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ANTI-DUMPING CLAUSE UNDER WTO REGIME AND ITS IMPACT ON INDIA: A CRITICAL STUDY

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CERTIFICATE

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DECLARATION

I, Fayiz A H (Reg. No. LM0223007), pursuing Master in International Trade Law, do hereby declare that the Dissertation titled 'ANTI-DUMPING CLAUSE UNDER WTO REGIME AND ITS IMPACT ON INDIA: A CRITICAL STUDY', submitted for the award of L.L.M Degree in the National University of Advanced Legal Studies, Kochi, during the academic year 2023-2024 is my original, bona fide and legitimate research work, carried out under the guidance and supervision of Dr. Mini S. This work has not formed the basis for the award of any degree, diploma, or fellowship either in this university or other similar institutions of higher learning.

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ERNAKULAM

ABBREVIATIONS

1. AD	-	Anti-Dumping
2. ADA	-	Anti-Dumping Agreement
3. Art.	-	Article
3. ASEAN	-	Association of Southeast Asian Nations
4. BRICS	-	BRAZIL, INDIA, CHINA AND SOUTH AFRICA
5. CDSOA	-	Customs Duty and Subsidy Offset Act, 2000
6. DA	-	Designated Authority
7. DGAD	-	Directorate General of Anti-Dumping & Allied Duties
8. DGTR	-	Directorate General of Trade Remedies
9. EC	-	European Community
10. EU	-	European Union
11. EVA	-	Ethylene Vinyl Acetate
12. FDI	-	Foreign Direct Investment
13. GATT	-	General Agreement on Tariffs and Trade
14. GDP	-	Gross Domestic Product
15. IMF	-	International Monetary Fund
16. NCAER	-	National Council for Applied Economic Research
17. PRC	-	People's Republic of China
18. PVC	-	Polyvinyl Chloride
19. SAIL	-	Steel Authority of India Limited

20. SBA	-	Stand-by Arrangement
21. UK	-	United Kingdom
22.US	-	The United States
23.US$	-	US Dollar
24. USITC	-	United States International Trade Commission
25. v.	-	Versus
26.VERs	-	Voluntary Exports Restraints
27. WTO	-	World Trade Organization

LIST OF CASES

1. United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless-Steel Sheet and Strip from Korea, WT/DS179/R
2. DS217 US- OFFSET ACT (BYRD AMENDMENT) case
3. WT/DS 229 Brazil- Anti-Dumping duties on Jute Bags from India case
4. WT/DS, 140 EC-Anti-Dumping Investigations, Regarding Unbleached Cotton Fabrics from India
5. WT/DS 141EC-Bed Linen case
6. WT/DS206 United States-Anti-Dumping and Countervailing Measures on Steel Plate from India
7. WT/DS313 EC-Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India
8. WT/DS 168South Africa- Anti-Dumping Duties on certain Pharmaceutical Products from India
9. WT/DS 306 India-Anti-Dumping Measure on Batteries from Bangladesh
10. WT/DS 304India-Anti-Dumping Measures on Imports of Certain Products from the EC
11. WT/DS 318India-Anti Dumping Measures on Certain Products from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
12. Nirma Ltd. v. Saint Gobain Glass India Ltd, 2012 (281) ELT 321 (Mad).
13. State of Gujarat Fertilizers & Chemicals Ltd. v. The Additional Secretary and Designated Authority, (2012) 08 CAL CK 0027
14. Reliance Industries Ltd. v. Designated Authority and others, (2006) 10 SCC 368

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ANTI-DUMPING CLAUSE UNDER WTO REGIME AND ITS IMPACT ON INDIA: A CRITICAL STUDY

CHAPTER 1- INTRODUCTION

The World Trade Organization took over the bridle of GATT with the intent to liberalize trade all over the world. WTO has a number of 164 member countries, and 25 observer states as part of this international organization. This is the trade-related phase of globalization, and trade policies of each state play a critical role in the international economic integration process. The liberalization policy of the WTO aimed at opening every economy to mankind. All nationalities, irrespective of whether developed, developing, or under-developed, wish to exploit the opportunities of free trade. At the same time, each nation has its conservative approach toward the welfare of its domestic industry. The developed countries require new markets for their products. Whereas the developing and least developed countries ask for the new technology, mechanisms and protection of their traditional occupations and industries from foreign industries. In this situation, these countries might be reluctant open up their market to developed foreign nations due to the fear of predatory trade practices. The liberalization demands these countries to discard their existing tariff structures and restricted trade policies.

These kinds of protectionist measures, which also cause a hindrance to the idea of free trade, were restricted through WTO agreements. Tariffs were the most common protectionist measure which was affected due to the WTO agreements. The reduction of tariffs compelled the nations to look for other possible methods of protectionism. In this time of dilemma, anti-dumping laws were substituting the former protectionist measures such as the imposition of tariffs on imports.

Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 and the WTO Agreement on Implementation of Article VI of GATT 1947 (the Anti-dumping Agreement) allow member countries of the WTO to take anti-dumping action to assist their domestic industries in certain circumstances. If countries, after rigorous investigation, find that injurious dumping is taking place, they can impose measures on offenders. Dumping

occurs when the price at which a product is exported to a country is less than the normal value at which 'like goods' are sold in the domestic market of the exporter.

Before the establishment of the WTO, anti-dumping was primarily a concern for developed industrialized countries. They used it as a way to minimize losses, engage in market predation, and at times, even as a political tool. For developing countries, it was not a matter of concern due to their colony status in the first half of the 20th century and their backward developmental status after decolonization.

The users of AD were limited to less than 10 nations. Later in the WTO era, the circumstances changed drastically, and both the use and users of AD measures were changed. Anti-dumping has become the most used contingent protection measure within the WTO framework. Countries like India, China, Brazil, Argentina, South Africa, and many other developing countries have been vigorously engaging in Anti-dumping either as target countries or users of AD. India has become one of the most vehement users of anti-dumping measures against other contracting parties.

As far as India is concerned, the export and import are of great concern in such a huge market. The stability price of commodities and raw materials are vital in an economy. AD measures will reflect on the price of commodities. It is also important to understand the AD measures faced by Indian industries abroad. This is crucial in determining the growth capacity of Indian industries. Therefore, it understood that knowing the trends and patterns of AD measures are vital in formulating trade and diplomatic policies.

1.1 LITERATURE REVIEW

1.1.1 Ganguli, Bodhisattva, *The Trade Effects of Indian Antidumping Actions*, Review of International Economics,2008, Volume 16, Issue 5, PP. 931 -941

In this article, the author relying on various statistics stated that India is the leading initiator Anti-Dumping measures even surpassing developed powers such as US and EU community. India initiated the highest number AD cases during the period of 1995-2004 among the WTO member countries. It is also interesting note that India is not a traditional user of Anti-dumping regulations as such. Soon after, the India became the member of the

WTO, the rate of initiation of Anti-Dumping cases are far higher than some of the traditional users.

1.1.2 Khan, Owais Hasan, *A Critique of Anti-Dumping Laws*, Cambridge Scholars Publishing, 2018.

Dr. Khan argues that very purpose of the Anti-dumping regime under WTO is not attained; moreover, it stands as a barrier for free and fair international trade. Even the most basic argument for this anti-dumping regime was to protect the domestic industries from predatory pricing was also not achieved. He even added that the inclusion of anti-dumping clause was to please the developing and least developed nations who have suffered greatly because of anti-dumping laws.

1.1.3 Samir Kumar Singh, *An Analysis of Anti-Dumping Cases in India*, Economic and Political Weekly, Mar. 12-18, 2005, Vol. 40, No. 11 (Mar. 12-18, 2005), pp. 1069-1074

Samir Kumar Singh, in his article titled "An Analysis of Anti-Dumping Cases in India", argued that in India, the magnitude of protectionist actions including Anti-dumping measures is substantially high compared to the US, EU, and Australia. He is also warned that the anti-dumping policy of India is turning out to be counter-productive in praxis. It grossly ignored the interests of user industries and consumers.

1.1.4 Mark Wu, *Antidumping in Asia's Emerging Giants*, 53 HARV. INT'l L.J. 1 (2012).

Prof. Mark Wu of Harvard Law School stated in his work "Anti-Dumping in Asia's Emerging Giants", that the United States and the European Communities were the primary drafters of the anti-dumping provisions under the WTO regime and they were the first to make use of anti-dumping sanctions. Therefore, the scholars most often focused their research on the anti-dumping sanctions on the legal practices of the US and European Community. No special attention was given to India, China, and other developing countries. From 2003 to 2010, India and China positioned first and second respectively in terms of adopting the greatest number of anti-dumping sanctions.

1.1.5 Pallavi Kishore, *India's Experience with the Anti-Dumping Mechanism*, 2014 INT'l Bus.L.J. 317 (2014).

India's experience during the late 1990s and early 2000s in World Trade regime concerning Anti-dumping sanctions was not so convenient for Indian foreign trade. For instance, the bed-linen case initiated by the EU and South Africa- Anti-dumping duties on pharmaceuticals from India were not anticipated by our foreign trade experts. Dr. Pallavi Kishore, in her article "India's experience with the anti-dumping mechanism", states that these bitter experiences made India realize the importance of anti-dumping laws and became its user. Then, India updated its anti-dumping regime.

1.2 OBJECTIVES

The work mainly focuses on the impact of the WTO Anti-dumping regime on India as an importer as well as an exporter. The project tries to find out the effectiveness of Anti-dumping measures in India and how it affects international trade in India.

1.3 RESEARCH PROBLEM

The WTO anti-dumping regime has caused drastic underutilization of Indian export potential. Industrial products were sanctioned by developed and developing countries at various points in time since the commencement of the WTO agreement and Uruguay rounds. The present WTO anti-dumping practice in India is a regressive legal action and can affect Indian trade in the modern liberalized world. India is considered one of the emerging giants in the modern world due to production potential. Therefore, the antidumping regime under the WTO has to be analyzed in relation with India’s present trade and it’s potential. The Indian anti-dumping regime did not effectively use the anti-dumping statutes and actions to counter the dumping of foreign products which caused the depletion of domestic industries.

1.4 RESEARCH QUESTION

To what extent has the WTO anti-dumping regime affected the Indian economy? Did the present WTO anti-dumping practices adversely affect the progression of Indian International trade?

1.5 HYPOTHESIS

The WTO anti-dumping agreement has adversely affected Indian foreign trade. It is caused mainly due to the Indian policy towards the various practices of anti-dumping provisions around the world.

1.6 RESEARCH METHODOLOGY

The research will be conducted in a doctrinal format by relying on legal documents and the literature available. This research will depend upon secondary data, mainly quantitative, released by international institutions. The data from the international organizations including WTO will account to major part of the research data.

1.7 CHAPTERISATION

1. **Introduction**

   This Chapter will have introductory concepts on Anti-Dumping, its legal framework under WTO agreement. The chapter will provide the framework of the research undertaken for this dissertation and will outline the research question, hypothesis, objectives of study and research methodology.

2. **Evolution and Regulation of Dumping**

   This chapter will give a broad historical picture of the origin of the concept of dumping in international trade. This chapter will describe the instances of dumping in various countries globally. The chapter also try to explain the state intervention in dumping and the roots of anti-dumping legislations across the world.

3. **Anti-Dumping Under GATT and WTO**

   The chapter takes into account the provisions regarding Anti-dumping in the GATT and the development of the WTO Anti-Dumping Agreement. This section also explores the procedural and substantial aspects of the ADA.

