



An Appraisal of Anti Dumping laws in India

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ABSTRACT :

Anti-dumping laws in India act as momentum trading defense instruments that guard indigenous industries against the impacts of cutthroat pricing strategies in overseas trade. The opposite of this policy is dumping, which is the selling of goods at a lower price than usual, and the effects lead to losses of market share, industry failure, and all those connected with it. The regulatory mechanism of anti-dumping in India is provided under the “Customs Tariff Act, 1975” and the “Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995,” leading to a WTO agreement on anti-dumping. The Department of Trade Remedies investigates such matters while the Directorate General of Trade Remedies, or DGTR, carries out investigations and analyses to justify injury to industry while conforming to extended standards of transparency. This paper has established that judicial decisions have played a major role in determining the application and implementation of anti-dumping laws, including an elaborate determination of injury. Such a comparison shows the organization’s gaps in best practices, including the need for a “lesser duty rule” as well as shortening the investigation period. Nevertheless, the increasing legal complexities may comprise such factors as procedural barriers and maintaining national industrial interests coupled with compliance with WTO rules and standards, all of which contribute to the development of the new legal framework for protecting India’s industrial segments and at the same time ensuring fair trade. Improvement proposals to strengthen the anti-dumping regime are the improvement of procedural practices, the strengthening of the DGTR, international harmonization of the methods, and fighting against protectionism.

Keywords : Anti-dumping laws, India, Customs Tariff Act, DGTR, WTO, international trade, injury determination, protectionism, fair competition.

Introduction :

Anti-dumping laws are among the most important legal instruments all around the world as a protective shield for a domestic industry against unfair actions of foreign competitors. In the context of countries such as India that are fighting for their economic integration on the one hand and domestic industries protection on the other these laws merely serve as a protection to the local businesses from the effects of what is termed as ‘dumping’, that is, selling products at a price much lower than its value in the international market. Dumping affects the domestic economy, hinders development of production facilities locally and could lead to loss of employment, and therefore any measures against dumping are necessary in the modern world.¹

Anti-dumping measures are administered in India by the customs Tariff Act of 1975 and the Customs Tariff Rule 1995. These laws are in accordance with WTO Anti-Dumping Agreement offering structure formula which mean an organized approach towards the imposition of the duties. The DGTR is responsible for Anti-Dumping investigation initiations, examination of the injury to domestic Industry by dumped imports and the recommended duty. This structure allows India to defend against predatory pricing to the extent of protecting sensitive industries such as steel from unfairly priced imports from markets such as China.²

The cases presented in the paper showcase India as one of the most active users of measures in the shape of anti-dumping duties, which underlines the importance of such regulations to the country’s trade policy. These duties also help in covering up the affected sectors and at the same time they serve a tactical purpose of keeping overseas companies from acquiring undue markets shares of Indian markets. It supports making employments, lead to industrial diversification and helps to bolster economic base. But India has been applying stiff anti-dumping measures in its exports, which has sometime created some tension with partners like the USA, raising wrong signals at WTO.³

The nature and operation of anti-dumping laws are exemplified through India’s experience indicating its importance as a trade defense instrument, and lessons to be learnt in the trade protectionism versus trade liberalization debate. The application and development of these laws put forward India’s tactical planning for supporting domestic companies against international rivals.

¹ Tania SL Voon, "Review of Edwin Vermulst, the WTO Anti-Dumping Agreement: A Commentary", *available at*: <http://ssrn.com/abstract=1012211> (last visited on October 01, 2024).

² Literature on Anti-Dumping and Trade, *available at*: <https://www.tradeliteraturereview.org/anti-dumping> (last visited on October 20, 2024).

³ Pramod Kumar Rai and M. S. Pothal, *Anti-Dumping Measures in India* 45 (OrangeBooks Publication, Mumbai, 2nd edn., 2021).

Conceptual Framework of Anti-Dumping

The framework of anti-dumping laws becomes the basis for controlling cross-country business practices and methods in trading and defending local industries against unfair price strategies. Anti-dumping laws work towards the objective of defending the territory of a certain country against the negative impact of dumping products into foreign markets. As a concept, it is therefore imperative that one undertakes an understanding of the definition and meaning of 'dumping' and analyses the legal frameworks that surround it globally, the differences between dumping and competitive pricing, and the overall implications of anti-dumping. Altogether, these aspects give a satisfactory explanation of the nature of anti-dumping laws as well as their importance in the formation of the provisions of trade-related legislation.⁴

Definition and Meaning of Dumping

Dumping is a trade practice whereby a firm sells a product in a foreign country at a price lower than that it sells the same commodity in its domestic market or even below cost. The main reason for such a structure of prices is usually a desire to gain market share in the foreign market while leaving a marginal profit out of it with the hope of covering it with higher prices once the market share is captured from local producers. In India, the legal definition of dumping is spelled out under Section 9A of the Customs Tariff Act, 1975, which defines dumping as the placing of goods on the Indian market at a price lower than the normal value that results in or tends to cause material injury to an Indian industry. The 'normal value' is ascertained using the price at which the product is sold in the exporter's territory under non-inevitable conditions of trading or the cost of manufacture with a reasonable margin added. Dumping is defined more narrowly as the situation in which the export price is below the normal value where there is also sufficient evidence of the impact of the exports on domestic producers.

