization, the Protocol on the Accession of China to the WTO*