4. **Anti-dumping and developing countries**

   Developing countries are given concessions and relaxations for implementing the WTO agreement. Article 15 of the AD agreement provides a special provision for developing countries in the form of constructive remedies in place of AD duty against a developing country. This chapter will look into the common aspects of WTO agreement and its impact on developing countries. This chapter will try enlighten some of the common trends in the developing countries. This pattern is an important element in understanding the Indian position.

5. **Indian Experience with Anti-dumping Regime**

   This Chapter will look into India's experience with Anti-Dumping regime both as a reporting country and target country. Indian experience will include both as an exporter and importer. Both these aspects will give a comprehensive account of India's position in the international trade.

6. **Conclusion**
7. **Bibliography**

This dissertation is aimed at having a detailed picture of the anti-dumping measures in relation to the Indian legal and economic sector. India has initiated many Anti-Dumping cases against various other countries for protecting domestic industries and on the opposite Indian industries faced anti-dumping measures in foreign nations. The data on these AD measures will ascertain the impact of AD regime on Indian economy. The dissertation endeavor to achieve the meaningful information on Indian foreign trade with reference AD regime under WTO.

CHAPTER 2- EVOLUTION AND REGULATION OF DUMPING

Trade has always been a significant aspect of a civilized society. The political significance of trade between two independent kingdoms or territories has been substantial. The trade was the fundamental thread of relations between kingdoms or territories. The Silk Route is a historical international trade experience during the ancient and early medieval periods. A state's formal relationship with another is evident from its trade volume. The whole of colonialism entered our nation under the disguise of trade. Every colonial power initiated its power game by controlling the trade of its colony. After the fall of colonial structures and the emergence of independent nation-states, international trade remains a significant area that demonstrates global power. The trade of energy resources such as petroleum as well as toys for children was regulated by each nation-state. This wide range of products was traded internationally with a specialized policy. Every nation had its own specific international trade policy, primarily determined by the particular characteristics and nature of the country.

The international trade policies of nations were determined by various factors such as national interest, production capacity, and economic conditions. For instance, India followed a self-reliant economic policy that prohibited the importation of many products. This was done to enhance the productivity of local industries. Therefore, importing any product our local producers already produced was nearly impossible. This was very crucial for promoting the interest of domestic producers. This policy was not against the idea of seamless international trade cooperation. The Indian market was not open to foreign players. Many third-world or developing/least-developed countries formulated and employed similar policies and approaches. Countries like Argentina, Nigeria, and China took identical steps to ensure the big foreign players were not infringing on the market and cease monopolization.[1] These goals are achieved by various measures such as import prohibition per se, customs duty, countervailing duty, and anti-dumping measures. These

[1]Luiz Claudio Duarte, *Dumping and Anti-Dumping in International Trade: Origins, Legal Nature, and Evolution Developments in Brazil and in the United States* (1997) (unpublished LL.M. thesis, Univ. of Ga. Sch. of Law).

measures are understood as protectionist measures under international trade law and economics.

Protectionism is the umbrella term that comprises various acts by an authority, mainly state authority, to protect the domestic market from unfair trade practices from foreign traders. The protectionist measures played a significant role in the international trade scenario after two decades of GATT, 1947. The fall of colonial empires and the establishment of sovereign independent states have resulted in global trade imbalances due to the availability of natural or artificial resources, heavy machinery, and advanced technologies. This imbalance will cause a notable difference in the case of the export of any products at a price lower than the price at the exporting country. This will eventually harm the domestic producers, and this practice is known as dumping.

2.1 HISTORY OF DUMPING

The practice of dumping is not new to the socio-political realm. Although not known in the same term, dumping was known to the experts in that field.[2] Adam Smith discussed one of the earliest instances of dumping, granting official bounties by government authorities for stimulating exports.[3] This was done to incentivize the exporters to sell their products at a lower price and to capture the market. However, these instances are inconclusive enough to identify that dumping was happening in any economy. There were no such studies related to ascertaining if any dumping occurred. Viner opines that it was only after the Industrial Revolution that there was an active practice of anti-dumping due to mass industrial production and the search for foreign markets for these industrial products.

The UK was the very first beneficiary of the Industrial Revolution. British manufacturers viciously utilized the instrument of dumping against young American industrialists. The American protectionist writers argued that during the early days of American independence, British industrialists were alleged to have dumped in the American market not just to control the US market but also to destroy young American industrialists

[2] Jacob Viner, The Prevalence of Dumping in International Trade: I, Journal of Political Economy (The University of Chicago Press), Oct. 1922, Vol. 30, No. 5, 655 (Oct. 1922).
[3] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* 414 (Jim Manis ed., Electronic Classics Series, Penn State Hazleton 2005)

deliberately. The dumping was alleged to be done through the combination of business people from England who were able to produce the goods at a cheaper cost due to industrialization and eliminate the American competition[4].

Though some writers believed there was dumping by the English manufacturers, it was not easy to believe deliberate predatory dumping existed. During the second decade of the 19th century, there were instances of unintentional dumping of produce from England due to the change in political frameworks. The Treaty of Ghent of 1814 between the United States and England restarted the trade between the two nations. Despite the allegations of predatory dumping of English products, there was unintentional dumping, which caused losses to the exporters after a while. Reopening the market after the end of hostility between the two nations was like a revival of trade for the exporters. During the period of hostility, the exporters were forced to stock the goods, which were then exported after the Treaty, as they were deprived of their primary market. This caused an explosion of manufactured goods exported to the US, and the English exporters greatly profited. They even started exporting the goods without prior orders, expecting a higher profit from the increased sales volume. This continued for a period, and the supply of goods was huge compared to the demand, and the traders were forced to reduce the prices. At one point, the sales were happening at a price that was less than the price of the products in England. This phenomenon is understood as unintentional dumping. [5]

Similar unintentional dumping can be seen during the same period when the English manufacturers made speculative dumping to Brazil and Portugal. Moreover, the price depression of 1816 in England was attributed to the experience of such unintentional dumping. However, none of these incidents provide enough logical evidence to substantiate the existence of predatory and intentional dumping to crush US manufacturers. Soon after, the US administration enacted the Tariff Act of 1816. This was the first legislative action of protectionism and was aimed at protecting the United States manufacturers from the threat of dumping English products that benefitted from industrialization.

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[4] Jacob Viner, The Prevalence of Dumping in International Trade: I, Journal of Political Economy (The University of Chicago Press), Oct. 1922, Vol. 30, No. 5, 655 (Oct. 1922).

[5] Luiz Claudio Duarte, *Dumping and Anti-Dumping in International Trade Origins, Legal Nature, and Evolution Developments in Brazil and in the United States*, Jan. 1, 1997.

It was not always one nation that was the protagonist, and the other was always the antagonist. During the 19th century, England established free trade, and many countries were blessed with the benefits of industrialization. Other industrial nations have gradually shared the blame for the dumping with intensive industry productivity. Nations, including the United States, which once accused England of the issue, faced the accusation of dumping. The accusation was strong during the US Civil War. After the Civil War, the accusation became more loud and bitter. The economic depression of 1872 added fuel to this situation as US firms were forced to sell products at a cheaper price in Canada. Alfred Marshal, relying on his personal investigations, opines that the manufacturers from Ontario had substantive reason for the fear of dumping.[6]

No major countries were relieved from the accusation of dumping as well as being a victim of dumping. In 1880, the American Secretary of State, W. M. Evarts, recommended that American cotton manufacturers export their products abroad to establish trade in foreign markets. The former Chancellor of German Reichstag had argued for a strong German Tariff by stating the impotence of the existing tariff structure in combating the dumping activity of other nations. In 1886, the British Commission on Depression criticized the German and French manufacturers for actively participating in dumping in England. At one instance, at least, there were British allegation of dumping in their nation by American manufacturers. The scenario has undergone drastic changes as the protagonist and antagonist swap their roles within a period of eight decades. The commission also recommended an ad valorem tariff to prevent dumping and restrict foreign manufacturers from enjoying other advantages. But this is a vicious cycle, the protected industries of Victoria made it a common practice to dump their products in Australia. The makers of many products including dairy products were sold at Australia at a lower price. [7]

2.1.1 GERMANY

Germany was among the global powers that practiced steady and systematic export dumping through setting up Cartels and purchasing and selling combinations in last decade of 19th century. German manufacturers implemented this by high protective tariffs and

[6] Alfred Marshall, *Industry and Trade,* 783 (Macmillan & Co. 1919).
[7] C.H. Chomley, *Protection in Canada and Australasia,* 82-83 (P.S. King & Son 1904)

the well-organized cartels and purchasing and selling combinations. The protective tariff maintained high rate for the products being imported to Germany and the latter-maintained balance of pricing among the German manufacturers. The German cartels also tried various alternatives to keep up the industrial dominance including paying bounty amount to the individual exporters as well as the cartels themselves.[8] This enabled the cartels to have a balanced price level which helps them to keep the under their control level which is beneficial to their business. There were complaints of dumping in heavy industries such as iron and steel, textile and pig iron.

The dumping of German manufactures was done to attain full production and stable and profitable domestic prices. The economic growth directly incidental to the export was not their primary goal to achieved. There were instances where there are no exports due to the insufficiency of the products at the domestic market and sometimes bounty incentives were temporarily abolished or reduced. This does not mean that the dumping was a rare activity among German manufactures rather intention was not predatory nature. It was limited to whatever is necessary for sustenance of German market and this can be huge in volume.

Not everyone agreed with this perspective during that period. Mitchel Palmer published a report that accused German industrialist, especially German chemical industrialists, of predatory dumping intended to crush foreign competition and to establish German monopoly world-wide. The report details commodities dumped in the United States with predatory intent, including aniline oil, oxalic acid, and salicylic acid, and provides circumstantial evidence.[9] Also there was a consular report by US Department of course that Germany indulged in predatory dumping in Turkey to get rid of British and French competitors.[10]

It was claimed in England, long before the world war broke out, that manufacturers of wire nails from Germany and America had sold their products at lower prices in the English market. As a result, the British producers were forced to quit the industry. Later, these

[8] *Cooperation in American Trade*, Federal Trade Commission, U.S. (1916).
[9] Mitchell Palmer, *Alien Property Custodian Report* (U.S. Gov't Printing Office 1919).
[10] 3 U.S. Dept. of Commerce, Special Consular Reports, No. 77, 19I7

foreign manufacturers raised their prices to English buyers much higher than they had previously reduced them.

It was noted that some other countries on the continent were also engaging in considerable dumping activities. Comparing the volume of production and export of the British, German and US industries against other continental powers such as Belgium, Austria and France are comparatively insignificant. Therefore, dumping was not studied in depth in respect with these nations. In the latter countries, the production was largely was limited to the production of small industries of individual concerns under less developed industrial conditions. As a result, it is not sensible to assume that these countries deliberately indulge in predatory dumping to crush any competition in the export market. In the case of Belgium, the tariff rates are so low and it was beneficial for the foreign entities to enter the Belgian market. This scenario was totally not suitable for the Belgian industries to dump their products in other nations with such low and non-modernized production methods. Yet, some products, including iron and steel, coal, cement, plate glass, canned vegetables, and earthenware, are produced in large amounts in Belgium but did not have an important domestic market, and active syndicates/Cartels were controlling the market activities. This compelled the Belgian industries to dump their product in distant markets.[11]

2.1.2 FRANCE

In the case of the French industry, the products were not produced on a large scale. The exported French commodities are mostly artistic specialties and novelties suited for individual patterns and were not subject to competition from producers from other countries on a price basis. This manufacturing pattern is unsuitable for initiating dumping on a comprehensive scale. Similarly, the cartels were also not instituted for predatory dumping but rather for the sake of preventing the harm of dumping into the French market. One writer also opined that the French Tariff policy has even went to the situation which deny legal possibility of dumping by French producers (Art.419 of Civil Code).[12] Despite all this, in 1886 British official commission complained of French dumping of iron and

[11] Jacob Viner, The Prevalence of Dumping in International Trade: II, Journal of Political Economy (The University of Chicago Press), Dec. 1922, Vol. 30, No. 6, 796 (Dec. 1922).
[12]I Jean Morel, "Le Regime Douanier de la France," Revue de Science et de Legislation Financieres, VII, 160

steel in the British market. The French iron and steel syndicates were formed with the purpose of increasing prices in the local market by limiting the amount of their products offered for sale locally. The remaining portion of their production was to be sold overseas at whatever price it could fetch.