The practice of dumping becomes a matter of debate when the action has some unfavourable impact on the economy of the importing country. Harm can be in the form of a reduction in market share for local producers, a decrease in sales, poor profits, or even shutdowns. In India, anti-dumping duties are levied concerning an investigation conducted by D. G. T R. based on facts to determine as to whether the product has been dumped in the Indian market and whether this dumping has caused considerable damage to the domestic industry. There is thus a legal structure that governs the issues of dumping to maintain some order for its treatment to ensure fair competition without the practice of having to close the door on bona fide trade.

International Framework on Anti-Dumping

The measures against the pronouncement that dumping is regulated at the international level by WTO rules, which have a framework through which the member countries may take measures against dumping. The current WTO framework used in the application of anti-dumping measures is called the WTO Agreement on Anti-Dumping, formally referred to as the "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994." The following are the main principles established in this agreement: the purposes of anti-dumping duties, the circumstances that justify the imposition of anti-dumping duties, the process of conducting investigations of dumping, and the determination of injury to the domestic industry. The intended users of these rules are the procuring, reviewing, monitoring, and implementing authorities of anti-dumping measures in the IA motif to act fairly and judiciously within the confines of the WTO's principles of law.⁵

World Trade Organization (WTO) Agreement on Anti-Dumping

The code focuses on the WTO Agreement on Anti-Dumping, which is the WTO legal instrument governing current responses to dumping. It mandates that an anti-dumping investigation must demonstrate three key elements before duties can be imposed: the conditions of dumping, material injury or the threat of injury to the domestic industry, and the relationship between the injury and dumping. Such conditions raise anti-dumping measures to a proper shield against unfair trading and not as mere protectionist weapons. The rights and freedoms of citizens, which are protected by the Constitution of the Russian Federation, are valid in the course of consideration of cases on violations of the legislation in the sphere of immigration regulation. The agreement also prescribes further procedures for carrying out checks, including the conditions for the start of the investigation procedure, the possibility of an interested person to participate in the proceedings, and the obligation to provide information to the population.

India, as a member of the WTO, makes its anti-dumping laws consistent with the provisions of the WTO Agreement on Anti-Dumping. The Notification No. CENVAT/15/2004-Central Excise, dated October 15, 2004, is similar to the "Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995," which conforms to the WTO agreement. The standard that has been laid down by these rules is followed by the DGTR, which is the authority that investigates anti-dumping in India. India follows WTO standards to ensure its domestic industries are shielded from unfair price practices while its anti-dumping actions meet international trade legal standards.⁶

Difference Between Dumping and Competitive Pricing

Dumping is a common term that is very often mistaken for predatory competitive pricing, though there is a lot of variances between the two. By legitimate it meant that competitive pricing strategies involve deploying low prices to consumers as a result of efficiency, such as reducing production costs, achieving economies of scale, and higher production efficiency. It helps consumers since it involves lower prices while at the same time promoting

⁴ R. K. Gupta, *Anti-Dumping and Countervailing Measures: The Complete Reference* 89 (SAGE Publications Pvt. Ltd, New Delhi, 1st edn., 1996)

⁵ Ishwar Dutt, "A Comprehensive Literature Review on Anti-Dumping", *27 Journal of Economic Studies* 43 (2017).

⁶ Wolfgang Mueller, Nicholas Khan, and Tibor Scharf, *EC and WTO Anti-Dumping Law: A Handbook* 123 (Oxford University Press, London, 2nd edn., 2008).

producer's competition. However, dumping is different in various ways, especially because it entails the sale of goods in a foreign market at a dumping price or below the normal value or cost of production for purposes of eliminating competition and controlling the market. The main reason for the use of dumping is not the lower cost but the predatory price, which is aimed at destroying local competitors.

