

Dumping and anti dumping in international trade



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Introduction

International trade in the 21st century is a highly competitive area, with every nation trying its best to attain the competitive advantage. The benefits of being the dominant player in the game of trade are sufficient enough to lure even the least developed nation to embark on an aggressive trade strategy. The trade element provides benefits not only on the economic front but also has the unlimited potential of providing vital political advantage. The examples of such benefits have changed the course of human history for several centuries. The European power bloc enjoyed the trade advantage till the World Wars destroyed their mainland, following which the advantage shifted to the United States. But even US felt the heat of Japanese trade policies in the 1960s and 1970s, while during the last decade of the 20th century world saw the short-lived prominence of the 'Asian tigers'. With the new century came a new set of players known as the emerging markets along a handful of prominent player, who were tagged as the BRIC bloc by Jim O'Neil of the Goldman Sachs.

The trans-national trade has always had its effect on the international relations mainly because it took the a zero-sum game form rather than the win-win situation, thus going against the theories advanced by Adam Smith, Frederick von Hayak and Milton Friedman. Maintaining the dominance in trade became essential as monetary benefits in the form of current account and capital account surplus became more critical for furthering the growth of various national economies. Hence countries have been forced to engage themselves in a series of trade-distortion techniques like dumping, currency devaluation and so on. China, the export behemoth, supported its export

oriented industrial units through the simplest monetary tool – depreciation of the domestic currency against the global currencies. This depreciated Chinese Yuan made exports more attractive and provided adequate trade surplus for China against global importers like US and European countries. The other nations also attempted to use this tool, but only a few were able to reap the right benefits. Currency manipulation was a serious crime according to International Monetary Fund (IMF) and the various central banks across the world. Hence exporting countries including China resorted to other mechanisms to support its exports. With the national Governments providing adequate subsidies to the manufacturing concerns, low-cost production was achieved by the exporters.

The cost-advantage helped the exporters to push their goods into overseas markets and break the existing dominant industries in the overseas markets. This led to the scenario known as ‘ dumping’ and enraged importing countries, mainly in the West, used customized anti-dumping measures to counter this wave of dumping. The emergence of World Trade Organization (WTO) in 1995 and a series of agreements in the late 1990s and in the first decade of the 21st century provided a standardized framework for countering the anti-dumping worldwide.

This report examines the scenario of dumping and also analyses the anti-dumping measures taken up by various nation-states, supported by various trade blocs. The measures provided by WTO to support anti-dumping rules and to prevent its abuse are also critical to the study done in this report. The report would also accommodate some cases in anti-dumping, with respect to

India, China and Developed countries, in order to further explain anti-dumping as a prevalent trade measure.

Dumping & Anti-Dumping

Exporters who sell their products at a price lower than the domestic market prices and production costs are guilty of “ dumping”. With nations getting more and more tuned towards protecting their domestic industries against foreign competitors, more and more cases of dumping are being reported world wide. The main tool against dumping for most sovereign states is the use of national laws pertaining to trade in the form of “ Anti-Dumping” Measures. Like in case of any regulation initiated with good intentions, abuse of these regulations has also risen with time. Thus World Trade Organization was forced to take up the issue of dumping and anti-dumping through a series of regulations using the General Agreement of Tariffs and Trade (GATT) clauses.

ANTI-DUMPING: TERMS

Normal Price/Comparable Value

It is the price of the product when sold in the ordinary course of trade for consumption in the exporting country. A fair comparison is required to be made between the normal price and the export price and it should be made at the same level of trade at ex factory level and in respect of sales made at as nearly possible the same time.

In certain circumstances, there may be no sales in the domestic market to enable comparison, in which case, it may not be possible to determine

normal value. In such circumstances, there are two alternative methods which have been provided for determination of the normal value.

The price at which the product is sold to a third country.

The “constructed value” of the product, which is calculated on the basis of the cost of production plus selling, general and administrative expenses and normal profits.

Insufficient volume of sales: if certain sales are made below their cost, then they are to be ignored for computation purposes and the normal value would be determined based on remaining sales. The remaining sales would normally be considered as sufficient if they constitute 5% or more of the export sales made to the country conducting the investigation against dumping.

“De-minimis” rule: In case the remaining sales are insufficient on account of insignificant volume of sales in the home market, then the normal value would be computed based on the alternative methods provided.

Indirect exports: If products are not imported directly from the country of manufacture but from an intermediate country, the normal value is to be determined on the basis of sales in the market of the originating country unless this may result in an inappropriate or impossible comparison.

Export Price

The export price is generally based on the transaction price at which the foreign producer sells the product to an importer in the importing country.