2.1.3 AUSTRIA

Austria is another major power during the 18th and 19th century Europe. Relying on American consul's Report, dumping has been customary and normal practice of manufactures engaged in the export trade.[13] The practice of dumping has been attributed specifically to the wire-tack, enameled ware, and petroleum refining syndicates. The Hauptkatell in the iron and steel industry is an important player facilitating the export dumping by exempting the exports from production quota or limits. The oil and the cotton-spinning Cartels also granted export bounties to their members. In addition to these major European powers in the 19th century, other countries like Spain and Italy have reportedly facilitated dumping by export bounties. The Russian iron and steel industry syndicates also declared bounties for export dumping.

Apart from the European Continent, there are some other countries which also involved in dumping of products. The common perception was that dumping was not widely prevalent in Canadian products. This perception got acceptance since the major export of the Canadian industrialists were from extractive industries. These extracts were produced by thousand small scale industrialists scattered in the different parts of the country. Moreover, these small-scale producers are unorganized and not able to bring their products to the market through systematic price-discrimination. This feature cannot be attributed to most of the products of mining industry in Canada, which are produced under large-scale conditions. These productions mostly turn out to be under monopolistic control and there was least possibility that it is sold in Canada at lower prices than abroad. The leading interest in the iron and steel industry from 1908 to 1910 received bounties from Government and sold rails abroad at lower prices than in Canada. This dumping allegation was largely raised by British and later the Government withdrew its bounties on rails sold

[13] *Cooperation in American Trade*, Federal Trade Commission, U.S., 227,261,262 &332 (1916)..

in Canada. The Canadian producers also faced US allegation of prevalence of dumping of Canadian harness leather, sole leather and lumber.[14]

2.1.4 JAPAN

Japan is considered one of the world's most influential empires through the modern historical period. Japan was an important participant in terms of global production. Japanese dumping in the field of cotton yarn export was much recognized and discussed. The Japanese Cottons Spinners Association has initiated efforts to increase exports to the Chinese market. In 1890, the association submitted an action plan to export cotton to the Chinese market, bearing loss for five years in order to gain a grasp over the Chinese market. It suggested every market player, irrespective of whether they are exporting or not, to share the losses. The suggestion was not converted into effective actions. The association again came with other suggestions such as the system of export bounties in 1902 and lottery element into the export in the year 1908. Both these schemes were short-lived due the discontentment among the member mills. The cotton yarn dumping in Chinese market was an example of predatory dumping. It was not the only dumping happened due to Japanese exports. Large scale machine productions when combined with monopolistic control and high tariff protection caused dumping in the foreign markets such as China. [15]

2.1.5 BRITAIN

In Britain, sporadic dumping or the export at reduced prices of causal overstocks, is infrequent in England. The British producers did not produce for stock in which is not in hand. It does not mean such a dumping never happened. Like every other producing country, the British producers dump their products in the foreign market at a reduced to mitigate the loss of the production. The absence of monopolistic combinations, expensive plants for production, high fixed charges, and the lack of protective import duties are some of the major reasons for Britain not being a vocal and active participant in dumping. The free trade policy of Great Britain makes dumping impossible to carry out. Despite this linear reasoning of free trading hindering systematic and continuous dumping, instances

[14] U.S. Tariff Commission*, Information Concerning Dumping and Unfair Foreign Competition in the United States and Canada's Antidumping Law,* 13, 15 (U.S. Govt Printing Office, 1919).
[15] Viner, Supra note 11 at 802

show British producers indulging in dumping in foreign markets. The Tariff Commission Report on the Cotton Industry,1905 depicts an account of a witness stating that," English spinners frequently sell their yarns in foreign markets at less price than they would accept at home to the detriment of the English merchants".[16] The Scotch Steel Makers Association regularly quoted in the trade papers lower export prices for steel plates than those offered to domestic buyers. The re-importation was something very common during that period. But in the case of this steel plates export, these commodities were mainly exported to distant countries, and the commodities were bulky; no other competitor could bear transportation and freight costs.

The British salt producers had established a combination and has been charged with export dumping. Similarly, during the war, the British Alkali combination was alleged to be in contractual deals with South American caustic soda manufacturers to choke down the American companies from procuring caustic soda and eventually shutting those off.[17] This was a wartime precaution, and the results of the post-war period were expected to favor British exporters. The British combination stated that considering the exclusive contract, they guaranteed their prices would be lower than any offered by the Americans. This type of guarantee could lead to predatory dumping. The combinations or the associations pooled money to rescue the members of the combinations from suffering reduced pricing. There has been a reference to a fighting fund in the 1919 Reports of Committee in Trusts, and there were instances of reprisal dumping. The British manufacturers dumped in Belgium in return for Belgium manufacturers dumping in the UK.

2.1.6 THE UNITED STATES OF AMERICA

Unlike Britain, the practice of continued and systematic dumping has been a common practice among American manufacturers since the late 1780s. The American manufacturers or exporters mainly promoted business in the foreign market through active dumping practices. The American exporters normally covered up their export price from the American public. A member of the US Cabinet criticized dumping of agricultural products

[16] Tariff Commission, *Report on the Cotton Industry*, London, I905, par. 602
[17] HERMANN LEVY, MONOPOLY AND COMPETITION: A STUDY IN ENGLISH INDUSTRIAL ORGANISATION 229 (1 ed. 1911).

by the American Harvester Company stating it was unfair to the American farmers. The American steel manufacturers were dumping their products at high volume and intensity as it tragically affected the shipbuilding and other allied industries.[18] This scenario also strengthened the agitation to lower the American Tariff on foreign goods during the late 1890s and early 1900s. This dumping went beyond the expectation of capturing the foreign economy rather adversely affecting the domestic industries in respect with the price of raw materials used. Extensive and continuous dumping on a substantial scale was a part of the American manufacturing industry till World War I. The exporters indulged in dumping were dominant industrialist participated in staple industry such as iron and steel or manufacturers of specialists. The practice of providing bounties through common funds by the producers was not allowed in the United States, and hence, they were prevented from starting producer's association.

The absence of such an association was the reason behind small producers' invisibility from the dumping realm. The dominant industrialists who were exporting produces to foreign market at dumping prices bore the losses due to the reduced prices alone. The dumping was profitable or met the break-even only by those firms controlling a large fraction of the total production. Regarding export bounties or rebates, the concerns of enjoying a near monopoly kind of privilege could bear to provide bounties. The United States Steel Corporation was the single instance recorded of granting systematic indirect export bounties or rebates. The difference between domestic prices and the dumping prices by the United States Steel Corporation was sizeable than any other dumping happened during the first two decades of 20th century. Some scholars even opine that the dumping by the US Steel Corporation was one of the major reasons for the enactment of the Canadian Anti-dumping Law of 1904. The US Steel Corporation even demanded its employees to work at reduced wage in respect production of goods exported at reduced price.

The importance of American dumping in the scenario of history of dumping law is very astonishing. The American dumping prior to World War I caused much vigorous protest and to more countervailing legislation than the export of any other country. There were

[18] "The Iron and Steel Trade of the United States," *Monthly Summary of Commerce and Finance of the United States*, 25 (August 1900)

protests among the many European states against the dumping of American Steel industry. In 1902, four prominent European statesmen namely, Witte of Russia, Luzzatti of Italy, Gulochowski of Austria and Gothein and Posadowsky of Germany, claiming no collusion with each other, simultaneously suggested the formation of a European Union as a means to defend their joint economic interests against the dumping of American products in European market. In 1905, New Zealand implemented a legislation authorizing the imposition of countervailing duties against foreign products imported and dumped at a lower price. The act also contained provisions to grant bonuses to domestic manufacturers or British manufacturers to meet unfair competition in agricultural implements. The legal action was primarily triggered by the complaints of domestic and British manufacturers regarding the dumping of agricultural implements by International Harvester Company in order to suppress the competition. The Former Secretary of State for the Colonies of the United Kingdom, Joseph Chamberlain argued for adopting a Protective Tariff by the Great Britain was due to the rise of resentment against American and German dumping. Similarly, the Australian Industries Prevention Act, 1906 aimed to neutralize the effects of dumping and other unfair practices of American Trusts.

The early legal documents containing anti-dumping provisions targeted American dumping. Notably, the American industries other than the US Steel Corporation was not in a position to have a cartel. Still, the US industries were able to influence the global trade environment drastically. Moreover, the US industries such shipbuilding have suffered due to dumping committed by US concerns. The US Commissioner of Corporations on the Petroleum Industry commented the dumping of Standard Oil Company condemnable not because it eliminates foreign market competitors rather because of the exorbitant prices in the domestic market.

2.2 HISTORY OF ANTI-DUMPING REGULATIONS

Dumping was carried out throughout modern history for various purposes. In some cases, it was meant to get rid of the excess produce to mitigate the loss incidental to the stocks.

[19]Whereas in other cases, it was intentionally aimed at eliminating competition in the foreign market and sometimes crushing the domestic producers. Whatever be the reason, it will eventually affect the local producers and traders. This causes the authority to act on the export regime and to protect the domestic producers. This does not necessitate that for every dumping; there will be a reaction from the part of the authority in the form of anti-dumping action or regulation. Sometimes, the dumping will provide a consumer-friendly market as the consumers getting the product in the cheapest price. It will be beneficial to keep the dumping prices in the market so that the consumers will benefit. Therefore, it is noted that it is only after the comprehensive understanding of the after effects of dumping there will be antidumping action. The birth of any anti-dumping action is much more complex than we usually assume, and in addition, it also involves the political economy behind it.

The Evolution of Canadian Anti-dumping law is a classic example of how the intersection of dumping, popular politics, and other stakeholders contribute to the passing of an Anti-dumping law. It was in 1904 that Canada passed the anti-dumping law. Back then, the Liberal Party Government of Canada was majorly supported by the farmer population. The party also lent contributions from the manufacturers to run their party campaign. Both these sects of people have contrasting interests. The higher tariff did not benefit the farming community as it raised the machinery and equipment price. In the case of manufacturers, a lower tariff rate might compel them to reduce the price at the local market and will eventually affect the exports and lose control over foreign markets. In addition, US Steel Corporation gained from the opportunity opened up by Canada's transcontinental railroad construction. There was a massive allegation against US Steel Corporation being aggressive and dumping rails into the Canadian market in order to control the market.

However, the Canadian government could not bring administrative or bureaucratic action to charge tariffs on any specific products alone. Increasing or decreasing tariffs was not a discriminating process. Every industry will demand a revision of tariffs. The government identified and understood the phenomenon of dumping as an evil and proposed to deal with

[19] Eamonn Butler, *Protectionism: The Anti-Dumping Argument*, ADAM SMITH INSTITUTE, https://www.adamsmith.org/blog/protectionism-the-anti-dumping-argument (last visited Jun 16, 2024).

it.[20] Upon this premises, the Canadian Government proposed an antidumping regulation, in which an additional special duty was established with the then-existing customs duty to act as an equalizing factor between fair market value and export selling price. Mr. W.S Fielding, The Finance Minister of Canada, commented on the regulation as an instrument of opportunity.