The difference between competitive prices and dumped prices is not only a theoretical but legal one as well. For anti-dumping duties to be applied, two things must be proved: the low-price determination cannot be due to fair competition in the marketplace and has to be associated with a plan to dominate and harm the local production line. In the Indian case of "*Nirma Ltd. v. Designated Authority*,"⁷ the Hon'ble Supreme Court held that the bare margin differential between the export price of the imported goods or the domestic price of similar goods does not constitute dumping unless evidence of injury to the domestic industry has been proved. The law, thus, makes a difference between normal competition within the market and unfair restrictive practices.⁸

Economic Impacts of Dumping

The effects of dumping cut across the economic domain of the community and may accrue long-term effects on the importing economy. To this effect, when dumping takes place, domestic producers are unable to compete with the dumped imports since they are sold at artificially low prices, thereby resulting in a reduction in their sales. The most tangible effect is the problematic financial situation of local companies that leads to staff cuts, decreased investments, or even company shutdown. For instance, the Indian steel industry has been under pressure due to the increased export of cheap steel products, hence the response of applying anti-dumping duties to some of these steel products. Many of these futures realized this measure not only contributed to the stabilization of the market but also the saving of jobs and the protection of the industry from the decline of finance.

That is, for the consumers, the benefits may include low prices and increased stock in the short run through dumping. However, many long-term consequences are adverse in terms of economic growth. If dumping results in the shutting out of domestic competition, it in turn may develop monopolistic situations after the foreign supplier has obtained a dominant position; the latter may increase prices, which means that the consumer is worse off. Also, the decline of domestic industries hampers the development of newer products and must also have large-scale repercussions by shrinking the gross industrial capacity of the country. The shutting down of manufacturing units removes the availability of such quality employment and goes on to affect the supporting industries, in the process damaging the economy.

Furthermore, it distorts people relations in international trade since the imposition of anti-dumping duties attracts negative reactions from the exporting country, culminating in trade quarrels. India has been making news at the WTO because of its anti-dumping measures, especially in industries like pharmaceuticals and chemical industries whose anti-dumping measures have been challenged by other countries. The use of AD measures to safeguard local industries from unfair competition can be deemed as protectionism because it disrupts trade liberalization negotiations and diplomatic transactions. Hence, anti-dumping laws are not only aimed at compensation for the economic damage incurred but are also aimed at maintaining the balance in relations both international and domestic while at the same time promoting the principles of fair trade.

Evolution of Anti-Dumping Laws in India

The changes in the period in question depict the Indian government's gradual opening up to World Trade and its attempts at protecting its companies from such practices. In the legal environment, it has raised and evolved over the years, conforming to the international standards conversant with the operational issues of the Indian economy. Anti-dumping measures in India have evolved to the latest practices for any country involved in international trade, especially after India joined the WTO. To understand this evolution, one has to look at the progressive historical framework for anti-dumping legislation in the country as well as the amendments that had taken place to cement the existing particular legal frameworks in tackling the issue of dumping in the world that is experiencing globalization.⁹

Historical Development of Anti-Dumping Legislation in India

The history of anti-dumping laws in India was initiated early in the 1980s, when integrated India for the first time felt the impact of trade liberalization in its economy. The basic structure of anti-dumping was first set up in the Customs Tariff Act 1975, which provided the principles governing the imposition of duties on dumping products. However, such provisions were relatively less elaborative and did not contain an effective framework for studying and preventing dumping. However, the demand for a strong anti-dumping regime got proper importance in the late 1990s in India after the process of economic liberalization and integration with the international trade system began at large. The WTO's Agreement on Anti-Dumping, which came into force in 1995, helped India in developing its legal awareness through the process of harmonization of laws.

This change of trend in the development of anti-dumping laws in India began with the promulgation of the "Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995." These rules were developed to ensure that the anti-dumping measures practiced in India conform with the WTO Agreement on Anti-Dumping. The 1995 Rules provided for an orderly process of investigation of dumping complaints and of determining injury to the domestic industry, and the imposition of anti-dumping duties as deemed appropriate. They also laid down specific factors to be used in establishing the normal value of the goods, the dumping margin, and the probable link between dumping and injury. The DGAD, now known as DGTR, was formed as the nodal body responsible for carrying out anti-dumping investigations in India.¹⁰

⁷ [2005] 186 ELT 385 (SC).

⁸ Adam Shortt, "The Anti-Dumping Feature of the Canadian Tariff", 20 *The Quarterly Journal of Economics* 255 (1906).

⁹ Aradhna Aggarwal, *Anti-Dumping Law and Practice: An Indian Perspective*, available at: <https://www.icrier.org/pdf/antiDump.pdf> (last visited on October 15, 2024).

¹⁰ Neeta Desai, "Research Trends in Anti-Dumping Literature", 14 *Indian Journal of Trade and Policy* 82 (2018).