However, in certain cases the transaction price may not be appropriate for

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purposes of comparison with normal value. These circumstances may arise in case of:

Internal transfers i. e. transfer between the same entities from one location to another, where there is no transaction value;

Barter or exchange transactions, where the money value is absent;

Where the relationship existing between the exporter and the importer may have an influence or bearing on the price negotiated or

For such other reasons where the transaction price may not be considered to be at arm's-length.

In such cases, the transaction value cannot be adopted and the export price needs to be determined based on an appropriate alternative method.

However, the construction of the export price should be reasonable and based on facts and circumstances, which are warranted in each case. The export price may be constructed based on:

Price at which the imported product is first resold to an independent buyer

The constructed price should have allowances for costs including duties and taxes, incurred between the importation of the product and its resale to an independent purchaser, as well as for reasonable profits accruing there from.

The constructed price should also give allowances for factors such as different levels of trade, conditions and terms of sale, taxation, quantities, physical characteristics, and other matters demonstrated to affect price comparability

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Conversion of currency: The comparison of the normal value with that of export price would require conversion of currency. Normally, when the base currency is different from USD or Euro, they are converted into USD or Euro for the purpose of calculations. In such cases, the exchange rate to be used should be one on date of sale. In case of a forward currency sale, the exchange rate adopted for the forward transaction should be used for conversion.

Like Product

The term “ like product” is defined as “ a product that is identical, i. e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Sales in ordinary course of Trade

In order to enable comparison of the export price and the normal price, the anti dumping investigations need to determine whether the sales in the domestic market of the exporting country are made in ordinary course of trade or not. In case the price at which the goods are sold in the domestic market is below its cost, then prima facie, it would mean that the sales made in the domestic market are not in the ordinary course of trade. Accordingly, such sales may be disregarded in the determination of normal value.

However, sales made below costs may not be disregarded for determination of normal value where they allow for recovery of costs within a reasonable period of time, which may normally be one year or are insignificant.

Anti dumping: WTO Regulations

The WTO is the only International body dealing with the rules and regulations of trade between nations. The WTO Agreements negotiated and signed by bulk of the world's trading ratified in their parliaments. WTO took over the reins from GATT in the year 95 and its objective is no different. It is focused on maintaining trade balance between the developed, developing and under developed countries. Some of its objectives are

That international economic relations should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand;

Expanding the production of trade in goods and services;

While allowing for the optimum use of the world's resources in accordance with the objectives of sustainable development, seeking both to preserve the environment and to enhance the means of doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

WTO, seen from the past, intends to achieve the stated objectives by one or more of the following mode or means:

Administering trade agreements

Acting as a forum for trade negotiations and settlement of trade disputes

Reviewing national trade policies

Assisting developing countries in trade policy issues, through technical assistance and training program

Co-operating with other international organization

In an effort to bring cross border transactions and free trade between nations it signed a lot of agreements in this regard. As a result of it lead to the implementation of the article VI of GATT 1994, which is popularly known as the Anti- dumping Agreement. Wherever WTO seeks for free trade it also makes sure that the trade fair and full.

Article of VI of GATT:

It states that the practice of exporting goods from one country to another at less than the normal value should be strictly condemned if it causes or threatens to cause material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. In order to seek implementation of the said Article, member nations at WTO have entered into an agreement called the Agreement on implementation of Article VI and more-popularly referred to as the “ Anti-dumping Agreement”.

“ A product is considered as being dumped i. e. introduced into the commerce of another country at less than its normal value if the export price of the product from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.”

The activity of throwing goods at less than their normal value into another country would be called dumping. When dumping causes or threatens to cause material injury to domestic industry of the importing country, the action undertaken to counteract the said dumping, by the importing country, is called as ' anti-dumping'.

WTO lays down the basic principles on how a Nation can or cannot react to dumping. In this regard, it would be essential for a member country to prove that there should have been a material and genuine injury to its competing domestic industry, before in any manner, taking steps against dumping. The importing country is allowed to take action against dumping, when:

Dumping is not only said but also shown to have taken place by the importing country;

On the basis of dumping, being said to exist, the importing country is able to establish from reliable information and considering all possible factors that such dumping has actually caused or could cause, material injury to its domestic industry; and

Lastly, as a reasonable justification for any action against dumping, the importing country should be able to present the calculation stating the extent of dumping i. e. the difference between the export price and the normal price in the exporter's home country.

The agreement has given three ways to calculate the case of dumping

Difference between the price in the exporter's domestic market (called normal value) and the price charged for export to the subject nation, in the absence of the price in the domestic market.

The second method is to compare the price charged by the exporter for exports to another country that to the price charged on export to the subject nation.

In the absence of the comparable price , the price in the exporter's market is derived from the cost incurred by the manufacturer and then it is subjected to the importing nation

Approach adopted to counter Dumping

An action imposing and collecting dumping would require a three step approach;

The establishment of evidence in favour of dumping.

