BENEFITS AND IMPORTANCE OF ANTI DUMPING ACT
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Abstract
This paper investigates the benefits and importance of anti dumping act. In recent years antidumping (hereinafter sometimes “AD”) has been catapulted to the forefront of the most controversial practices in international trade. One of the most sensitive issues confronting countries in a trade negotiation is how to treat economic sectors unable to face import competition. Antidumping laws alter the pricing policies of foreign firms to the benefit of domestic ones. Unilaterally, domestic firms want to lobby for antidumping restrictions; unilaterally, consumers want to lobby against them. This paper shows that if firms succeed in both countries, their profits fall and consumer surplus rises, so that firms end up working for consumers everywhere by lobbying. It also shows that each government, maximizing total domestic surplus, prefers no legislation irrespective of the action of another government. However, world surplus may be greater with antidumping rules. These results hold under both Bertrand and Cournot competition.

Key Words: Dumping Act, Antidumping Act, Antidumping Duties.

Introduction
The general agreement on tariffs and trade lays down principles to be followed by the member countries for imposition of anti – dumping duties, countervailing duties, and safeguard measures. Pursuant to the GATT, 1994, detailed guidelines have been prescribed under the specific agreements which have also been incorporated in the national legislation of the member countries of the WTO. Indian laws were amended with effect from 1.1.95 to bring them in line with the provisions of the respective GATT agreements.

Dumping, is a pricing practice where a firm charges a lower price for exporting goods than it does for the same goods sold domestically. It is said to be the most common form of price discrimination in international trade. Dumping can only occur at places where imperfect competition and where the markets are segmented in a way such that domestic residents cannot easily purchase goods intended for export. It is a subtle measure of protection which comes under the non-tariff barriers and is product and source specific. Antidumping duties were initiated with the intention of nullifying the effect of the market distortions created due to unfair trade practices adopted by aggressive exports. They are meant to be remedial and not punitive in nature. A harmful to the domestic producers as their products are unable to compete with the artificially low prices imposed by the imported goods. As a method of protection to the domestic industries, antidumping duties are thus levied on the exporting country which has been accused of dumping goods in another country. As the antidumping duty is only meant to provide protection to the domestic firms in the initial stages, as per the international laws, the antidumping legislations may last for a maximum period of five years. Antidumping measures are of two kinds:

Antidumping duty: This is imposed at the time of imports, in addition to other customs duties. The purpose of antidumping duty is to raise the price of the commodity when introduced in the market of the importing country.

Price undertaking: If the exporter himself undertakes to raise the price of the product then the importing country can consider it and accept it instead of imposing antidumping duty.

Dumping is said to have taken place when an exporter sells a product to India at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping is per se not condemnable as it is recognized that producers sell their goods at different prices to different market. It is also not unusual for prices to vary from time to time in the light of supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. It is also not uncommon that export prices are lower than the domestic prices. Therefore, from the
point of view of antidumping practices, there is nothing inherently illegal or immoral about the practice of dumping. However, where dumping causes or threatens to cause material injury to the domestic industry of India, the designated authority initiates necessary action for investigations and subsequent imposition of anti-dumping duties.

**Legal Framework**

Sections 9A, 9B and 9C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti-Dumping which is in pursuance of Article VI of GATT 1994.

**Dumping**

Dumping occurs when the export price of goods imported into India is less than the normal value of ‘like articles’ sold in the domestic market of the exporter. Imports at cheap or low prices do not per se indicate dumping.

The price at which like articles are sold in the domestic market of the exporter is referred to as the “normal value” of those articles.

**Normal Value**

The normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade. In the domestic market of the exporting country or territory. If the normal value cannot be determined by means of domestic sales, the Act provides for the following two alternative methods:

- Comparable representative export price to an appropriate third country.
- Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and for profits.

**Export Price**

The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

**Constructed Export Price**

If there is no export price or the export price is not reliable because of association or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer. If the articles are not resold as above or not resold in the same condition as imported, their export piece may be determined on a reasonable basis.

**Margin of Dumping**

Margin of dumping refers to the difference between the Normal Value of the like article and the Export Price of the product under consideration. Margin of dumping is normally established on the basis of:-

- a comparison of weighted average Normal Value with a weighted average of prices of comparable export transactions; or
- comparison of normal values and export prices on a transaction to transaction basis.

A Normal Value established on a weighted average basis may be compared to prices of individual export transactions if the Designated Authority finds a pattern of export prices that differ significantly among different purchasers, regions, time period, etc. It is significant to note that the alternative method of comparing the normal values and export Prices are a major change introduced after the Uruguay Round. The margin of dumping is generally expressed as a percentage of the export price.

