

Antidumping Laws in India: The Consequent Impact of Dumped Imports on the Domestic Industry

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ABSTRACT

In recent years antidumping has been catapulted to the forefront of the most controversial practices in international trade. While politicians scarcely hide their support for antidumping, there is little love lost between it and economists as well as trade reformers. Interesting lying World Bank's trade policy loans or loans in which trade policy reforms are a significant element. In view of the importance of antidumping to international trade and the fact that states do not appear to be too eager to renounce it in the near future, this paper discusses some significant issues involved and the changes introduced by the Uruguay Round of trade negotiations, with the hope that such discussion will be useful to policy and decision-makers in the international trade arena.

Keywords

Anti Dumping, Dumping Margins, International Trade

INTRODUCTION

The antidumping duty or undertaking agreement is usually lifted after five years unless revoked earlier. Upon request received from interested parties or on its own initiative, the Ministry periodically reviews the need for continuance of antidumping duty or undertaking and determines individual dumping margins for new suppliers in the exporting country who did not export the product to India during the original period of investigation. If it is concluded in a review that the removal of the antidumping duties would be likely to result in the continuation or recurrence of dumping and injury, the Central Government may extend the period of imposition of antidumping duty for a further period of five years.

An appeal against the order of antidumping determination or review can be filed with the Appellate Tribunal within ninety days. Every appeal must be heard by a Special Bench consisting of the President of the Appellate Tribunal and no less than two other members, which must include one judicial member and one technical member. A Bench can exercise and discharge the powers and

functions of the Appellate Tribunal. If the members of the Bench differ in opinion of any issue, the decision is made according to the opinion of the majority; if the members are equally divided, the President can either give an opinion himself or refer the case to one or more of the other members of the Appellate Tribunal and the decision is based on the opinion of the majority of those members.

The last Twenty Two years have witnessed a phenomenal growth in the literature relating to dumping in international trade. The politicians, economists and lawyers have all participated in the ongoing debate on dumping with a zeal that is somewhat unprecedented even in respect of a trade issue. To a considerable extent the intensity of the debate is the direct outcome of the proliferation of antidumping laws and the increase in the incidence of the antidumping actions in the principal practitioners of this art among the developed countries and some developing countries that seem well set to catch up with the former. Although both Canada and U.S. have emerged as major users of antidumping and countervailing against each other as well as against other countries including developing countries² and the U.S. is regarded as the world's leading prosecutor of unfair trade, Brazil, Korea and Mexico have been rapidly attempting to turn the tables.

MEANING OF ANTI-DUMPING

Moving on as to what is anti-dumping, it can be fined as a protective device available to the states against vicissitudes associated with the free trade. In the recent years a large number countries have become frequent users of anti-dumping. Many of the heaviest anti-dumping users are countries who did not even have an anti-dumping statute a decade ago. The traditional users continue to make use of these measures with more vigor by targeting new users.

Anti-Dumping duties were introduced by the developed countries to protect their industries against the low priced imports. Developing countries supported the inclusion of the provision relating to anti-dumping duties under GATT because they wanted to levy of anti-dumping duties to be

under international regulation. Antidumping measures are not only legal but they are also flexible in usage. Further, anti-dumping duties can be presented not as protection but as encounter against “unfair” competition. [1]

ANTI-DUMPING: INDIAN PERSPECTIVE

Trade policy regimes in most countries have transformed from inward oriented protectionist regimes to more outward and liberal trade regimes. However, any government that maintains a liberal trade policy is subject to pressures for temporary protection to specific industries. GATT therefore contains some contingent measures, which permit the signatories to withdraw their normal obligations under specified circumstances and impose higher protection against import of one or more goods from one or more countries. Contingent protection measures fall under three categories – antidumping, countervailing and safeguard measures. [2]

The present study focuses on antidumping measures. Broadly speaking a product is said to have been dumped if it is introduced into the commerce of another country at less than the normal value of the product and it causes/threatens material injury to an established industry of the country. Article VI of the GATT stipulates that ‘in order to offset or prevent dumping a contracting party may levy on any dumped product an antidumping duty not greater in amount than the margin of dumping in respect of such countries’. Almost all WTO member countries have adopted/amended their antidumping legislation largely in accordance with the GATT provisions to deal with dumped imports. Some of the countries that are not members of WTO have also acquired their antidumping legislation. Almost 90% of total world imports are now entering countries in which antidumping laws are in place. [3]

The share of developing countries in total cases was 10% at the beginning of the 1990s; it is almost 50% now. A large-scale recourse to antidumping has raised fears among researchers, analysts and specialists of its misuse as a protectionist measure. While some have raised questions about the ambiguities in antidumping regulations and procedures, others have questioned economic rationale behind such actions.

ANTI-DUMPING LAWS & PRACTICE: ECONOMIC PERSPECTIVE

The rationales for antidumping laws have long been subject to analysis by economists. The most frequently offered economic justification for antidumping laws is that

these laws protect the competitive process and the consumer from monopoly power of the foreign exporters. Following the thinking in antitrust literature, most scholars define economic efficiency in terms of consumer welfare standards. There are however, two protection-based justifications for imposing antidumping duties: [4]

The political economy argument highlights the role of the domestic political influences mainly lobbying by influential domestic producers in determining the antidumping cases. In most cases in India the use of antidumping measures may be justified on economic grounds [5]. Dumping in the literature is defined in two ways : price dumping and cost dumping. The former refers to international price discrimination while the latter is the practice of selling at prices below per unit cost. The antidumping law in the WTO Agreement however refers to price dumping. The sales below costs are not considered ‘the ordinary course of trade’. Article 2.1 of the WTO antidumping agreement stipulates:

LEGAL FRAMEWORK OF ANTI DUMPING IN INDIA

The principle of imposition of anti-dumping duties was propounded by the Article VI of GATT 1994 – Uruguay Round. Indian legislation in this regard is contained in Section 9A and 9B (as amended in 1995) of the Customs Tariff Act, 1975 Further regulations are contained in the Anti-Dumping Rules (Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

The “*export price*” of the goods allegedly dumped into India means the price at which it is exported to India. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level.