The antidumping regulation was not considered an entire shift from the customs practices or new legal practices in Canada. In the past, Canada has been known to implement shrewd modifications to its customs valuation procedures in order to enhance protection. Canada grants greater authority to the executive and administrative branches to determine duty rates by using artificial valuation methods for goods. During the early period of the regulation, the domestic manufacturers opposed it, and later, when the US steel's price rose, the manufacturers identified its potential and supported it.

Not for the same reasons, other countries also implemented antidumping laws during the first two decades of the 20th century. The United States, France, Australia, New Zealand and Great Britain passed antidumping legislations. It's a little-known fact that dumping was not the primary cause behind the implementation of legislation. Rather, there were other factors at play. These reasons include social, political and economic factors. During the second decade of 19th century, the hostility towards Germany was one of the major factors in making the antidumping legislations. It was common among the Allies in World War I that German enterprises were involved in predatory dumping. These powers even alleged German government was accumulating vast stocks of goods in order to dump on the markets of the world. Adding to it, it was done with a view to gain economic warfare as they miserably failed on the battlefield.

Trust busting is another factor which played a major role in the formulation of antidumping laws. Trust busting can be understood as the manipulation of an economy, carried out by the governments around in the world, in an attempt to prevent or eliminate monopolies and corporate trusts. Trust busting was not particularly aimed at foreign traders or products. But the trust busting against foreign trust or cartels were severe and backed by political

[20] U.S. Tariff Commission 1919, p. 22

emotions. That is to say, any trust and cartels are not welcomed and in case of any foreign trusts or cartels are attacked with intensity. But this was not that easy as stated. [21]

Another aspect that contributed to the implementation of antidumping laws was the existence of high tariffs. Most European powers except Great Britain, the United States and Canada charged heavy tax on import products. This allowed the domestic firms to sell their products at a higher margin and create a monopoly. In addition, the higher tariffs protected them from re-imports of the products they sold. This cannot be dealt merely by reducing the tariff and promoting foreign products in the domestic markets. This will cause an everlasting vicious cycle of domestic and foreign monopolies. In this juncture of dilemma, antidumping laws and duties are imposed. Many other countries used the way Canada took to maintain the balance in their market.[22]

The history of antidumping laws in the United States were a bit different from that of Canada. Like most countries, the tariff was a major tool for regulating imports in the US during the early 20th century. The evolution is a journey through different anti-trust legislations and finally taking the figure and structure of anti-dumping regulation. The Sherman Anti-Trust Act of 1890 was one of the earliest examples of such legislation. The 1890 Act prohibits every contract or combination that restrains interstate or foreign commerce and every attempt of monopolization of commercial activities.[23] The US Supreme Court refused to apply the provisions of the act to sales contract that had been made in the exporting country. Soon after, the US Congress through the Wilson Tariff Act, 1894 attempted to widen the limits of the Sherman Act by making it unlawful every conspiracy or combination that was engaged in importing and trying to restrict trade or to increase the US price of an article.[24] But the instances of invoking the particular could be counted on a finger in a single hand.

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[21] Finger, J. Michael, 1991. "The Origins And Evolution Of Antidumping Regulation," Policy Research Working Paper Series 783, The World Bank.
[22] Micheal J Finger, Dumping And Antidumping: The Rhetoric And The Reality Of Protection In Industrial Countries, The World Bank Research Observer, Vol. 7, No. 2, 121 (July 1992),
[23] Douglas Irwin, *NBER WORKING PAPER SERIES - THE RISE OF U.S. ANTIDUMPING ACTIONS IN HISTORICAL PERSPECTIVE*, 4 (2004).,
[24] *Id.*

The anti-German sentiments escalated during the World War I and there was widespread popular notion that German enterprises were particularly vicious perpetrators of predatory dumping. This scenario put substantial pressure on the government on revising the tariff. The US Congress made it unlawful to sell goods imported in the US market at a price substantially lower than those in the producing or exporting country. The Antidumping law of 1916, thus, tried to prevent monopoly, injury or destruction to the domestic industry. In the light of these provisions, the US Tariff Commission Study of 1919 began an investigation by a survey among hundreds of US enterprises, trade associations and other traders. They were asked about their personal knowledge regarding foreign dumping and competition. [25]

The survey found twenty-three instances of foreign dumping that was known to the enterprises surveyed. The commission pointed out the existence of actual number of foreign dumping being the six times the known instances by the enterprises and association of traders. The patent leather by German manufacturers were classified as "severe competition". The particular product was produced at a cost lower than the US could produce in their country. [26]

Micheal J Finger opines that the antidumping regulation of 1916 did not meet any of its desired goals. In the following years since 1921, there were only one petition on the basis of the antidumping provision and that too was dismissed for not providing enough facts to substantiate dumping. The 1916 act was useless in minimizing the pressure for a legislation similar to the Canadian act. Thus, Congress enacted the Antidumping Law of 1921, and the same can be traced to date. The Secretary of the Treasury is granted specific authority by the law to assess whether the importation of a product at a price below its fair value in the exporting country or other export markets has the potential to harm or hinder the establishment of a U.S. industry. If it is found so, the Secretary is empowered to impose a special dumping duty against the import of the product. Congress has mandated that the

[25] J. Micheal Finger, *supra* note 21 at 8.
[26] THE U.S. TARIFF COMMISSION STUDY OF 1919, P.15

U.S. International Trade Commission determine injury and urged the President to assign the determination of dumping to the U.S. Department of Commerce. [27]

The early regulations in the United States aimed at preventing "unfair imports" were essentially extensions of antitrust law.[28] These regulations were based on the same criteria and relied on antitrust law's mode of enforcement and standards of proof. From 1890 to 1921, there were several revisions that brought changes in both these dimensions. Although trust busting continued to be the focus, the objective of the regulation shifted from trusts to imports, and the instrument of enforcement changed from law to bureaucracy. The main change in the criteria was from using an antitrust standard to an injury-from-imports standard and the enforcement is more attributed to administrative in nature not legal. The similar to these changes Australia also turned to an administration centered legal framework to tackle the issue of dumping. The Act was enacted soon after the Canadian law was implemented in 1904. South Africa was also part of this stream.

These early instances of antidumping was mostly an issue by the developed or industrial powers. The countries like India, middle east and Africa were facing the hardships of Colonialism. The hardships imposed by colonial rule often mirrored the dynamics of antidumping, albeit under a different guise. This phenomenon was not merely an economic strategy but a facet of a more immense power dynamic that characterized the era—particularly, the relationship between colonial powers and their colonies. For instances, the trade policy of Britain in India was to export the raw materials from India and import the machine manufactured cheaper goods in India. This also crushed Indian handicrafts and cottage industries. This was more of an issue of colonialism rather than foreign dumping. But the logic behind this practice was nothing but that of antidumping. Similarly, the establishment of GATT gave rise to modern independent sovereigns and changed the scenario a bit. These elements will be discussed in detail in the following chapters.

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[27] J. Micheal Finger, *supra* note 21 at 13.

[28] J. Michael Finger, *DUMPING AND ANTIDUMPING: THE RHETORIC AND THE REALITY OF PROTECTION IN INDUSTRIAL COUNTRIES*, 7 WORLD BANK RES. OBS. 121, 129 (1992).

CHAPTER 3 -ANTIDUMPING UNDER GATT AND WTO

The phenomenon of dumping and antidumping legislation was mainly confined to the countries that have the industrial might to produce in large masses.[29] The developing countries, or the least developed countries, were contributing to the economy at a negligible rate or would be a colony of any imperial powers. Therefore, the history of dumping and antidumping were circumnavigating around these global powers in the first half of 20th Century. In the early half of the 20th century, except the United States no other countries prohibited price discrimination causing the injuries to the competition in the domestic market. There were bilateral treaties among countries agreeing not to provide any bounties, discount or refunds provided for the exporters by their origin state. But these provisions in the agreement turns out to be ineffective due to the vacuum of any penalties on such provision of bounties.[30] Soon after the Second World War, global power dynamics and geopolitics underwent drastic changes. The countries started declaring independence from the imperial powers and proclaimed their sovereignty. The early negotiations of GATT were not at all interested in inserting a provision regarding dumping and anti-dumping.

Considering the repercussions of excessive use of antidumping provisions, article VI, dealing with antidumping and countervailing measures, was made a part of the GATT. The GATT agreement of 1947 aimed at the seamless flow of international trade and the opening of markets of every member country to the agreement. The use of antidumping and countervailing measures might tamper with the free flow of international trade. The scholars had identified different types of dumping, namely.

1. Price dumping
2. Service dumping
3. Social dumping and
4. Exchange dumping[31]

[29] ARADHNA AGGARWAL, THE ANTI-DUMPING AGREEENT AND DEVELOPING COUNTRIES AN INTRODUCTION, OUP INDIA, 3 (1 ed. 2007).
[30] Edward L. Symons Jr., The Kennedy Round GATT Anti-Dumping Code, 29 U. PITT. L. REV. 482 (1968).
[31] Owais Hasan Khan, *A Critique of Anti-Dumping Laws,* Cambridge Scholars Publishing, 2018

Price dumping is the most common type of dumping. In the early GATT drafting debates, price dumping was only taken into consideration. Other aspects of dumping were not objective enough to enumerate and find a reasonable method to bring it under control.

GATT is considered one of the initial efforts in the post-World War II scenario, which aimed at increasing global trade by removing trade barriers and tariffs. Article VI of the General Agreement on Tariffs and Trade (GATT) does not offer clear instructions on when member countries can implement countermeasures against unfair trade practices. Additionally, this article lacks procedural safeguards to prevent its misuse as a protectionist tool. The reluctance of the US Congress was a reason for the stagnant status of the organization. The US never ratified the Havana Charter, which established an International Trade Organization, and the GATT was indefinitely extended by common consent. The GATT was functioning in the name of the contracting parties and a small secretarial entity.[32]

The GATT agreement contains the rules applicable to the multilateral trade in goods. The agreement aimed at open and liberal trade policies among the contracting parties and thus encouraged countries to promote economic development. The global powers who advocated for such a multilateral trade agreement argued that the agreement benefits producers in the importing country by making available cheaper raw materials from exports and gaining competitive positions in the market to sell their products. On the other hand, consumers worldwide will benefit from market-controlled competition, leading to reasonable pricing and wide choices of products.