**Factors Affecting Comparison of Normal Value and Export Price**

The export price and the normal value of the goods must be compared at the same level of trade, normally at the ex-factory level, for sales made as near as possible in time. Due allowance is made for differences that affect price comparability of a domestic sale and an export sale. These factors, inter alia, include:

- Physical characteristics
- Levels of trade
- Quantities
- Taxation
* Conditions and terms of sale

It must be noted that the above factors are only indicative and any factor which can be demonstrated to affect the price comparability, is considered by the Authority.

**Like Articles**

Anti-dumping action can be taken only when there is an Indian industry which produces “like articles” when compared to the allegedly dumped imported goods. The article produced in India must either be identical to the dumped goods in all respects or in the absence of such an article, another article that has characteristics closely resembling those goods.

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The Indian industry must be able to show that dumped imports are causing or are threatening to cause material injury to the Indian ‘domestic industry’. Material retardation to the establishment of an industry is also regarded as injury.

The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support the contention of material injury. Injury analysis can broadly be divided in two major areas:

**The Volume Effect**

The Authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India, and its affect on the domestic industry.

**The Price Effect**

The effect of the dumped imports on prices in the Indian market for like articles, including the existence of price undercutting, or the extent to which the dumped imports are causing price depression or preventing price increases for the goods which otherwise would have occurred.

The consequent economic and financial impact of the dumped imports on the concerned Indian industry can be demonstrated, inter alia, by:

- decline in output
- loss of sales
- loss of market share
- reduced profits
- decline in productivity
- decline in capacity utilization
- reduced return on investments
- price effects
- adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc.

Injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors considered relevant should individually show injury to the domestic industry.

**CASUAL LINK**

A ‘causal link’ must exist between the material injury being suffered by the Indian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping. Some of these are volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, export performance, productivity of the domestic industry etc.

**The cost of Anti-dumping Duties**

Before discussing the cost of AD duties, it is instructive to review the standard analysis of the costs of import tariffs and quotas for comparison purposes. The economic consequences of an import tariff are well-known. The tariff leads to a higher price in the importing country that creates gains for the domestic producers at the expense of consumers, while the government collects tariff revenues and can then redistribute to the general population. If markets are perfectly competitive and the importing country is small enough in the world that the
import tariff will not significantly affect world price of the good, then the welfare effect for the importing country is an unambiguous net loss. Simply put, the gains to the producers plus the tariff revenue cannot outweigh the losses to consumers from higher prices. In the end, there is nothing to counteract the efficiency loss from the consumers that completely stop purchasing the product (no purchase means no tariff revenue can be collected). Nor is there anything to counteract the replacement of production by less-efficient producers in the importing country for some of the more-efficiently produced imports. If the importing country is large enough that its import tariff (and accompanying reduced world demand) reduces the price, it can experience a “terms-of-trade” gain that may counteract these losses and become a net gain. However, this is a theoretical construct that seems far a field from why countries impose import tariffs.

**Anti-dumping duty law**

In the international marketplace, imports are an important part of many sectors. Imported goods increase options for purchasers and consumers and can ensure more competitive products from domestic sources. However, imports can also distort the outcome of competition in the marketplace when the foreign producer/exporter is able to engage in discriminatory pricing on exports. For more than one hundred years, one or more trading nations have had a remedy to address international price discrimination where a domestic industry is injured. This remedy flows from a country’s antidumping duty law. In the U.S., current law flows from modifications to the Antidumping Act, 1921. Dumping occurs when a product is sold for export for a price below that which the same product is sold in the home market or at a price that is below its full cost of production. Under U.S. trade laws, as well as the trade laws of many other nations, domestic industries that are materially injured by, or threatened with injury from, dumped imports can seek relief through the imposition of an antidumping duty order. The rights of trading nations to impose such remedies have been recognized in the GATT (and now the WTO) since the GATT’s origins in 1947/48.

For more than 50 years, and in hundreds of cases, Stewart and Stewart has helped clients obtain relief from dumped imports under the antidumping duty law in the United States. Our team has extensive experience working before the U.S. agencies that administer the laws (since 1980, the U.S. Department of Commerce and the U.S. International Trade Commission) in pursuing the imposition and maintenance of antidumping duty orders, as well as the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit in challenging and defending administrative agency decisions. Our clients benefit from Stewart and Stewart’s expansive knowledge of the factual and legal issues relevant to antidumping duty proceedings, and our team can assist clients in all phases of an antidumping duty proceeding, including:

- original investigations;
- administrative reviews;
- five-year (sunset) reviews;
- scope inquiries;
- new shipper reviews;
- changed circumstances reviews;
- anti-circumvention proceedings; and
- judicial challenges.