The “*margin of dumping*” is the difference between the normal value and the export price of the goods under complaint. It is generally expressed as a percentage of the export price.

The “*domestic industry*” means the domestic producers as a whole engaged in the manufacture of die like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers

thereof in which case such producers may be deemed not to form part of domestic industry. [6]

The “*like article*” means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigations. In regard to injury to the domestic industry, the industry must be able to show that dumped imports are causing or are threatening to cause “*material injury*” to the domestic industry.

INVESTIGATION PROCESS FOLLOWED BY THE MINISTRY OF COMMERCE IN ANTIDUMPING PETITIONS

Legal Procedures

Any interested party may file an antidumping petition with the Ministry of Commerce on behalf of the domestic industry. After examining the accuracy and adequacy of the evidence in the petition, the Ministry undertakes an investigation into whether foreign products are imported at a price lower than the normal value, and whether those imports are causing or threatening to cause material injury to the domestic industry.

In special circumstance, the Ministry may self-initiate an investigation without having received an antidumping petition if it has sufficient evidence of dumping, injury and a causal link between the two. The Central Government imposes antidumping duties on the basis of the findings by the Ministry. To determine whether the foreign products are imported at a price lower than normal value, the Ministry calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to India, or the difference between individual normal values and individual export prices on a transaction-to-transaction basis over the period of investigation.

In special circumstances, the Ministry may compare a weighted average normal value to prices of individual export transactions to India. The Ministry determines the normal value using one of four methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market.

However, if there is an insufficient quantity of sales in the exporting country’s domestic market, the weighted average sales price is below the weighted average unit cost, or the volume of sales below unit cost during the

investigation period is more than 20 percent of the total sales being used to determine normal value, the Ministry calculates the normal value using one of the two alternative methods.

The Ministry may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for selling, general and administrative costs and profits, or use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Ministry determines the normal value using either the sales price or constructed value in a selected market economy country, or the price from a selected market economy country to a selected third country which may include India.

If none of these methods are possible, the Ministry may calculate the normal value for a nonmarket economy using the adjusted sales price of the like product in India, or using any other reasonable basis.

The Ministry generally calculates a separate antidumping margin for each supplier. However, if any interested party fails to provide authentic, necessary information within the time limit, or it is difficult to verify the provided information, the Ministry may make its determination on the basis of “facts available,” which includes the information submitted in the petition or submitted by interested parties.

When the number of suppliers or products involved in the investigation is too large, the Ministry may select a sample of suppliers or products for the investigation using statistical sampling methods based on information available at the time of selection or by choosing those suppliers or products with the largest import volumes.

The Ministry calculates the dumping margin for those firms not in the sample using a weighted average of the dumping margins calculated for those suppliers selected for the investigation. When determining whether the foreign imports are causing or threatening to cause material injury to the domestic industry, or materially retarding the establishment of an industry, the Ministry considers the volume of dumped imports, the effect of the dumped imports on prices of the like product in India’s market, and the consequent effect of the dumped imports on domestic producers.

To examine the impact of the dumped imports on domestic industry, the Ministry evaluates the magnitude of the margin of dumping and all relevant economic factors and indices including natural and potential decline in sales,

profits, output, market share, productivity, and return on investments, inventories, employments, wages, and growth in the domestic industry. The Ministry also examines the other factors to ensure that the injury caused by these other factors is not attributed to the dumped imports.

These factors include the volume of goods imported at a “normal value,” contraction in demand or changes in the pattern of consumption, competition between foreign and domestic producers, developments in technology, and the export performance and productivity of domestic producers. Following its preliminary investigation, the Ministry makes a preliminary determination on dumping and injury and issues a public notice.

The Central Government then imposes a provisional duty not exceeding the margin of dumping on the basis of preliminary determination by the Ministry. Provisional antidumping duties usually remain in force for a period of no more than six month; in some cases, they may be extended by the Central Government for up to nine months. If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices, the Ministry may suspend or terminate the antidumping investigation without applying provisional antidumping measures.

The Ministry must also inform the Central Government of the acceptance of an undertaking and issue a public notice. If the exporter fails to uphold the undertaking agreement, the Ministry must inform the Central Government of such violation and recommend imposition of provisional duties. Following a provisional affirmative determination, the Ministry continues its investigation on the margin of dumping and injury.

Before giving its final findings, the Ministry informs all interested parties of the essential facts under consideration which will likely form the basis of its decision. Within one year from the date of initiation of the investigation, or in exceptional circumstances eighteen months, the Ministry must make a final determination regarding injury and the value of antidumping duties, submit its final findings to the Central Government, and issue a public notice on its finding. Within three months of the date of publication of final determination by the Ministry, the Central Government may publish a notification in the Official Gazette imposing antidumping duties not exceeding the margin of dumping determined by the Ministry.

CONCLUSION

The alarming increase in the number of antidumping actions pursued by the developed and developing countries has caused considerable concern among economists and trade reformers. These concerns have led to the suggestions of substituting antitrust principles for antidumping laws and regulations or for using safeguard measures under Article XIX of GATT 1994. At the current stage of the development of international trade law neither proposal appears feasible.

Moreover, antidumping actions have become a fact of life and the international community recognizes such actions as the only legitimate tool to combat dumping as defined by and determined in accordance with law. Despite the urgings in some quarters neither municipal legal systems nor international agreements have mandated an “economy-wide” cost-benefit analysis of proposed antidumping actions.

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