The GATT negotiations on tariff concession happened in four sessions between the years 1947 and 1964. The anti-dumping provisions were not part of the first three negotiations during the years 1947, 1959, and 1961. The current text of the ADA was the result of the developments starting from the Kennedy Round of 1964. Antidumping was not a major issue during the first two decades of the GATT. Antidumping was a minor instrument when GATT was negotiated, and provision for antidumping regulations was included with little

[32] Edward L. Symons Jr., The Kennedy Round GATT Anti-Dumping Code, 29 U. PITT. L. REV. 482, 487 (1968).

controversy. In 1958, when the contracting parties finally canvassed themselves about the use of antidumping, the resulting tally showed only 37 antidumping decrees in force across all GATT member countries, 21 of these in South Africa.[33] The antidumping agreement was inserted not because it was a persisting issue but rather because it has the potential to be against the smooth functioning of trade. The Anti-dumping regulations are a safety valve for the government to rescue their domestic industries. In certain situations, anti-dumping regulations are vital to maintaining a breathing space for small domestic industries. On the other hand, it may be due to any enterprises' monopolistic trade practices, which denies consumers the right to have cheaper products.[34]

The Article VI of the GATT 1947 merely provided theoretical legislation on the matter of Anti-dumping and was mostly silent on its implementation. The WTO Agreement on the implementation of Article VI of GATT provides a detailed framework for domestic anti-dumping legislation and regulations. The discussions on the ADA came into GATT negotiations only on 1964. It was mainly the result of the Powers conferred on the US President by Congress to negotiate internationally on tariff and non-tariff barriers on trade. The US Trade Expansion Act, 1962 empowers the US President to negotiate on the trade relations of the US with other countries. These negotiations are particularly known as Kennedy Round negotiations. Using this power, the President created the Office of the Special Representative for Trade Negotiations with the purpose of negotiating with the other signatories to the General Agreement on Tariffs and Trade (GATT). During the Kennedy Round of negotiations, the focus was mainly on tariffs. However, an agreement was made beforehand also to include non-tariff trade barriers in the scope of negotiations. As a result of these negotiations, an international antidumping code was created.[35]

[33] J. MICHAEL FINGER, FRANCIS NG & SONAM WANGCHUK, ANTIDUMPING AS SAFEGUARD POLICY (2001), http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-2730 (last visited May 9, 2024).
[34] Symons. Supra Note 32 at 488
[35] ARADHNA AGGARWAL, *PATTERNS AND DETERMINANTS OF ANTI-DUMPING: A WORLDWIDE PERSPECTIVE*, 6 (2003).

3.1 ANTI-DUMPING IN THE PRE-WTO PERIOD

Anti-dumping has been a crucial part of the global trade diplomacy and economy. It has been practiced by most countries in the past. The developed countries used anti-dumping as a means of protectionism in the 20th century. There was no black-and-white position taken by the global powers regarding anti-dumping. Some countries supported the anti-dumping in terms of protectionism. However, the same country might dump its products in a foreign market to gain market control. The first genesis of anti-dumping was due to the politics of trade between major powers such as the US, Canada, and European powers, including Germany. In some states, the provisions of the anti-dumping even included criminal provisions. Whereas in some states, it only involves civil liability. The usage of anti-dumping did not have any regular trends or patterns in the earlier period. The usage of anti-dumping was influenced mostly by the geopolitics of the world war and post-world war scenarios rather than economic and market factor.

The anti-dumping regime were not regulated under any international framework until the adoption of GATT 1947. The GATT only provided a substantial base for the anti-dumping practices. It did not provide any detailed procedures for the implementation of anti-dumping duties. However, there were discussions regarding enhancing detailed procedural and substantial guidelines on anti-dumping practices among the GATT working parties in the 1950s and 1960s. Still, there was no significant development on this issue, and it was a minor trade instrument. There were relatively few disputes till 1980 in the GATT.

The global economic and trade cooperation aimed at the smooth flow of international trade was reciprocated with demand for certain measures for protecting domestic industry. There were negotiations happening in the GATT 1947. By 1963, 110 renegotiations had been undertaken. These renegotiations also made way for Voluntary Export Restraints (VERs). VERs were bilateral negotiations outside GATT. Exporting countries were convinced to limit their exports voluntarily. Though these VERs and the related negotiations were beyond the premise of GATT and GATT-illegal, they were in conformity with the principles of reciprocity.[36] The VERs were formulated on the basis of negotiations between trading

[36] AGGARWAL, *supra* note 35 at 5

partners. These negotiations between trading partners also explored various other forms of reforms and solutions by way of compensation as the higher price the exporters would get. Due to this different and varying approaches of protectionism, there is no exact account on use of anti-dumping measures. GATT did not mandate the countries to report their contingent actions. However, there were certain limited information on anti-dumping actions taken by some countries. South Africa was one of the most notable countries that adopted 21 anti-dumping measures in the year 1958, where the cumulative of all anti-dumping measures was just 37.

The Kennedy Round, 1963 negotiations paved the way for uniform anti-dumping rules. The Kennedy Round adopted "the Agreement on the Implementation of Article VI of GATT," which was otherwise known as the Anti-dumping Agreement (ADA). It came into force on 1968. The post-Kennedy Round negotiations and ADA increased the popularity of anti-dumping as a remedial measure in international trade. Soon after adopting the agreement in 1968, the European Community (the initial version of the European Union) anti-dumping legislation adopted in 1968. The usage of anti-dumping measures were very limited and was confined to major six powers. These major users include Australia, New Zealand, South Africa, Canada, the US and the EU. Almost all countries white Europeans led nations that enjoyed colonial supremacy.

After one and a half decade after the Kennedy Round, it was the consequence of the Tokyo Round that we saw through the increased use of anti-dumping measures. The Kennedy Round developed a detailed procedural element that need to be fulfilled in the conduct of investigations. The number of cases filed worldwide during the 1980s skyrocketed as it was double the rate as that of 1970s. Developed countries were once again the primary players in anti-dumping measures. The Tokyo Round was signed by 27 countries, comprising mostly of developed countries, and was bound by the requirements of the ADA with additional detailing induced through the Tokyo Round. Developing countries were not part of the Tokyo Round.

Later, in 1986, the Uruguay Round commenced and was marked by the participation of developing countries. The Uruguay Round resulted in the establishment of WTO. In the

five years stretch from 1990- 1995, there were more than 1300 instances of antidumping measures worldwide. From the Kennedy Rounds, the GATT member countries were compelled to report instances of anti-dumping measures. Now, it is evident that even before the establishment of WTO, Anti-Dumping turned out to be a global phenomenon in both developing and developed countries. Even countries such as Russia, not a member of WTO, have legislated their own legal documents on anti-dumping measures.

The usage of anti-dumping did not have a structure or predictable trend in the pre-WTO period. The anti-dumping laws were in place for only a few countries during the first fifty years after Canada adopted its anti-dumping statute in 1904.There were two major waves of adoptions since the mid-20th century. The first wave led to about 30 countries implementing AD laws from 1950 to 1970. The reason for this wave can be attributed to the GATT, 1947 and its further negotiations. The Kennedy Round of 1963 can also be said as a reason for some part of this wave.

The second wave was more of substantial in nature as another 80 countries adopted AD laws. The Tokyo Round and the Uruguay Round saw increased participation of non-developed countries, and these countries began adopting AD laws in the 1990s. This wave was witnessed among the developing countries of all regions of the world, including former Soviet Union states and Eastern Bloc countries. This happened along with trade liberalization and globalization. Therefore, there were great leaps in the anti-dumping initiations and actions, though there was strict scrutiny and compliance with other requirements.[37]

3.2 WHY ANTI-DUMPING CODE?

The Article VI of the GATT 1947 provides general principles in relation to implementing anti-dumping measures. This generality caused major issues when it comes to real-life scenarios. The detailing of certain concepts and procedures in relation to anti-dumping may not be the same as other member countries of GATT. For instance, the concept of injury or material injury is different among different countries. The anti-dumping clause under

[37] Bruce A Blonigen & Thomas J Prusa, *Dumping and Antidumping Duties*, NATL. BUR. ECON. RES., 14 (2015).

GATT is a provision that enables any member country to impose a duty or measure against the dumping of products by a foreign manufacturer. These duties or measures are mostly characterized by any administrative process that may cause disputes. Many relevant terminologies, concepts, and calculation methods are subject to state-determined definitions and methods. This will lead to major trade flow uncertainties and disputes arising from such trade transactions. It's important to recognize that there can be significant disparities in the definitions, such as "injury" and "industry," across different nations. However, it's crucial to understand that these differences arise from each country's regulatory commission, and it's essential to work towards finding common ground. For example, while Australia considers a "detriment" to a domestic industry as injury, Sweden requires "material injury." By acknowledging these differences, we can confidently develop a framework that considers the unique needs of each country involved. These inconsistencies and disparities, coupled with some anti-dumping actions, made some states feel they are kept out of the competitive markets in some foreign nations.[38] This would eventually choke down the primary objective of the GATT 1947, i.e., free and smooth trade flow. The Anti-dumping Code clarified that the purpose of the code is to provide for equitable and open procedures as the basis for a full examination of dumping cases. The Agreement on Anti-dumping interprets the provisions of the Art.VI and provides a harmonized ecosystem for the trade to happen.

3.3 CONTENTS OF ANTI-DUMPING AGREEMENT

The WTO framework enabling the antidumping measures consists of two documents, i.e. Art.VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Implementation of Article VI of GATT 1994. The former is the enabling provision, and the latter covers procedural and substantive aspects of implementing the anti-dumping measures. The AD Agreement provides detailed methodologies and procedural issues related to the implementation of anti-dumping measures. Both these provisions are meant to be read together.

[38] Edward L. Symons Jr., The Kennedy Round GATT Anti-Dumping Code, 29 U. PITT. L. REV. 482 (1968).

WTO/GATT allows its members to take anti-dumping measures. It is not mandatory for members to have a legal framework for AD action. It is one such provision where the WTO framework provides detailed instructions for setting up a trade barrier. The AD Agreement requires member countries to meet specific pre-requirements before taking any anti-dumping action. The Agreement sets out three basic conditions that must be satisfied before imposing anti-dumping measures. These are:

1. The imports in dispute are dumped
2. There should be a material injury or a threat with material injury or that the establishment of a domestic industry is being materially retarded
3. The dumped imports must cause the injury[39]

If any member country decides to impose anti-dumping measures, it must conduct an investigation based on the provisions of the anti-dumping agreement to ensure the existence of the three elements. The very first Article of the Agreement explicitly mandates the investigation to be conducted in the stipulated procedures for implementing anti-dumping action.[40] The Article states as follows:

"An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations."

It can be inferred from the Article that the imposition of anti-dumping measures is subject to an investigation, and its findings must prove the above-mentioned three preconditions. It is also noted that the WTO member countries are precluded from taking any other actions against injurious dumping imports. Article 18.1 clearly states, "No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement."[41]

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[39] Judith Czako,Johann Human & Jorge Miranda,World Trade Organization – A Handbook on Anti-Dumping Investigations, Cambridge University Press, 2 (2003)
[40] Article 1,Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
[41] Article 18.1, Agreement On Implementation Of Article VI Of The General Agreement On Tariffs And Trade 1994

The WTO agreement also limits the methods of measures that can be taken against the dumping of any products by a member country in another member country. These prescribed measures are (i) provisional measures, (ii) definitive anti-dumping duties, and (iii) price undertakings. The AD Agreement gives detailed provisions regarding the procedures to be followed for conducting investigations, substantive rules related to the calculation of dumping margin, determination of injury, and proof of the causal relation between the dumping and the injury, and references to certain aspects of the domestic legal framework including the institutional framework.

3.4 DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORK

Like any other international agreement, the signatories to the agreement must incorporate the provisions of the WTO agreement as well as the AD agreement into their domestic legal framework. The WTO arrangement provides a certain degree of choice for the member countries in terms of selecting the method of incorporation, legislation, and institutional framework. It is necessary to have an arrangement regarding the legal and institutional framework prior to the initiation of any anti-dumping investigation and the imposition of measures. These issues are addressed in line with the constitutional framework of the member country.

In some countries, international agreements will automatically be applied. Whereas in other countries, the provisions of the WTO agreement and, therefore, the AD Agreement are incorporated directly into the domestic legal framework through enabling legislation. This enabling legislation will accompany some extensions in the form of some administrative actions such as regulations, rules, and bye-laws. These supplementary legal instruments will provide detailed information in regard to the implementation of the same. These will mostly include the institutional framework and the procedural aspects of other elements of anti-dumping, including investigation. This framework is important in providing clarity and certainty for the parties affected by both dumping and anti-dumping actions.