Stewart and Stewart prides itself on being able to maximize value for our clients through a strong command of the facts, underlying laws, regulations, and policies, and thorough research. We work to ensure that determinations by the U.S. Department of Commerce and the U.S. International Trade Commission are based upon the best record and legal arguments. Our legal and Government Relations teams have also been involved in the development of new and modified legislation and regulations that both benefit our clients and result in good public policies. We monitor developments in the World Trade Organization that are relevant to domestic law, including negotiations and work in the WTO Committees. We can assist clients whose cases are the subject of WTO challenges by other nations or help to see that the U.S. or other trading partners consider a dispute against a trading partner whose action appears contrary to the WTO rules. Similarly, where the U.S. has undertaken obligations within an FTA for a binational panel review of trade remedy determinations, we defend or pursue challenges to agency determinations through the binational panel process. In short, our team can provide clients with our wealth of experience and knowledge in the pursuit of relief under the antidumping duty law.
Examining the U.S. Anti-Dumping ‘War’ against China

This paper also examines about U.S. Anti-Dumping ‘War’ against China. Since the People’s Republic of China’s accession to the World Trade Organization (WTO) in 2001, there has been a notable increase in tensions concerning trade relations between China and the United States. China’s enormous economy presents a predicament for many members of the WTO but it especially gives rise to feelings of unease for China’s largest trade market: the US. China is one of the world’s largest low-cost producers of goods in labor-intensive sectors such as textiles, food (agriculture), chemicals and electronics. The problem is that, when a country like China, floods a foreign market (like the US) with low-price goods, this may present an unfair advantage for the exporter. Such ‘dumping’ of goods is essentially, therefore, exporting at a price either below the cost of production, below the home-market price or sometimes, as will be shown in China’s case, below a third country price. The result can bring about less-than-fair-value goods and these have the potential to threaten or injure a domestic industry.

Due to the large volume of its exports, it is of little surprise that China has been the primary target of anti-dumping measures. The sheer number of anti-dumping cases against China has made it apparent that China is perceived as a threat to many other WTO members: over the past two decades or so, more than 30 countries have opened about 600 anti-dumping cases in the WTO against 4000 different types of Chinese products. Over this same two-decade period, the US had made 110 petitions and 68 orders against Chinese goods topping the list among the US’s trading partners for such measures. Currently, 25 percent of all WTO anti-dumping investigations are directed at China. Although the WTO has reported an overall decrease in anti-dumping investigations and measures, China remains the most frequent subject of new investigations. But what are the underlying reasons for all of these actions taken against China?

This paper considers how and why the US has been using anti-dumping measures in response to Chinese imports. In order to effectively show the nature of this US-China trading relationship, it is necessary to focus on a few trade sectors in particular. Trade in food and agriculture is especially notable because it incorporates the farming and growing constituents in the US, who often launch petitions for investigations. Agriculture products also make up about 10 percent of US anti-dumping cases against China. In general, trade between the US and China is enormously important; the countries have a trade volume of well over $200 billion. Moreover, the US trade deficit with China is larger than ever. To shed some light on why there is so much tension, it is important to examine anti-dumping procedure in the US and the case law and, at the same time, to examine the modus operandi of stakeholders in US domestic industries. In particular, it is necessary to consider why the US still treats China as a non-market economy, the advantages and disadvantages of such a practice, and what the future holds for China in terms of being recognized as a market economy.

1. Appealing to Unfair Competition

Trade practices that involve dumping are considered “unfair” because they interfere with or distort free market economy principles. It is often considered very difficult to apply trading rules to non-market economies (NMEs), which supposedly do not adhere to such principles. According to the Sino-American Agreement of 1999, the US will continue to consider China as a non-market economy until 2016. Such status means a stricter interpretation of US trade remedy laws and the methodology by which they are applied to China. This type of methodology is commonly believed to result in much higher duty rates. However, the US is not the only country that has taken the defensive and increased its anti-dumping measures against China. In fact, in 2006, one-third of the European Commission’s investigations were directed against Chinese goods. Still, the measures by the US have been the most numerous. In its accession to the WTO, China agreed in advance to commit to certain safeguard measures and to achieving market economy principles. In particular, Article X. of the General Agreement on Tariffs and Trade (GATT), the governing rules for the WTO, provides that members should ‘promptly’ publish all information relating to trade regulation within their country so as to “enable governments and traders to become acquainted with them.” While the word ‘transparency’ is not mentioned in this article of GATT, one of the main issues among members is for China to become more transparent and accountable in its trade practices.
United States’ perspective, even though China is now a member of the WTO, it still has a long way to go in terms of achieving the principles that govern open market economies. It is mainly for this reason that the US Commerce Department does not classify China in the market economy category.

