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PRESS RELEASE

Wiley Rein's Alan Price Comments on China's Request for Market Economy Status

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Washington, DC – As anticipated by Wiley Rein in a 2015 report, the Chinese government today requested consultations with the United States at the World Trade Organization (WTO) regarding the use of the "non-market economy" (NME) methodology in antidumping investigations. Wiley Rein represents numerous U.S. industries that oppose China's request for market economy status.

China bases its request on the December 11, 2016, expiration of Paragraph 15(a)(ii) of its Protocol of Accession. China claims that this provision was the sole legal basis for the application of the NME methodology, and that its expiration means WTO Members may no longer use the methodology to determine dumping margins. Opponents of China's arguments—including the U.S. government—argue that language remaining in the Protocol after the expiration of Paragraph 15(a)(ii) continues to provide clear legal authority for WTO Members to apply the NME methodology in accordance with domestic law.

"China's claim is misplaced," said Alan H. Price, chair of Wiley Rein's International Trade Practice. "Despite the fact that provision (a)(ii) expired yesterday, the remainder of Section 15 remains in full force and effect and continues to provide sufficient authority to treat China as a non-market economy. Treating China as a market economy would be an unwarranted step with significant negative ramifications."

In September 2015, Mr. Price co-authored a report, "The Treatment of China as a Non-Market Economy Country After 2016," which concluded that China is not a market economy. Mr. Price represents numerous domestic steel producers and other domestic producers in

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Practice Areas

Antidumping and Countervailing Duties/ Trade Remedy Cases
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World Trade Organization (WTO)

antidumping and countervailing duty investigations for a variety of materials and products. He also advises the U.S. industry and the U.S. Trade Representative in connection with WTO disputes regarding China's raw material export restrictions.

U.S. law provides six factors to determine whether, as a substantive matter, a country qualifies as a market economy for the purpose of U.S. antidumping investigations. If an analysis of those factors demonstrates that prices and costs in the country are not set by market forces, the U.S. Department of Commerce will use "surrogate values," or prices and costs in a third country at a similar level of economic development, to calculate dumping margins. As a substantive matter, the Chinese government continues to intervene extensively in its domestic economy to support domestic firms in international competition. Because economic outcomes are not determined by market forces, standard antidumping methodologies do not reflect true margins of dumping and result in incomplete relief for U.S. industries against dumped Chinese imports.

In February 2016, Mr. Price testified before the U.S.-China Economic and Security Review Commission (USCESRC) on this topic, concluding that whether you look at criteria in United States, European Union, or Canadian law—and each government's approach to China as a major trading partner—China is not a market economy.

A full copy of the 2015 report can be read here.