Although not explicitly mandated by the AD Agreement, establishing domestic institutional and legal frameworks for implementing measures is *sine qua non* for effective

action and adherence to the agreement. Consequently, it is essential that a member establishes the necessary institutional framework and designates empowered investigating authorities prior to any investigation. Additionally, a suitable decision-making structure should be put in place. There are no provisions or instructions in the AD Agreement regarding the institutional aspects of investigations. Typically, a dedicated department or entity is assigned within a specific government ministry or office to handle the investigative aspect of the procedure.

Anti-dumping is usually connected with ministry portfolios such as trade, industry, commerce, finance and customs. In some member states, investigation on the existence of dumping and injury is done by two different organizations. In a bifurcated system, body entitled with the power of investigation of dumping and injury will be independent from the government. Whereas in case of unitary system, all aspects of investigations are done by government or government-controlled organization It is a usual practice that, whether the process is unified or bifurcated, the decision-making aspect of the process is separated from the investigation process. Moreover, the method of decision-making and the level at which choices are made may vary according to the Members' preferences. In the United States, Anti-dumping actions are taken by the Ministry of Commerce and the investigation is done by the United States International Trade Commission (USITC). The USITC is an independent, quasi-judicial federal agency that investigates the impact of imports on U.S. industries, and directs actions against unfair trade practices, such as subsidies and dumping.[42] The President nominates, and the U.S. Senate confirms the six commissioners who make up the USITC. The President and the secretary of state sign the formal commission.

Anti-dumping and anti-subsidies & countervailing measures in India are administered by the Directorate General of Anti-dumping and Allied Duties (DGAD) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry and the same is headed by the "Designated Authority". The Designated Authority's function, however, is only to conduct the anti-dumping/anti-subsidy & countervailing duty investigation and make

[42] Bruce A. Blonigen & Chad P. Bown, *Antidumping and Retaliation Threats*, 60 J. INT. ECON. 249, 255 (2003).

recommendations to the Government for the imposition of anti-dumping or anti-subsidy measures. Such duty is finally imposed/levied by a Notification of the Ministry of Finance. Thus, while the Department of Commerce recommends the anti-dumping duty, it is the Ministry of Finance that levies such duty.[43]

3.5 PROCEDURAL ASPECTS OF AD INVESTIGATION

An investigation is the first instance where the state or allied agencies entered international trade and took an active role. The WTO member states maintain the least active state engagement and leave the total trade environment for market forces. The investigation and further procedural aspects of anti-dumping were not a subject matter of Article VI of General Agreements on Trade and Tariff 1947. The Anti-Dumping Agreement of WTO confers certain rights on the domestic producers for initiating the antidumping charge through petitioning against any particular product from a particular country when these imported products are causing injury to the domestic industry.

The WTO acknowledges substantial and procedural differences across different countries. These differences are visible in terms of investigation and defining certain aspects such as like-products, material injury, fair value, normal value, and dumping margin. The WTO ADA provides a broader framework regarding these aspects, including investigation. The agreement details the investigation as a basic framework for the procedures. The investigations have to comply with the framework provided under the agreement. Therefore, if a domestic industry in a state believes that it is subject to injury by imported products, it can file a petition with the designated government authority to investigate anti-dumping charges. In nearly all cases, domestic firms and labor unions submit the petition. The members of the industry individually or collectively can initiate a petition. Government agencies responsible for enforcing anti-dumping laws have the authority to launch investigations independently, but they are used very seldom.[44]

[43] Directorate General Of Trade Remedies, *Shaping International Trade Annual Report, 2018-19*
[44] Blonigen and Prusa, *supra* note 37.

The Panel in the *United States-Steel*[45] dispute observed that Under Article 5.1 (except for 'special circumstances'), an antidumping investigation shall typically begin upon a written request "by or on behalf of the affected industry. The straightforward wording of this provision, and specifically the use of the word "shall", indicates that this is a crucial procedural requirement for starting an investigation in accordance with the Agreement. The Panel determined that, given the nature of Article 5.1 as a crucial procedural requirement, there was no reason to believe that a violation of this provision could be fixed retroactively.

The petition must undergo scrutiny by the administrative agencies to determine if it meets all requirements under the existing law to initiate an anti-dumping investigation. These requirements include the definition of products, the nature of the injury, the existence of dumping, and its effect on the domestic industry. After satisfying these requirements, the investigation proceeds must be designed with an established timetable. Each country can determine the time period for the investigation. This timely investigation qualifies the procedure to be effective and the least affected on the flow of trade.

The Anti-dumping duty can only be imposed if the primary investigation satisfies two criteria. The first criterion is to satisfy that the price of imported goods in the market is below what is considered as the fair or normal value. The other criterion is determining whether the dumping activity materially injured the domestic industry or threatened to cause material injury. The existence of the either of the criteria will not be a reason for implementing duties. It is very important to understand that the existence of both criteria is *sine quo non* element for imposing an anti-dumping duty.

The first criterion is determined by calculating the dumping margin. The dumping margin is not a uniform concept everywhere. The dumping can just because the price of import goods is lower than that in the importing country. In some states, it came into existence when the price of the imported products is than that in the domestic market of the exporting country. This is mostly attributed as predatory in nature as it targets to erase the existing local competition. This predatory practice may involve huge loss for the exporting industry

[45] Panel Report, United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R, adopted 1 February 2001, para. 5.20

in the short run as they are traded at a price lower than its cost of production and sale. The traditional way to determine fair value is by comparing the price of the same product in the exporter's domestic market, after accounting for transportation, border costs, exchange rate differences, and other relevant expenses. This allows for a direct comparison of prices as the products leave the factory. Product dumping, as defined by Article 2.1 of the WTO Anti-Dumping Agreement (ADA), occurs when a product is sold in a foreign country at a price lower than its normal value. The normal value is determined by comparing the export price of the product to the price of a similar product sold within the exporting country for consumption.[46]

Before initiating the WTO anti-dumping agreement, there was an alternative method for determining the dumping margin in the form of sales below cost. The investigating authority must prove that the exporter has sold a sufficient volume of a product at a price below average total cost. The investigating authority would ask for the detailed cost breakups of the products and other relevant data from the exporters. The exporters are bound by such demand to provide details. By discovering the existence of sales below cost, the agency is empowered to impose dumping duty. The investigating authority did not need any evidence of price discrimination, and the dumping duty was designed to bring the sale price above the fully loaded costs plus a profit margin. Though it is not uncommon to sell at a price below cost, it is irrelevant in the case of anti-dumping, and such pricing is considered unfair. [47]

In the absence of a relevant market in the exporter's country due to the size of the demography or less demand, the investigation agency in an importer state will have to make the price comparison with the price of the exporters in a third market. This will help us to understand the price discrimination between importing nations by the exporters and their prices in one destination. This is because of the idea that anti-dumping is not just about price discrimination between importing and exporting countries. Rather, it is about the impact on the domestic industry on an importing nation. In the process of determining

[46] Michael P. Leidy, *Antidumping: Solution or Problem in the 1990s?*, INTERNATIONAL TRADE POLICIES VOLUME II THE URUGUAY ROUND AND BEYOND: BACKGROUND PAPERS , 54 (2024).
[47] Mina Mashayekhi, *TRAINING MODULE ON THE WTO AGREEMENT ON ANTI-DUMPING*, UNCTAD, 11.

the dumping margin, the authorities may use information obtained from both parties involved in the investigation and if required, may rely on interested third parties' information.

The very purpose of the anti-dumping duty is to protect the domestic industry from the predatory market practices of foreign exporters. On the other hand, mere price discrimination cannot be a criterion for imposing anti-dumping duties or any other remedial measures that hinders the smooth flow of international trade. In that scenario, it is important to determine the material injury caused by the dumping activity. It is the material injury caused to the domestic industry is main reason for such anti-dumping measures. The domestic industries' suffering is the reason which creates a problem for a state. This creates an imbalance of trade and effects the GDP of the nation. The injury determination involves the scrutiny of changes that happened in the market share and import penetration. It also examines the domestic industries' performance from production, employment, capital investment, and firm bankruptcies. In most cases, it is important to establish the causal relationship between these injuries and dumping which is considered to be a difficult task.[48]

Another aspect of the investigation deals with determining a "like product," as defined in Article 2.6 of the ADA. A like product is one that is identical in all respects to the product under consideration. In the absence of such a product, it refers to another product that closely resembles the characteristics of the product under consideration. In ADA cases, this term is important for both determining injuries and assessing dumping. When comparing similar products, there are typically various types or models available. While there can be many variations, it's important to make the comparison as precise as possible. Therefore, a variation that significantly affects the price or cost of a product would usually be considered a different model or type. For the purpose of calculation, authorities generally compare identical or very similar models or types.[49]

When there are no sales of the same product in the regular course of trade in the exporting country's domestic market, or because of specific market conditions or low sales volume,

[48] Blonigen and Prusa, *supra* note 37 at 11
[49] Mina Mashayekhi, *UNCTAD/DITC/TNCD/2004/6 UNITED NATIONS PUBLICATION ISSN 1816-5605*, 7.

it's not possible to make a fair comparison, the dumping margin is calculated by comparing it with a similar product's price when exported to a suitable third country. This is assuming that the price is representative. Alternatively, it can be compared with the production cost in the country of origin plus a reasonable amount for administrative, selling, and general expenses, as well as for profit.

Article 3 of the WTO ADA specifies that "injury" refers to material harm to a domestic industry, the threat of material harm, or material hindrance to the establishment of such an industry. It is crucial to demonstrate that dumped imports cause injury or pose a threat of injury to the domestic industry. The investigating authority must examine various known factors other than dumping that may be harmful to the domestic industry. If there is no injury or threat of injury to the domestic industry producing the same product, complaints against dumping are unlikely to be filed.

In case the investigation authority is satisfied that the dumping causes material injury to the domestic industry, they can impose anti-dumping measures on imports of the products that underwent investigation. Even at the preliminary investigation stage, the authority can impose preliminary dumping measures on the products. The measures can be in the form of ad valorem duty, specific duties, or price or quantity undertakings. If the preliminary dumping measures involve levying of duties, these levied and collected duties will be reimbursed if the final determination comes to be negative. It is also notable that the investigation need not always be against a specific product from a foreign country as a whole; rather, it can be against a sole exporter or a group of exporting firms.

The investigation and the following actions by the investigation authority of a state is primarily the volition of the importing state. The WTO provides broad guidance regarding the investigation and states are empowered with wide powers to interpret the rules. It is the prerogative of a state to determine the working of an anti-dumping mechanism of a state. This discretion causes a wide range of arguments and is the reason for the many WTO disputes based on anti-dumping actions. The WTO also limits the state power by establishing a bar on the time frame for anti-dumping duties. The anti-dumping duties should only remain in place as long as injurious dumping continues. The countries are

obliged to review whether the duty is still required after a stipulated period of time. However, there are anti-dumping measures prevalent for decades in various states.[50]

The Anti-Dumping Agreement grants significant flexibility in defining and determining various aspects of anti-dumping measures. It's not just about establishing the presence of both dumping and material injury at the same time, but also about establishing a causal link between the two. Factors other than the dumping of foreign products, such as government interventions in the domestic market, can also lead to distortion in the domestic market against local industries. Furthermore, the concept of de minimis applies to the volume of trade and corresponding injury, meaning they should not be insignificant. These non-dumping factors can vary from country to country, as each nation may have a different approach to tackling anti-dumping practices. The use of anti-dumping statistics is a fascinating area of study. It has gained significant traction as a form of trade remedial measures since the 1990s, with the establishment of the WTO further driving this trend. There has been a notable increase in the use of this instrument among developing and transitioning countries. Furthermore, it's important to recognize that not only the use of anti-dumping, but also the position of a target of anti-dumping measures is essential in analyzing a nation's stance on anti-dumping. These changes were not something that happened gradually. Rather, they involved much political turbulency and coercion.

