



Centre for Trade and Investment Law
Preliminary Draft

Book Release of “Non-Market Economies in the Global Trading System: The Special Case of China” Edited by James J. Nedumpara & Weihuan Zhou
and
Symposium on ‘Trade Remedies and Non-Market Economies’
15 December 2018, India Habitat Centre, New Delhi.

On 15 December 2018, Dr. Anup Wadhawan, Commerce Secretary, Government of India, Dr. Vijaya Katti, Dean of Academics (Administration), Indian Institute of Foreign Trade, New Delhi and Prof. Abhijit Das, Head and Professor, Centre for WTO Studies (CWS) launched the book “Non-Market Economies in the Global Trading System: The Special Case of China” edited by Dr. James J. Nedumpara & Weihuan Zhou. The book, a Springer publication, examines the non-market economy treatment of China in anti-dumping cases and highlights multiple perspectives on the interpretation of Section 15 of China’s Protocol of Accession to the WTO and the Second Ad Note to Article VI of the GATT. The book also provides unique insights on the approaches followed in different jurisdictions in dealing with cost and price distortions in non-market economies in trade remedy cases. Dr. Wadhawan in his keynote address congratulated the editors and lauded the book as a hallmark contribution for both academicians as well as practitioners working in the field of trade remedies. The book launch was followed by a symposium on ‘Trade Remedies and Non-Market Economies’.

Symposium on ‘Trade Remedies and Non-Market Economies’

The symposium on trade remedies and non-market economies comprised of three panel discussion sessions. The first panel discussion deliberated upon ‘China’s market economy status: The Text, Context and the Controversy’. The Panel, chaired by Professor Abhijit Das, comprised of Dr. Veena Jha, IKDVIJ Consulting, Mr. Jayant Dasgupta, Former Ambassador of India to the WTO, Dr. A. K. Gupta, Founder, TPM Consulting and Dr. James J. Nedumpara, Head and Professor, Centre for Trade & Investment Law (CTIL). Mr. Jorge Miranda, King & Spalding, London joined the discussion via Skype. The Panel explored the contours of Section 15 of Protocol of China’s Accession to the WTO and various interpretations flowing from the said provision. The Panel further discussed China’s distortionary practices that compelled countries to brand China as a non-market economy and juxtaposed Chinese practices with practices of other countries like the US with respect to agricultural subsidies which albeit cause distortion, do not invite a similar response.

The Panel in the second session on “Double remedies and Non-market economies: Expanding the Toolkit” was chaired by Dr. Jarrod Hepburn, Senior Lecturer, University of Melbourne and comprised of Mr. Mukesh Bhatnagar, Professor, CWS, Ms. Pallavi Arora, Research Fellow, CWS, Ms. Katarzyna Kaszubska, PhD Candidate, Delhi University, Mr. Seetharaman, Founder, Seetharaman & Associates and Mr. R. Parthasarthy, Principal Partner and Country Head, L&S. The discussion in this session centred on the WTO Dispute Settlement Body’s treatment of external benchmarks in the context of Article VI of the GATT, 1994. The Panel and Appellate Body’s approach in US Softwood Lumber, 2004, US-Carbon steel and EU-Bio Diesel case, 2006 were discussed to understand the existing toolkit and where they fall short in



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addressing issues such as double counting and zeroing. The discussion also threw light on the practices of Indian authorities in calculating margins for dumping.

The third panel discussion focused on “Country Practices and Non-market Economy Treatment”. The discussion was chaired by Dr. V. S. Seshadri, Former Indian Ambassador to Myanmar. The distinguished guests on the panel consisted of Ms. Moushami Joshi, Foreign Attorney, Pillsbury, Washington D.C., and Mr. Sanjay Notani, Partner, Economic Laws Practice, Mr. Parthasarathi Jha, Senior Associate, Economic Laws Practice and Mr. Atul Sharma, Partner, Seetharaman Associates. The Panel discussed the practices of other countries, particularly the United States and India in dealing with non-market economies. Since 2016, Indian authorities retain the burden of proof in an anti-dumping investigation to establish that the producer belongs to a non-market economy, as opposed to prior practice of the rebuttal presumption lying on the producers. The Panel further deliberated upon distortion of cost, PMS regime, RCEP and the necessity to have regulations on supply chains of companies from non-market economies who have shifted to market economies. The discussion concluded with a brief overview of the wide power enjoyed by DGAD on imposing Anti-Dumping Duties and the need for regulation in this area.