In India, the following conditions need to be fulfilled before initiating an action against dumping:

The product which is said to have been dumped, has been imported into India from a country outside India

The export price is less than the comparable price

Consequent to being dumped, it has caused or the effect of causing material injury to manufacturers of like product in India.

The transaction alleging dumping is undertaken in the ordinary course of trade

The establishment of evidence in respect of its injury

In the context of dumping, the term “ injury” has been defined to mean either

material injury to a domestic industry,

threat of material injury to a domestic industry, or

Material retardation of the establishment of a domestic industry.

The determination of injury must be based on positive evidence which would normally involve an objective examination of the volume of the dumped imports and the effect it has on the prices in the domestic market for like products and the consequent impact of these imports on domestic producers of such products.

Also, in certain circumstances, producers who are related to the exporters or importers of the product under investigation and producers who are themselves importers of the allegedly dumped product. In this regard, a producer would be deemed to be related to the exporter or importer if:

one of them directly or indirectly controls the other

both of them are directly or indirectly controlled by a third person

together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of

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the relationship is such as to cause the producers to behave differently from non-related producers

Evaluation of Injury

The investigating authorities have to develop analytical methods for consideration of these factors such as volume and price which may be regarded as relevant in the light and circumstances of each case. The authorities need to evaluate all relevant economic factors having bearing upon the state of the domestic industry. In this regard, a number of factors have been listed such as actual or potential declines in sales, profits, output, market share, productivity, return on investments, utilization of capacity, actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and the magnitude of the margin of dumping. In evaluating the injury to the domestic industry, the investigating authorities are required to consider whether there has been significant price undercutting in respect of the dumped imports as compared to the price of the like product in the domestic industry of the importing country.

Causal Link: As regards the establishment of material injury, it needs to be demonstrated that there is a causal relationship between the article that is alleged as being dumped and the injury it seeks to cause to the domestic industry manufacturing or producing like product. The investigating authorities need to analyze factors such as change in technology and change in the pattern of demand etc. which can cause material injury to the domestic industry but these factors are not arising on account of dumping,

as they need to be excluded in evaluating the injury on account of dumping. Therefore, the investigating authorities are required to develop analytical methods for determining only those factors which have a causal link between dumping of alleged goods and its consequent injury to the domestic industry.

Cumulative Analysis: In cases where an article is found to be dumped into the importing country from more than one country, it is possible to undertake a cumulative analysis of the article being dumped. In this regard, it is provided that the authorities must be required to determine the margin of dumping from each country and that such margin should not be less than 2%, expressed as a percentage of the export price for each country and that the volume of imports from each country should not be less than 3% of the imports of like articles. In this regard, if the imports from one country is less than 3%, then such investigation may be possible if the collective imports from all such countries is not be less than 7% of the import of like articles.

Dumping Calculation: The margin of dumping is normally calculated as the difference between the weighted average normal value and the weighted average price of all comparable exports. In certain cases, this comparison may be done on a transaction-to-transaction basis. The difference between the normal value and export price is called as the margin. In case the export price differs significantly among different purchasers, regions or time periods, then comparison based on weighted average export price may not be appropriate. In such cases, the investigating authorities would compare the weighted average normal value with that of the export price on

individual transaction basis. This situation is referred to as targeted dumping.

Assessment of Duty: Normally, the assessment of dumping margin for the purpose of the levy of anti-dumping duty is to be calculated with respect to each exporter or producer of the product concerned under investigation. However, such a system may not be practically feasible in all cases and thus the investigating authorities may limit the number of exporters, importers, or products individually considered and impose the anti-dumping duty even on uninvestigated sources, on the basis of the weighted average dumping margin established with respect to exporters or producers actually examined.

ANTI-DUMPING: Procedures

Initiation of Investigation

The investigations against dumping are required to be normally initiated on the basis of a written request submitted “ by or on behalf of” a domestic industry and it needs to be supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product. However, the investigation would not be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced in the domestic industry of the importing country. The application is required to contain the following information:

Evidence of dumping, injury and the causal link

The identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant.

Complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question

Information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export

Information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry

On receipt of the application the investigating authorities would examine the accuracy and adequacy of the evidence provided for determining whether there is sufficient evidence to justify the initiation of an investigation and before initiating investigation, the authorities need to notify the exporting country.

Conduct of Investigation

The authorities are required to guarantee the confidentiality of sensitive information and verify the information on which determinations are based. In order to ensure transparency, the authorities are also required to disclose the information on which determinations are to be based to all interested parties and to provide them with adequate opportunity to make or provide

their comments. The investigating authorities are required to give notice to all interested parties viz. Exporter, the government of exporter and the producers of like products, about the investigation.

The procedure of investigation is as follows:

Preliminary Screening: The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. In case of any discrepancy, a deficiency letter is issued.