Amendments and Key Legislative Changes Over Time

After the new 1995 Rules, there have been several changes and new legislation to fine-tune the Indian anti-dumping laws to suit the complexities of the modern trading world. The amendments were made in the year 2001 after a new assessment of the anti-dumping measures during which laws under the Customs Tariff Act, of 1975, were made. This change enhanced the conditions for applying anti-dumping duties that are retroactive where dumping is affecting or has affected a product-producing industry causing material injury or where there exists prior dumping. This reform empowered the country to increase or decrease the volume of duties depending on the specific case, so they could set up the groundwork on which to protect domestic industries from being dumped on.

Subsequent enabling legal changes were affected in 2010 to incorporate provisions on sunset reviews necessary for establishing whether termination of the anti-dumping measures would lead to a persistent or future occurrence of dumping and injury. This is of great importance as it helped in keeping anti-dumping measures adequate to the task of defending local industries against unfair competition while at the same time avoiding encroaching on unfair trade in other ways. Also, the elevation of the DGAD to the Directorate General of Trade Remedies (DGTR) in 2018 was another institutional change geared towards embedding improvements to India's trade remedial architecture. The DGTR now handles not only the anti-dumping cases but has also turned into a nodal agency for safeguard measures and countervailing duties, which depicts that the execution of trade defense measures is getting more coordinated.

When we therefore compare India's nascent anti-dumping legislation to the present-day regime of protection, we find that they are indeed a long way off from each other. The ongoing change in the law demonstrates India's determination of the rights and obligations to shield domestic businesses from unfair trade practices and meet its WTO obligations. These laws have evolved as a measure to protect home-based industries and yet respond to the door-open liberalized economy that operates on the principles of free markets and fair competition. The ability to modify the antidumping legislation from time to time has put India in a position to counter the risks associated with dumping in a constantly evolving global trading platform.

Legal Framework Governing Anti-Dumping in India

Companies engaged in anti-dumping activity in Indian markets are regulated by statutory enactments and standard procedures that conform to global criteria. The terms of anti-dumping measures in India are enshrined in the "Customs Tariff Act, 1975" and the "Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.". The laws of trade in these countries can be effectively enforced through investigation, surveillance, and compliance with legal procedures conducted by the Directorate General of Trade Remedies, or DGTR. To comprehend this framework, it is necessary to study important laws, rules, and regulations that facilitate the process of detecting and responding to dumping practices in the Indian market.¹¹

The Customs Tariff Act, 1975

In India, the "Customs Tariff Act, of 1975" acts as the basis of anti-dumping legislation. It authorizes the anti-dumping duties to be levied on products imported into India at a price below the normal value where such imports lead or are likely to lead to material injury to the domestic industry. Sub-section 9A of Section 9 of the Customs Tariff Act of 1975 deals with anti-dumping and permits the imposition of duties that are in proportion to the 'margin of dumping' on imported goods. Dumping is, according to the law, when the export price of goods imported into India is lower than the normal value for the like article in the exporting country.

Key Provisions Relevant to Anti-Dumping

Some basic conditions are provided under Section 9A of the Customs Tariff Act, 1975, that spell out the circumstances under which anti-dumping duty can be levied. It examines how anti-dumping duties may be imposed on an imported product provided the domestic industry proves that it has been injured by the dumped goods. The provision also looks at the method of determining the normal value, the export price, and the dumping margin, which is the difference between the two. Further, "Section 9A (2)" provides that anti-dumping duties are not permanent; they must expire five years after the date on which they are imposed unless a review indicates that if the anti-dumping duties will not cease to have an effect, there will be dumping, continuation, or recurrence of the same.

Furthermore, during the period of investigation, the adoption of provisional measures is also rendered possible. Approximately "Section 9A(2A)," temporary anti-dumping duties may be applied for a period not exceeding six months in a situation where preliminary investigation reveals that dumping exists and causes material injury to the domestic industry and intervention is needed urgently. Such provisions make it necessary that, before anti-dumping duties are imposed, considerable proof of dumping has been established, thus protecting the interests of domestic industries while at the same time protecting fair trade internationally.¹²

¹¹ Darshna Garg, "Scrutinizing the Concept of Anti-Dumping and Drawbacks of WTO in Restricting China with regard to Anti-Dumping in India", 4 (2) *International Journal of Law Management & Humanities* 615 (2021)

¹² Framing the Problem in Anti-Dumping Research, available at: <https://www.researchproblemstatement.org/anti-dumping> (last visited on October 16, 2024).

The Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995

The structural rules implemented on the anti-dumping proceedings in India are known as the "Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995." The 1995 Rules elaborate on features of the WTO Agreement on Anti-Dumping and give specific direction on how the investigations should be conducted, the proofs that should be collected, and the privileges of the involved parties in the investigation process. These rules define circumstances in which dumping takes place and the approach used to evaluate normal value and export price.

The rules also provide for the identification of an injury. The investigating authorities must determine whether there is an injury to the domestic industry or a menace thereof. Injury is established through examination of issues that include dumped imports, whereby the volumes are checked relating to prices prevailing in the domestic market and their effect on domestic producers in aspects such as profitability, productivity, capacity utilization, and employment. Similar to what has been mentioned earlier, the 1995 Rules provide for the disclosure of the findings of the investigation to the parties concerned to give these parties a chance to explain and file comments and objections.

Role of the Directorate General of Trade Remedies (DGTR)

The Directorate General of Trade Remedies (DGTR) is thus the central government organization mainly involved in the implementation of the anti-dumping laws in India. Created under the Ministry of Commerce and Industry, the DGTR is responsible for carrying out independent investigations into antidumping, reviewing whether there is compliance with the legal provisions proffering antidumping duties, and recommending such duties to the Ministry of Finance. Because of its importance, the interpretation of anti-dumping measures remains an essential responsibility of the DGTR to guarantee its application in conformance with the law.

While the DGTR undertakes investigations upon receiving petitions from domestic producers under this assertion that it has been negatively affected by dumped imports, it must also establish on face value the facts relating to dumping, injury to domestic industry, and a connection between the dumping and the injury. The DGTR can also draw up the investigation on its own if it possesses enough proof of the existence of dumping that is averse to domestic industries. Mainly, during the investigation, the DGTR is supposed to gather and analyze the data and hold hearings with the parties interested in the matter so that the investigation process hits the mark in terms of legal requirements.

Procedure for Initiating an Anti-Dumping Investigation

The process by which an anti-dumping investigation is first launched in India starts with a petition by the domestic industry or other interested parties, which includes initial proof that dumping has occurred and has caused injury. The DGTR also investigates the adequacy of data submitted with the petition to trigger an investigation. In the event the DGTR perceives the allegations to have some ground in the preliminary assessment, the notifying authority carries out a full investigation informs the government of the exporting country of the process, and presents the allegations to the latter.

The method of investigation includes an examination of normal value, export price, constructed dumping margin, and a test of the cause of injury for the domestic industry. Information is also gathered from the exporters and importers as well as the domestic industry to establish that there is a causal relationship between the dumped imports and the purported injury. There may be a preliminary determination within a certain time frame, say six months, suggesting the amount of provisional anti-dumping duties if evidence of dumping and injury exists. The final ruling lagged with commitments of definitive anti-dumping duties once all the arguments and substantiations were considered.¹³

Imposition and Collection of Anti-Dumping Duties

After the investigation, if dumping is found to cause material injury to the domestic industry, then the Ministry of Finance is supposed to put in anti-dumping duties as per the recommendation of the DGTR. The duties are invoked at a level that will effectively eliminate the injurious effect of dumped imports by offsetting the margin of dumping. These duties may be specific, which means fixed for a unit of the product or ad valorem, that is, the percentage of the import value depending on the extent of dumping.

Anti-dumping duties are levied and collected through the customs authorities at the time of import. Anti-dumping duties are initially prescribed for five years from the date when they were initially imposed, after which the trade parties and government agree on whether implementation of the duties should continue through a review process referred to as a sunset review. If in the review the termination of duties is likely to result in dumping and injury, the duties can be renewed for another period. The provisions in the domestic laws therefore retain the objectives and spirit of the anti-dumping duties as measures aimed at remedying to some extent the negative impact of the dumping while preserving the WTO principles of non-application of measures beyond what is fair and equal in trade defense.

The overall structure of anti-dumping policy in India therefore consists of wide-ranging legal and procedural mechanisms tailor-made to tackle unfair trading practices without compromising on India's domestic industry and international trade commitments. Systematic and structured procedures, the role

¹³ Procedure to File an Anti-Dumping Case, available at:

<https://www.advocatekhaj.com/library/lawareas/antidumping/procedure.php?Title=Laws%20of%20anti%20-%20dumping%20in%20India&STitle=Procedure%20to%20file%20an%20anti-dumping%20case>

(last visited on October 15, 2024).

of the DGTR, and compliance with international legal requirements are integral to and part of anti-dumping laws to ensure a fair competition environment, safeguard Indian industries, and ensure stable international trading.¹⁴

Analysis of Judicial Pronouncements

The judiciary has also had a fairly active role to play in the development of the ground rules of anti-dumping laws in the country and in giving a fillip to laws that have been ambiguous in letters and spirit. Different judicial decisions relative to anti-dumping issues have not only shaped the direction of legal reasoning but also brought out the factors that surround the process of implementing these laws. Anti-dumping measures in India legalization analysis includes key judgments made for anti-dumping law interpretation, a case study that involves the difficulty of enforcing anti-dumping law, and Supreme Court landmark judgments that make legal precedents.