II. WTO Rules vs. US Antidumping Law

According to Article VI of GATT, countries are allowed to act against dumped imports when they cause or threaten to cause “material injury.” In Article VI, injurious dumping is considered to be unfair for several reasons: the export market is segregated while the import market is open; segregated markets confer an advantage on exporters; and dumpers have the opportunity to maximize profits, which is often injurious to an importing countries industry. On the other hand, it is important to note that the GATT does not forbid dumping but, rather, allows for the imposition of anti-dumping duties to offset its negative effects. However, Article VI does not outline the procedures on imposing antidumping duties. The WTO Antidumping (AD) Agreement was adopted following the Tokyo Round of international trade negotiations to expand on GATT Article VI. Following the Uruguay Round, the agreement was made more detailed so as to avoid confusion on key issues.

In order to have standing to initiate an investigation, there is a two level requirement that must be met. First, the degree of support from the domestic industry must reach a minimum level to account for 25% of the total production. The application however, is only considered to be filed on behalf of an industry if there is support amounting to more than 50% of the total production. In determining injury, the revised AD Agreement sets out the rules for comparing normal values to export prices so as not to cause inflated or unwarranted dumping margins. Article 3 (more specifically, 3.5 and 3.6) of the Agreement also makes clear the requirement of establishing a causal relationship between dumped imports and injury to the domestic industry.

While dumping and anti-dumping measures are outlined in GATT Article VI and WTO AD Agreement, in US domestic proceedings, the Tariff Act of 1930 is the primary source for making such determinations. Section 771(7)(A) of the Act defines material injury as “harm which is not inconsequential, immaterial or unimportant.” Furthermore, the same section enumerates three considerations for such material injury: the volume of imports, the effect of imports on prices of US domestic like products and the impact of imports on domestic producers of domestic like products. The determination of domestic-like products (or the identical/comparable product in the domestic market) and domestic industry is of special importance in antidumping cases.

Anti-dumping procedure in US law can be characterized by three different stages. First is the initial investigations stage which is commenced by the filing of a petition. The International Trade Commission (USITC) makes the determination of whether or not a US industry has suffered material injury. Then the International Trade Administration (ITA; Commerce Department; DOC) determines the extent of the dumping (as well as initiating the investigation. Lastly, the ITC makes the final injury determination. The second stage concerns the implementation of administrative reviews by the ITA to determine the necessary adjustments on the anti-dumping duties from year to year. The third stage, revocation of the duty, is relatively rare and does not occur unless there is no opposition from the domestic industry. Nevertheless, as a general rule, Article 11.3 of the WTO AD Agreement provides that orders should be revoked after five years unless there is a “continuation or reoccurrence of dumping and injury.”

III. U.S. Procedure Regarding Non-Market Economies and China

Since the US does not treat China as a market economy, it has to determine a fair value price for Chinese goods in order to determine the amount of the duty needed. Under US law, a dumping margin represents the percentage by which the fair-value price exceeds the export price. The WTO AD Agreement specifies three ways to calculate the product’s normal price in order to determine the dumping margin. Usually, it is based on the price in the exporter’s domestic market. When this cannot be used, two alternatives are available: the price charged by the exporter in another country, or a calculation based on the combination of the exporter’s production costs, other expenses and normal profit margins (WTO AD Agreement Article 2.2). In US law, Section 771(18) of the Tariff
Act of 1930 describes non-market economies as “any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that the sales of merchandise…do not reflect the fair value.” The Commerce Department has full authority of the determination of China as a non-market economy based on this definition.

There are two major differences in US anti-dumping procedure between market economies and non-market economies (NMEs) like that of China. The first difference is that, since prices in NMEs do not represent a fair value, a separate rate has to be calculated using a surrogate or third country market price. For example, US authorities may look to the Indian market to set a fair value in order to determine an accurate duty rate.19 The second difference is that the Commerce Department requires NMEs to show that their prices are not imposed centrally by the government. This is done in order to allow for the creation of an individual duty-rate rather than a “country-wide” rate. Companies that fail the necessary tests or do not participate in investigations are the ones that receive the more unfavorable country-wide rate. Section 776 of the Tariff Act of 1930 (19 USC 1667e) states that if “an interested party has failed to cooperate…to comply with a request for information…the administering authority…may use an inference adverse to the interests of that party.” In fact, many times, Chinese exporters are afraid to respond or get involved (earlier it was a result of unfamiliarity with US law) and are, therefore, subject to adverse inferences.