The differentiation between developed and developing countries is a widely discussed topic within the WTO framework. There were many areas where countries had differences of opinion. In case of prohibition tariff and quota restriction the position of these two blocs were not same but contrasting. Even there were conflicting interests within the blocs. This debate also applies to the issue of anti-dumping measures, which requires a comprehensive study of different categories of states. Developing countries need to reconsider and revise their strategies for international trade, diplomacy, and politics in the context of anti-dumping measures, unlike the traditional developed countries. Moreover, the developing countries were still dependent on their commodity trade rather than technology and

[50] Commonwealth Secretariat, WTO Negotiations on the Agreement on Anti-Dumping Practices, Technical Paper, BUSINESS AND THE MULTILATERAL TRADING SYSTEM, at 1, International Trade Centre UNCTAD/WTO (June 2005), https://ticaret.gov.tr/data/5b8ee73113b8761b8471c2c4/wtonegotiations.pdf.

services for earning foreign income. Whereas the traditional users of anti-dumping, developed countries, had shifted their revenue source towards the services, technology and tourism. Therefore, it is crucial to conduct a sophisticated and detailed study of developing countries and their involvement with anti-dumping measures in order to understand the patterns and trends that have emerged in the post-WTO era. For a developing country like India, this analysis will reveal certain patterns and deviations, which will help determine specific aspects of the Indian legal and economic environment.

CHAPTER 4 -ANTI-DUMPING AND DEVELOPING COUNTRIES

The developed countries were the users of anti-dumping in the pre-globalization era. The dumping and anti-dumping measures were among the major reasons for a tussle between the developed European nations, the US, and Canada in terms of trade. The countries have enacted anti-dumping laws from the early 20th century. Before the decolonization and World Wars, there were random instances of dumping and anti-dumping measures across the world. Later, the Emergence of GATT as a global platform for nations for uniform and harmonized trade rules brought some global consensus on anti-dumping. The negotiations on GATT and the enhanced participation of developing countries increased the number of countries using anti-dumping. In the era of globalization, the transition economies opened up their market, and they were keen on using anti-dumping to protect their domestic economy. It is also important to understand that the anti-dumping actions accounted for 89.1 percent of the total contingent measures taken. The countervailing measures and safeguards have only constituted 7.1 per cent and 3.8 percent respectively.[51]

In the second half of the 20th century antidumping had remained a minor trade instrument. The disputes on anti-dumping measures were relatively few and far between until 1980. The detailing of anti-dumping provisions through Kennedy Round and the Tokyo Round along with increased participation from the developing countries in the GATT negotiations caused a hike in the use of anti-dumping. This can also be attributed to the increased liberalisation of developed economies. They were looking for some WTO-consistent trade remedies for protecting their economies.[52]

Before the establishment of WTO, anti-dumping has become a popular form of protectionism. The Uruguay Round had detailed debates and deliberations on anti-dumping. The debate was between the traditional users, who were essentially industrialized countries such as the US and the European Community, and the traditional non-users, mostly developing countries. These developing countries were mostly characterized by

[51] Rowe and Maw , *"Global Protection Report 2001*", April (2001)
[52] AGGARWAL, *supra* note 35. Pg 4

agriculture-oriented economies, trade-restrictive markets, new sovereigns gaining independence in the decolonization in the 1960s, and import restrictions. Therefore, the demand by these different interest groups will be based on two different footings. The developed countries were looking for free and open markets in the developing countries, whereas the developing countries wanted to explore the opportunities of globalization and technology for the developmental purpose of their community. Therefore, both groups of nations demanded anti-dumping provisions to an extent. The traditional users of anti-dumping raised the demand for strengthened de minimis rules and provisions for sunset review. On the other hand, a cumulation provision was added and did little to restrain the use of price undertakings. This compromised position was necessary for reaching a position of consensus and will eventually lead to further AD disputes in the WTO dispute settlement system. [53]

Many scholars have observed that the embrace of Anti-Dumping by the US and EU was a bit surprising. They were the leading promoters of the free-market concept and argued that the least government intervention is key to economic growth and welfare. On the other hand, it often seems that just when developing countries begin to operate efficiently and become competitive in particular markets, the developed countries shut down those precise markets with a trade policy that is universally decried by economists. This mentality was described as '*do as I say, not as I do*' against the US and EU as they were their double standards was criticized by many scholars.[54]

The international law on Anti-Dumping was drafted primarily by Americans and Europeans. They were among the first to take advantage of these rules and remain among the most active users of Anti-Dumping. The legal studies on anti-dumping have tended to focus on American and European practices.[55] In the pre-1980's developing countries hardly initiated and imposed anti-dumping charges. This was primarily due to structural characteristics of these states such as closed economy, high tariff rates and the policy of self-reliance. Moreover, these nations were targets of the Anti-dumping actions by

[53] Thomas J. Prusa, *On the Spread and Impact of Anti-Dumping*, 34 CAN. J. ECON. REV. CAN. ECON. 591,592 (2001).
[54] *Id.*
[55] Mark Wu, Antidumping in Asia's Emerging Giants, 53 HARV. INT'l L.J. 1, 3 (2012).

developed countries. Before, developing countries were particularly affected by anti-dumping measures. They were not only most frequently impacted by these measures, but their businesses were also especially vulnerable to their negative effects. These companies lacked expertise, financial resources, and technical equipment, making it much more challenging for them to protect their interests in an anti-dumping investigation. Additionally, they were much less capable of mitigating the economic effects caused by anti-dumping and countervailing actions.[56]

The most damaging effect of anti-dumping actions is their impact on exports. Even the threat of an investigation can causes a decrease in exports, regardless of whether a duty will actually be imposed. Importers become wary and look for other sources of goods. This means that the current anti-dumping procedures can lead to unfair losses for exporting companies, regardless of the final decision. Additionally, the situation is made worse by Article 10.8 of the WTO Agreement, which allows for the retroactive imposition of a duty from the start of the investigation.

In addition to this, an antidumping investigation is an expensive undertaking for the exporter. The exporter is obligated to take part not only in the initial investigation but also in administrative reviews, which adds to the cost. It also takes significant time due to the uncertainty over the outcome, which can last for years, and they cannot defend their interests equally. This inadequacy of legal and financial resources restricts the capacity to contest the legitimacy and legality of an AD action and limits the possibilities of developing countries to initiate Anti-dumping actions.

4.1 EMERGENCE OF DEVELOPING COUNTRIES AS DOMINANT USERS OF AD

In the post-1980s, it is interesting to note that traditional users are no longer dominant users of anti-dumping. The developing countries hold the largest share of AD measures in force. A significant share of Anti-Dumping initiations and measures has imposed by the “new user” developing countries such as Argentina, Mexico, Brazil, Colombia, Indonesia, Peru,

[56] Kanika Gupta & Vinita Choudhury, Anti Dumping & Developing Countries, 10 KOR. U. L. REV. 117 (2011)

Turkey (Türkiye), Peru and Venezuela. These developed countries consist of 40% of new investigations and 45% of new measures imposed.[57]

In the period of GATT negotiations there is a sparing difference of the users of Anti-dumping instruments. In the decade of 1970s, active users of anti-dumping were limited to a few nations. In the 1980s, the significant users of anti-dumping were essentially five states, namely, the United States, Canada, New Zealand, Australia and the European Union. There were more than 1600 AD cases recorded in this decade and 95% of these cases were initiated by developed countries.[58] When it came to the 1990s, the rate of increase showed a 25 percent increase than the preceding decade—the decade of WTO establishment recorded approximately 2200 Anti-Dumping cases worldwide.[59]

More than the increase in usage, it was the change of users came into the limelight. The Countries of all phases of development and industrialization have joined the ranks of active users of Anti-Dumping and it was the new players in the field that actually made the change. The filing by the new users had increased by five times in the decade of 1990s from the rate of 1980s. For instance, in the year 1987-1990, the number of AD actions taken by Argentina is zero per year. But the Argentine AD actions raised to 14 in the year 1992 and 27 in the year 1993. This pattern is visible in other developing countries. The share of traditional users of Anti-Dumping dropped from 80 percentage in 1987 to 33 percentage in 1996.[60] In the GATT period of 1985-1994, the four traditional economies had initiated 1509 investigations that constitute 73 percent of the total Anti-dumping investigations. When it came to initial decade of WTO, both the number and share of anti-dumping by came down to 962 and 36 percent respectively. In case of developed economies including India, it soars from 336 to 1045 in numbers and 16 to 39 in proportional share.[61]

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[57] Chad P. Bown, *THE WTO AND ANTIDUMPING IN DEVELOPING COUNTRIES*, 20 ECON. POLIT. 255, 256 (2008).
[58] J. M. FINGER & NELLIE T. ARTIS, ANTIDUMPING: HOW IT WORKS AND WHO GETS HURT, UNIVERSITY OF MICHIGAN PRESS (1993).
[59] Prusa, *supra* note 53 at 594
[60] Raul Torres & Mario Ruiz, *The International Use of Antidumping: 1987-1997*, 32 J. WORLD TRADE, 7 (1998),https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\TRAD\TRAD1998057.pdf (last visited Jun 7, 2024).
[61] Bown, *supra* note 57 at 257.

Unlike developed countries, these developing economies do not have any long historical evolution for AD laws and statutes. These economies followed the new economic world order and opened its economy for foreign trade and economies. Most developing countries and other non-traditional users did not have any formal complaints of dumping before 1980s. They were mostly making use of import restrictions or tariffs to control the infusion of excess products against the domestic producers. In that scenario, dumping was not an issue for the developing economies. In the past, developing countries joined GATT/WTO and were no longer able to use tariff barriers and import restrictions. However, after joining GATT/WTO, these countries introduced anti-dumping (AD) legislation and started filing cases. For example, Mexico signed the GATT/WTO Anti-Dumping Agreement in 1987 and filed more than thirty cases within three years. Argentina lodged its inaugural anti-dumping (AD) complaint in 1991 and has maintained an average of nearly twenty cases annually since then. South Africa, too, has been launching over twenty cases each year after implementing its AD legislation. This trend of quickly employing the new legal tool is also observed in India, Indonesia, Turkey, Malaysia, Peru, Israel, Colombia, Costa Rica, and Venezuela. It's abundantly clear from the evidence that AD statutes are actively utilized rather than being left to gather dust. Prior to the establishment of the WTO, several developing countries had enacted antidumping laws. Among them were Argentina in 1972, India in 1985, Mexico in 1986, Brazil in 1987, Turkey in 1989, Colombia in 1990, Peru in 1991, Venezuela in 1992, and Indonesia in 1995. Despite this, it wasn't until after they became members of the GATT/WTO that these nations started to apply antidumping measures more vigorously.[62]

4.2 TARGET COUNTRIES OF ANTI-DUMPING

The impact of anti-dumping can be studied not only by its usage by a nation but also by looking into the nations targeted by anti-dumping investigations. Similar to the changing pattern in the AD usage in the last three decades of twentieth century, the pattern of changing target nations is also interesting. Since 1990s, Anti-dumping charges were

[62] Kanika Gupta & Vinita Choudhury, Supra Note 56, 124

investigated against around hundred countries. The decade of 1990s witnessed two times the countries targeted in the decade before. [63]

The dumping charges were made mostly by a few traditional users in the pre-globalization era. The Anti-dumping actions were initiated against another traditional user. Almost one-third of the Anti-Dumping investigations were done by a traditional user against another. These percentage measures were the same in the next decade, where AD investigations were against the fellow users. In the 1990s, it was not just about the traditional user, and new users were also part of this practice.