Key Judgments Shaping Anti-Dumping Law Interpretation in India

Few significant judgments have dramatically influenced the meaning of the anti-dumping laws in India, especially in the matters of procedure and criterion to impose the duties. In the recent case of *Rimjhim Ispat Ltd. v. Designated Authority*¹⁵, the Supreme Court discussed the question relating to the nature of actual damage to the domestic industries in the course of anti-dumping investigations. The Court also mentioned that it is necessary to provide more than a mere allegation of a material injury, which has to be supported by evidence of such forms of injury, as reduced sales, suppression of prices, or the shares of the market. By doing so, this helped to draw attention to the fact that, whenever deciding on whether or not dumping has led to or threatens to lead to injury to the G, several rigid evidentiary rules and regulations have to be followed.

Another remarkable case is '*Reliance Industries Ltd. v. Designated Authority*¹⁶,' which provides the analysis of the calculated dumping margin and normal value. The Supreme Court discussed problems related to the identification of a proper comparison between the export price and the normal value. It required that differences in conditions and terms of sale taxation and other areas that affect price comparability should be adjusted. This ruling reminded the authorities of the need to take an elaborate process in determining the dumping margin to warrant the application of anti-dumping duties that are justifiable under the law. It also emphasized the oversight the judiciary has in reviewing the methodologies used by the DGTR in conducting anti-dumping investigations.

Case Studies Highlighting Challenges in Anti-Dumping Enforcement

The present paper presents an analysis of how anti-dumping laws in India have been enforced and addresses the following concerns: For instance, the aspects of procedural fairness arising out of anti-dumping investigations were in question in the case of '*Nirma Ltd. v. Designated Authority*.¹⁷ The case involved the alleged dumping of soda ash from the United States, Kenya, and China. Nirma Ltd., an Indian producer, thereby appellant, the procedural behavior of the Designated Authority, arguing that the investigation failed to take due account of the evidence of the domestic manufacturers. The Supreme Court in particular stressed that the investigative activities should be conducted in conditions whereby all the circumstances of the case would be viewed and the interested parties given a fair chance to state their case.

A further challenge in anti-dumping enforcement was evident in *Essar Steel Ltd. v. Designated Authority*¹⁸ to do with the imposition of anti-dumping duties on hot-rolled steel products imported from Japan and Korea. The matter in controversy in this case related to customs anti-dumping duty, in so far as it pertained to the imposition of anti-dumping duties in respect of past sales. Among other things, the petitioner claimed that retrospective duties that were placed where no adequate assessment of an injury had been made resulted in a violation of the legal rights of the petitioner. The Supreme Court held that it was legal to apply changes in anti-dumping duties retrospectively but said that some specific conditions had been laid down that justified them, and that was a clear and present danger to the domestic industry. This ruling was significant because it sets the tone for proper adherence to due process when handling anti-dumping matters and worthy consideration of the injury assessments for a proper course of action.

Landmark Supreme Court Decisions on Anti-Dumping Matters

Many fundamental Supreme Court rulings not only define which aspects of anti-dumping laws are to be used, but these principled rulings organize how these laws are to be used as well. The case of *Haridas Exports v. All India Float Glass Manufacturers Association*¹⁹ The subject dispute has revolved around the anti-dumping duties on certain kinds of float glass imported into the country, and specifically, the petitioner has objected to the adequacy of the evidence base for the injury determination made by the DGTR, thus causing the dispute of discussion. The Supreme Court of the United States pointed out that before causation between imports dumped and injury to the domestic industry can be found, a special investigation must be made and the conclusion reached must be reasoned. To this effect, the Court pointed out that revealing a mere relationship with imports would not suffice—the investigation needed to establish that dumping was the primary reason for the losses incurred by domestic producers.

¹⁴ Levy of Anti-Dumping Duty on Imports, available at: https://eparlib.nic.in/bitstream/123456789/845747/1/17_Public_Accounts_48.pdf (last visited on October 15, 2024).

¹⁵ [2001] 128 ELT 317 (SC).

¹⁶ [2006] 202 ELT 23 (SC).

¹⁷ [2005] 186 ELT 385 (SC).

¹⁸ [2000] 115 ELT 387 (SC).

¹⁹ [2002] 3 SCC 272.