Initiation: the designated authority, after examining the accuracy and adequacy of the evidence regarding dumping, injury and causal link, issues a public notice initiating an investigation. The initiation notice is ordinarily to be issued within 5 days from the date of receipt of a properly documented application.

Access to Information: The authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection to all interested parties on request after receipt of the responses.

Preliminary Findings: Based on the information available before it and based on further information collected by the authority, a preliminary finding is made, which would also contain the reasons behind the determination made by the authority. In this regard, the preliminary finding is undertaken normally within 90 days from the date of initiation.

Provisional Duty: In case the authority considers it necessary, it may recommend the Central Government to impose a provisional duty, not

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exceeding the margin of dumping, on the basis of the preliminary finding recorded by it. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. Further, such duty will remain in force for a period not exceeding six months but which may be extended to nine months under certain circumstances.

Oral Evidence & Public Hearing: Interested parties are allowed to request the designated authority to afford them an opportunity to present their case and relevant information orally. However, the designated authority would consider the oral information only when it is subsequently reproduced in writing.

Disclosure of Information: The designated authority, based on the submissions and evidence gathered during the investigation and verification would proceed to make the determination of the final findings and formulate the basis thereof.

Final Determination: The interested parties would submit their response to the disclosure and the authority would consider such submissions before taking a final position on the matter. **Time-limit for investigation process:** the normal time allowed for completion of the investigation process is one year from the date of initiation of the investigation. The Central Government is empowered to extend such period by another six months.

Price Undertaking

‘Price Undertaking’ refers to a voluntary undertaking by exporters to revise the price or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is

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eliminated. However, the Central Government would be allowed to accept the price undertakings from exporters only after preliminary affirmative determination has been made that dumping exists and that consequent to dumping, injury has also been caused to the domestic industry. The investigating authorities are required to complete their investigation on the dumping and its consequent injury, in the event it is desired by the exporter or by the investigating authorities despite accepting the price undertakings. In case the investigation leads to a negative determination of dumping or injury, then the undertaking given shall automatically lapse.

Special Status

Anti dumping duty is not applicable for imports made by export oriented units unless the intention to levy on their imports is specifically stated in the notification. Export Oriented Units specifically include:

“ Free trade zone” means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;

“ Hundred per cent export-oriented undertaking” means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries Act, 1951;

“ Special economic zone” means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provisional Measures

The investigating authorities are allowed to take certain provisional measures in the form of levy of provisional duty for import of goods alleged to be dumped. These provisional measures are allowed only when the following conditions are fulfilled:

The investigating authorities have initiated the investigation giving proper public notice and interested parties have been given adequate opportunities to submit information and make their comments;

The investigating authorities have a preliminary affirmative determination in favour of dumping and its consequent injury to the domestic industry;

The investigating authorities judge that such provisional measures are necessary to prevent injury being caused during the investigation period.

ANTI-DUMPING: Indian Context

Indian laws regarding trade, including anti-dumping laws were amended with effect from 1st January 1995, following India's entry into the WTO. The anti-dumping provisions were amended keeping in line with the WTO Agreement. The investigations regarding anti-dumping duty are under Sections 9A of the Customs Tariff Act, 1975. Even though, anti dumping duty provides for countering the issue of dumping, countervailing duties are more useful for countering the direct and indirect subsidies by various national governments on their respective industries. In any case, the Indian Government has to prove injury and causal link need to be proved in front of the WTO panel on anti-dumping. The investigations pertaining to dumping are governed by the amended provisions of Customs Tariff act of 1975. Safeguards in the form of <https://assignbuster.com/dumping-and-anti-dumping-in-international-trade/>

tariff increases or quantitative restrictions were earlier used to counter the increased imports due to dumping, but nowadays such measures invite compensation payment to trading partners in appropriate cases.

The Customs Tariff Act, 1975 Sections 9A, 9B and 9C, 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, were framed to provide the legal basis for anti-dumping investigations and for the levy of anti-dumping duties, based on the Agreement on Anti-Dumping which is in pursuance of Article VI of GATT 1994. The investigations and recommendations on dumping issues are handled by Designated Authority, under the Ministry of Commerce, while the imposition and collection of anti-dumping duties are handled by Ministry of Finance.

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 Designated 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.

Application Procedure

Applications can be made by or on behalf of the concerned domestic industry to the Designated Authority in the Ministry of Commerce for an investigation

of any alleged dumping. The designated Authority may initiate an investigation when there is sufficient evidence that dumped imports are causing or are threatening to cause material injury to the Indian industry producing like articles or are materially retarding the establishment of an industry. Copies of the prescribed application pro-forma are available from the Ministry of Commerce. Applications should be submitted to the Designated Authority in the Ministry of Commerce in the prescribed form. Guidelines on how to complete a questionnaire are a part of the prescribed