U.S. Antidumping law and its effects on the economy

The first U.S. antidumping law, which was enacted in 1916, was very similar to a prohibition on the predatory pricing of imports. Predatory pricing is the intentional selling of a good at a price below the cost of production for the purpose of driving competitors out of business to increase the market power of the predatory firm. The increased market power then allows the firm to raise its prices above competitive market levels and thereby increase profits, which is the ultimate motivation for predatory pricing. For a number of reasons (not the least of which is the greater ease of obtaining protection under the law discussed below), the first U.S. antidumping law, though still in effect, has received little use.

Antidumping cases today are generally brought under another law with a more expansive definition of dumping. Under that law, no attempt is made to determine whether the pricing is predatory or even whether successful predatory pricing is possible in the case at hand. All that is required to have duties imposed is a finding that the good has been sold below the price in the home market or below cost and that material injury has resulted. The vast majority of cases in which antidumping duties are imposed do not involve predatory pricing.

The change in the pricing behavior targeted by antidumping law is important. Predatory pricing is detrimental not only to the competing domestic industry but also to the economy as a whole. However, beyond the small minority of cases involving such predation (and even in cases in which a firm attempts predation but fails), imports priced below cost or below their foreign price are generally beneficial to a country’s economy. Thus, the intended effect of the first antidumping law is beneficial to both the competing domestic industry and the economy as a whole, whereas the more frequently used current law helps the competing domestic industry but hurts the broader economy.1 (As discussed in Chapter I, there is some dispute about the actual versus the intended effect of predatory pricing law.) U.S. law places no restrictions on the pricing behavior of domestic firms in the U.S. market that are comparable with those placed on foreign firms by the antidumping law. For those and other reasons (for example, charges of bias in U.S. administrative procedures and methodologies), antidumping law has been a continuing center of controversy and the topic of deliberations in multilateral trade negotiations and in the U.S. Congress. In such deliberations, it is useful to know how antidumping practices of the United States compare with those of other countries and how the practices of other countries—especially those of the major U.S. trading partners—affect U.S. firms. The best sources of the data needed for making such comparisons are the semiannual reports made by signatories to the Antidumping Code of the General Agreement on Tariffs and Trade (GATT) and, subsequently, of the World Trade Organization (WTO). However, drawing useful summary statistics from those reports is difficult, for several reasons: they are not in a computer format that is readily usable;
information about each antidumping case is scattered among several tables in several reports; various countries have failed at one time or another to file reports for certain reporting periods; and the reports have many errors and omissions. Consequently, until recently, policy discussions and deliberations generally occurred without the benefits of good statistics.

Laws of Anti-dumping in India

Dumping is said to have taken place when an exporter sells a product to India at a price less than the Normal Value of ‘like articles’ sold in the domestic market of the exporter. However, imports at a cheap or low prices do not indicate dumping. The normal value is the comparable price, at which the goods under complaint fare sold, in the ordinary course of trade, in the domestic market of the exporting country or territory.

This is an unfair trade practice which can have a distortive effect on international trade. Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti-dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti-dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry.

Legal framework

The first Indian Anti-dumping legislation came into existence in 1985 when the Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1985 were notified. However, the laws of anti-dumping in India

- Based on Article VI of GATT 1994 (commonly known as Agreement on Anti-Dumping)
- Customs Tariff Act, 1975 - Sec 9A, 9B (as amended in 1995)
- Anti-Dumping Rules [Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995]
- Investigations and Recommendations by Designated Authority, Ministry of Commerce
- Imposition and Collection by Ministry of Finance.

Conclusion

This paper investigates all related and supporting information about “Benefits and importance of Antidumping Act in India. This is not only important in India but also important in all other countries. It is very essential to protect the local market from other countries dumping goods. Without these taxes, the local manufacturers got huge losses. So, the country has to face lot of problems. India and also U.S. faced the problem from china because dumping goods available at low cost, India and U.S. got huge losses from china. Dumping is said to have taken place when an exporter sells a product to India at a price less than the Normal Value of ‘like articles’ sold in the domestic market of the exporter. However, imports at cheap or low prices do not indicate dumping. The normal value is the comparable price, at which the goods under complaint fare sold, in the ordinary course of trade, in the domestic market of the exporting country or territory. This is an unfair trade practice which can have a distortive effect on international trade. Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti-dumping measure as an instrument of fair competition is permitted by the WTO.

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