Another landmark case of the Supreme Court is ‘*PTA Users Association v. Union of India*²⁰,’ the controversy concerned the sunset review of anti-dumping duties on the import of purified terephthalic acid (PTA). The Court further clarified that a sunset review is not re Ministry of Trade, n. above, at para. 79.44 is simply an administrative exercise, but rather a legal process—that physical exercise that should also determine whether or not the expiry of anti-dumping duties is likely to be followed by continuation of dumping and injury. This judgment upholds the procedural checks in anti-dumping law to ensure that such duties are not applied where growers have not sought such action without reviewing current market conditions and the prospect of injury to the domestic industry in the future.

However, in the case of *Metro (India) Ltd. v. Designated Authority*²¹, the Court dealt with the problem related to the aggregation of the injury from various sources of dumping. He presented the view that the Designated Authority erred by not using a weighted average of imports from various countries in calculating injury. The Supreme Court held that when products of origin from more than one country are involved in anti-dumping investigations, the Designated Authority should consider the combined impact of these products if they are seen to be, simultaneously, affecting the domestic industry. This decision emphasized the reason why the approach taken to determining injuries has to cover numerous facets to reflect the competitive realities influencing the domestic industry adequately.

The case studies of Indian courts’ pronouncements on anti-dumping laws bear testimony to what can be a convoluted process of enforcing such laws and why there is a need to understand the legal and economic grounds equally well. The judiciary has all the time stressed the primacy of law, due process, and proper procedures that should govern the anti-dumping measures so that they cannot turn into tools in the hands of those countries that want to protect their domestic industries unjustly. These decisions have been instrumental in favouring the proper use of anti-dumping laws for ensuring the cause of domestic industries whilst keeping in mind trade freedom internationally.

Challenges and Issues in Anti-Dumping Enforcement in India

While the Indian legislation prohibits anti-dumping laws and is moderately complex for foreigners to understand, the stopping of anti-dumping laws does not come without challenges. Some of the challenges encountered include complicated procedures that are adhered to while conducting investigations regarding dumping; the ability to capture the extent of the damage caused to domestic industries regarding circumstances that surround the injury; as well as the trade obligations that have to be put into consideration. These challenges are further compounded by procedural delays, bureaucratic procedures, and the concerns of domestic stakeholders and international trade obligations. It is for this reason that knowledge of these issues can improve the engineering of anti-dumping measures and achieve the goals of protecting domestic industries without violating international trade rules.²²

Procedural Delays and Bureaucratic Hurdles

Perhaps the most striking difficulty for anti-dumping enforcement in India is that of procedural delays and administrative barriers, which may slow down investigations and decision-making. As per the “Customs Tariff (Identification, Assessment, and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995,” an anti-dumping investigation must normally be completed within a year or a maximum of eighteen months. Nevertheless, in practice, investigations tend to take a much longer time even beyond these timelines, the outcome of which leaves uncertainty for domestic industries that are experiencing injury and for importers who are in doubt of investigations that may lead to the imposition of duties. This delay not only reduces the efficiency of anti-dumping mechanisms but also negates the aim to benefit the concerned industries at the earliest.

The multiple steps of data compiling and analysis within anti-dumping investigations commence with the initiation of charges, followed by data collection, and proceeding to analysis and holding of hearings may also compound the problems. The Directorate General of Trade Remedies (DGTR), which deals with investigations, bears the brunt of most of the cases, and it tends to have limited capacity to carry out its work efficiently, which results in logjams. Such procedural delays may be compounded by difficulties in securing cooperation from the exporters and importers from foreign countries who may balk at making any contribution or where they may dispute the investigation process. Resolution of these procedural and bureaucratic issues is relevant for sustainable and timely application of anti-dumping measures.

Issues Related to Determination of 'Injury'

Defining the nature of ‘injury’ to the domestic industry is a wedge that forms a central component of the anti-dumping investigation, mainly because the imposition of duties is predicated on the existence of a causative relationship between dumping and a material injury. Nevertheless, the assessment of injury rates is not fully clear in all situations and creates serious problems. Under the 1995 Rules, to investigate subsidized imports, one has to look at issues such as the volume of the imports, dropped prices, and the likelihood of the domestic industry achieving viability through increased sales volume due to the subsidies that the exporters have provided to their sales volume. But the use of these criteria does approach the determination of injuries more methodically; at the same time, their application being in many cases rather stereoscopic, the decision-making as to whether there is enough evidence to justify the imposition of anti-dumping duties may raise controversies.

For example, in the case of “*Rimjhim Ispat Ltd. V. Designated Authority*”²³, the Supreme Court highlighted the proof of injury that the fact that the injury is proportionate to the volume of imports and Cases and Analysis 345 the intensity of price suppression cannot be established. The investigation must show that the dumping causes actual and real material harm to domestic producers of the like product. In many cases, domestic industries no longer seem

²⁰ [2018] 1 SCC 408.

