

IS THE BIRD OUT OF CAGE: DEMYSTIFYING CHINA'S NON-MARKET ECONOMY STATUS?

Apoorva Vishnoi and Rishabha Meena***

ABSTRACT

Since joining World Trade Organization in 2001, China agreed to be treated as a Non-Market Economy (NME) for a 15 year period which expired on 11 December 2016. Determination of NME status becomes important in calculating anti-dumping duties. Normal value of the goods during such calculation is determined by home market price method, constructed value method or third country sale method. Article 15(a)(ii) of China's Accession Protocol empowers other Members of WTO to treat China as a NME in cases of anti-dumping investigation on fulfilment of certain conditions and hence, allows them to use methods other than home market price method. Article 15(d) provides an 'out' clause for China with respect to the special requirements of Article 15(a). It is the interplay between these two Provisions 15(a) and 15(d) that has become the source of much dispute. Post-expiration of Article 15(a)(ii), the issue is whether China can still be treated as a NME. The paper will analyse both sides of the arguments on treating China as a NME and evaluates the text and context of China's Accession Protocol. This Article addresses the accession agreement language regarding China's status as a NME, the removal of that language, and the respective arguments of Members in certain WTO proceedings regarding the significance of the terms of China's accession. The paper further throws light on the treatment by United States, European Union and India in anti-dumping investigations of imported goods from China. Finally, the paper concludes by identifying a way ahead.

1. INTRODUCTION: THE STORY OF THE BIRD AND THE CAGE

The notion of a Non-Market Economy (NME) is a concept peculiar to anti-dumping under the World Trade Organization (WTO). Dumping occurs

* B.A., LL.B. (Hons.), Research Fellow, Centre for Trade and Investment Law (CTIL), Ministry of Commerce and Industry, India.

** B.A., LL.B. (Hons.), Research Fellow, Centre for Trade and Investment Law (CTIL), Ministry of Commerce and Industry, India.