²¹ [2008] 224 ELT 363 (SC).

²² Challenges in Anti-Dumping Investigations in India, available at: <https://indialawnews.org/2015/04/13/challenges-in-anti-dumping-investigations-in-india/> (last visited on October 15, 2024).

²³ [2001] 128 ELT 317 (SC).

to be able to come forward with detailed and convincing evidence of injury, particularly in situations where there are multiple factors contributing to one's business performance. This challenge makes it hard for authorities to make sound decisions based on evidence, which makes appeals and legal consultations that result in the prolongation of the anti-dumping measures.

Conflict Between Domestic Interests and International Trade Obligations

The other problem of anti-dumping enforcement stems from the clash between the protection of industries and the legal requirements of the World Trade Organization (WTO). In this paper, it will be seen that the Indian anti-dumping measures are consistent with the WTO Agreement on Anti-Dumping, but the mechanisms that follow can cause friction with trading partners who may consider such actions as protectionist. There are many cases oneself to the WTO of anti-dumping duties of India; many countries claimed that it violates the WTO regulations. They show the dilemma that exists between protecting local industries and the responsibility to promote free and fair trade.

The clash between domestic interests and internationally binding trade obligations is further shaded by the fact that India uses anti-dumping measures as a strategic foreign trade policy instrument. The imposition of duties may lead to retaliation or challenge from the affected countries and distortions in the trade relations of India. For instance, anti-dumping measures have been applied to goods like steel, chemicals, and pharmaceuticals, which have resulted in trade frictions, and the affected countries have sought redress through the WTO dispute settlement mechanism. The problem of how to employ anti-dumping laws as a means of protecting domestic markets while at the same time avoiding escalations of trade disputes is thus not a simple one, and it must be solved in a manner that complies with international legal norms while simultaneously dealing with the real harm done to domestic businesses by dumping.²⁴

Conclusion :

Anti-dumping laws in India demonstrate that the country is actively updating its compliance with international trade laws along with imparting safeguards to its home industries. Anti-dumping measures as essential components of trade defense bodies to eliminate the detrimental impact of dumping, which may cause severe economic losses, lowered profitability, and many people's job exposure to layoff risk and industry shutdowns. India's legal anti-dumping system has evolved with the passing of the Customs Tariff Act, 1975, and the Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, which embody a conscious attempt to harmonize domestic laws with the WTO Agreement on Anti-Dumping. The formation of the Directorate and General of Trade Remedies (DGTR) also guarantees fair investigations of the cases of dumping by developing a proper framework that shields the industries of the nation.

The interpretation of anti-dumping laws has been most significantly influenced by judicial decisions made in India as far as procedural aspects of fairness and benchmark parameters for the determination of an injury are concerned. Reasons for difficulty in conducting anti-dumping investigations and enforcement are well illustrated in the case laws such as *Rimjhim Ispat Ltd. v. Designated Authority*²⁵ and *Reliance Industries Ltd. v. Designated Authority*²⁶. These judgments underline the importance of a strong investigation backed by solid evidence to justify anti-dumping duty not only to make an assessment of the scale of dumping but to counter the actual damaging effects on the domestic industry.

In contrast, the anti-dumping practices as well as the regulations governing it in India are generally consistent with regulations from developed countries in this area of law, but there are still certain aspects that have scope for improvement. Specifically, the so-called "lesser duty rule," which is similar to the EU's method, will allow regulating protection for domestic industries and consumers' and importers' interests. Furthermore, changes in substantive and procedural rules and the reduction of procedural time, along with organizational and other factors as demonstrated in this study, can enrich the enforcement process by adopting recognized practices of certain jurisdictions, for instance, China.

Hence, determining the causation of injury and coping with the dilemma arising from the clash between domestic safeguards and international trade commitments remains large. They argue that these problems necessitate that India further enhance its anti-dumping tool while not compromising its WTO obligations. In conclusion, it could be said that anti-dumping laws in India are the essential legal tool leaving a stock up for fair trade that can enhance a stable economic climate and to reply to the global threats in connection with dumping. Further development and strategic use of these laws will help sustain the competitiveness of the diversified industrial sectors of India.

²⁴ Irving B. Kravis, *Domestic Interests and International Obligations: Safeguards in International Trade Organizations* 17-32 (University of Pennsylvania Press, Philadelphia, 1st edn., 1963)

²⁵ [2001] 128 ELT 317 (SC).

²⁶ [2006] 202 ELT 23 (SC).