The reasoning behind this trend is primarily based on the argument that numerous nations utilize anti-dumping measures as a response to sanctions imposed on their imports. Countries implement anti-dumping measures with the dual aim of safeguarding their domestic industries against unfair trade practices and ensuring their exporters are shielded from legal abuses overseas. From this perspective, anti-dumping (AD) measures are a part of a tit-for-tat strategy. In this scenario, many AD actions are driven not by a desire to make markets more competitive, but rather by a wish to discourage other countries from utilizing trade laws. In essence, by increasing the costs of exporting, a government aims to also increase the costs for others who are reliant on trade laws.

The renowned Scholar P.K.M Tharakan has tried to understand this phenomenon by the help of an additional category of economies in transition. The economies in transition mostly include Russia, other earlier Soviet Union federations, Yugoslavian Republics etc. From 1987 to 1997, about 73 percent of the decisions came from developed countries, affecting both themselves and the developing nations equally. Approximately 15 percent of anti-dumping (AD) actions targeted transitioning economies. Out of 273 total definitive anti-dumping actions taken by developing countries, 80 were directed at developed nations, 84 at other developing nations, and 109 at economies in transition. The frequency of actions against transitioning economies was significantly greater compared to the other groups. [64]

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[63] Prusa, *supra* note 53 at 596.
[64] P.K.M Tharakan, *The Problem of Anti-Dumping Protection and Developming Country Exports,* WIDER,, 15,16 (2000).

Let's consider some of the target nations in early years of WTO. Armenia faced two investigations launched by Mexico and the US each. This was same in the case of Azerbaijan. Bangladesh faced two investigations from Brazil and one from the United States. Brazil were the sole complainants against against Sri Lanka in 2 instances. Vietnam faced one investigation each from Colombia and the European Union. The trend is very clear that majority of the anti-dumping investigations against the small, vulnerable nations were filed by developing countries.

4.3 EFFECTS OF ANTI-DUMPING IN DEVELOPING ECONOMIES

The Article VI of the GATT,1947, provides that the contracting parties has to condemn dumping of products that causes or threatens to cause material injury to established industry in the territory of a contracting party.[65] Primary aim of having an Anti-Dumping legislation is to provide protection for the domestic industry from unfair trade practices of foreign exporters. Usually, the act of dumping is seen as harmless because it provides consumers with cheaper goods and fosters competition among domestic producers. However, dumping can be harmful when it involves predatory pricing - exporting goods at a cost below the production cost to eliminate competing producers - as it unfairly damages domestic industries with competitive pricing[66]. The disparity between global powers in terms of natural resources, production capacity, technology, and human capital will create a disproportionate leverage in international trade. This hinders global trade cooperation and harmonization.

This trade disparity will create a power imbalance in the free market and cause compulsion for government intervention. Anti-dumping is considered to be the most used WTO-consistent contingent protection. In the absence of tariffs and other quota restrictions, the anti-dumping is the safety valve for the establishment of a market with solid foundation. But it important to note that the international trade scenario is not just market driven.

[65] Article 6, The General Agreement on Tariffs and Trade (GATT 1947)
[66] Bhumika Billa, Strategising Protectionism: An Analysis of India's Regulation of Anti-Dumping Duty Circumvention, 10 TRADE L. & DEV. 417, 419 (2018).

Rather, there are elements of geo-politics and diplomacy. In this conjuncture, it is important to understand the effect of Anti-dumping on the developing economy.

Anti-dumping has been a widely used industrial policy since the late 19th century. The developed and industrialized countries have used this protectionist instrument throughout these years. In the post-WTO era, it is visible that developing countries are the heaviest users of this policy.[67] Till this date, the recorded investigations that led to measures in force by both the US and EU combined is summed as 762 and that combined of India and China is 652.[68] It is to be noted that first recorded Indian Anti-Dumping investigation was in 1992 and that of China is in 2003. From this data it is perceptible that developing countries have become more frequent user of this instrument than developed countries.

In the context of developing nations, deploying anti-dumping (AD) measures in trade has its pros and cons, akin to the experience of more developed economies. The assessment is that, even though it's argued that AD policy can lead to anti-competitive results, the impact on welfare is significant, particularly for local consumers and businesses utilizing these products. Hence, a detailed analysis of the presence of predatory pricing and substantial harm is essential if AD policy is to continue to play a crucial role in the realm of global trade policy.

Measures against dumping are seen as obstacles to trade, regardless of the reasons behind them. Anti-dumping actions have a substantial impact on the quantity of imports. When an anti-dumping dispute leads to the imposition of duties or is resolved, it is estimated that, on average, the volume of imports decreases by nearly 70 percent and import prices increase by more than 30 percent. It is noteworthy that even when an anti-dumping dispute is ultimately dismissed, the scrutiny still significantly affects trade. The investigations

[67] N. Gregory Mankiw & Phillip L. Swagel, *Antidumping: The Third Rail of Trade Policy*, 84 FOREIGN AFF. 107 (2005).
[68] Antidumping investigation initiations - Trade Remedies Data Portal, https://trade-remedies.wto.org/en/antidumping/investigations#eyJ5ZWFycyI6W10sInJlcG9ydGluZ01lbWJlcnMiOlt7ImNvZGUiOiJDMTU2IiwibGFiZWwiOiJDaGluYSJ9XSwiZXhwb3J0aW5nTWVtYmVycyI6W10sImhzU2VjdGlvbnMiOltdLCJzdGF0dXMiOiJhbGwifQ== (last visited Jun 8, 2024).

themselves create market distortions. Even if the case is rejected, imports decrease by approximately 20 percent.[69]

The post AD measure scenario of a domestic industry can change its production and operation strategy. Domestic companies producing goods that compete with imports can regain market share from foreign companies by implementing anti-dumping measures. Moreover, during the years 1994-1998, 24 cases of anti-dumping (AD) were documented in Mexico. It is argued that the industries within the country that produce chemicals, steel, food, rubber, and paper and are vulnerable have gained the most from the protection provided by AD measures.[70]

In order to promote fair trade, anti-dumping laws aim to prevent foreign companies from selling their goods for lower prices in domestic markets compared to similar domestic products. This encourages foreign companies to adjust their pricing strategies to be in line with domestic prices, resulting in a market where there is no dumping margin and similar products have uniform pricing.[71]

Apart from serving as a protective measure, the use of anti-dumping (AD) policy as part of commercial policy also benefits developing economies by redirecting profits from dumping to the economies that have been dumped on. This is achieved through the collection of import revenues from anti-dumping measures. Ultimately, the strategic function of generating revenue has a positive impact on the economies of developing countries in the medium to long term.

Malhotra and Malhotra conducted an analysis of Anti-dumping measures in the pharmaceutical industries. Based on the data from all AD petitions imposed on pharmaceutical products from 1992 to 2002, their analysis suggests that AD duties led to limitations on imports from countries mentioned in the petition. They also discovered that there was minimal to no trade redirected to countries not mentioned in the petition. The

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[69] Prusa, *supra* note 53 at 594.
[70] Ishak Mohammed, *The Positive and Negative Effects of the Use of Anti-Dumping Policy in Developing Countries*,https://www.researchgate.net/publication/296706115_The_positive_and_negative_effects_of _the_use_of _Anti-dumping_policy_in_developing_countries (last visited Jun 8, 2024).
[71] Tivig T & Walz U, *Market Share, Cost-Based Dumping, and Anti-Dumping Policy*, 3 CAN. J. ECON. REV. CAN. ECON. 69 (2000).

situation of Vitamin C, where numerous AD petitions led to trade diversions, does not appear to represent the entire pharmaceutical industry in India. This suggests that the primary beneficiaries of the protection are domestic producers rather than foreign ones. Furthermore, these findings also indicate that this could significantly disadvantage consumers, leading to higher prices due to import protection.[72]

India is still having ongoing investigation against Switzerland, China and European Union on dumping charges of Vitamin A Palmitate.[73] In a country like India, Anti-Dumping can be burdensome for the ultimate consumers. Especially when it comes to the field of pharmaceuticals and other necessities. A demography compromising of a large chunk of its individuals under the poverty line cannot sustain on such practices.

Once companies in one country have been targeted with an antidumping petition by those in another country, there will always be a motivation for retaliation. The concern, however, is that if countries continue to retaliate against every positive antidumping policy, the number of antidumping actions will increase at a faster rate. Consequently, this undermines the core of free trade and weakens the competitiveness and productivity gains of domestic companies. Recent rises in the initiation of antidumping cases by some developing countries like China, India, and Brazil are primarily directed against countries that previously imposed antidumping laws against them.[74]

The potential long-term economic consequences of implementing anti-dumping policies on developing nations could be significant. Historical experiences of using antidumping policies indicate that a key challenge for new users is the complexity of revoking an antidumping measure once it's in place and local businesses are reaping its benefits. Despite the WTO's mandatory 5-year "sunset review" for all imposed measures, evidence from the US indicates that this obligation has minimal impact on removing an already imposed measure. Consequently, there are few, if any, historical cases of countries that have been

[72] Nisha Malhotra & Shavin Malhotra, *LIBERALIZATION AND PROTECTION: ANTIDUMPING DUTIES IN THE INDIAN PHARMACEUTICAL INDUSTRY*, 12.
[73] DGTR 3/3, 6/15/2022
[74] Thomas J. Prusa & Susan Skeath, *The Economic and Strategic Motives for Antidumping Filings*, 138 WELTWIRTSCHAFTLICHES ARCH. 389, 404 (2002).

consistent users of antidumping measures suddenly reducing or discontinuing their use. The economic repercussions of such a policy on an economy could be substantial.[75]

4.4 CHINESE EXPERIENCE WITH ANTI-DUMPING

Let's examine how China is affected with Anti-dumping. China is one of the fastest-growing economies in the world. Regarding production and trade, China cannot be ignored in any field. Volume and importance of Chinese products in the global market is huge. China became a WTO member later only in 2001. The United States has adopted Anti-Dumping provisions against China prior to WTO and China made its first AD measure against US only after a decade of WTO on 2005. Till this date, the United States has reported 152 cases against China and China reported 28 instances of Anti-Dumping measures against US. [76]

Imports from China experienced a significant decrease in the US during the year following the base year. Both the quantity and value of imports were 12% and 15% lower than the base year, respectively. The impact of AD measures in restricting trade is more pronounced when higher duties are imposed. There is a substantial increase in both the quantity and value of imports from other countries due to trade diversion. In cases where imports are rejected, there is an initial decline in both the value and quantity of imports, followed by a rapid rebound. It is evident that there is a negative correlation between imports from the PRC and imports from other countries during the investigation and the early days after duties are imposed. Following the preliminary decision in a given year, there is a notable decrease in US imports from the PRC, while imports from other countries are on the rise. The following year sees a rebound in imports from the PRC. Consequently, the growth rate of imports from other countries begins to decline, leading to the diminishing effects of trade diversion and weakening trade restrictions.[77]

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[75] Bown, *supra* note 57 at 286.
[76] Antidumping measures - Trade Remedies Data Portal, https://trade-remedies.wto.org/en/antidumping (last visited Jun 9, 2024).
[77] Minsoo Lee, Donghyun Park & Aibo Cui, *Invisible Trade Barriers: Trade Effects of US Antidumping Actions Against the People's Republic of China*, SSRN ELECTRON. J., 13,14 (2013), https://www.ssrn.com/abstract=2474559 (last visited Jun 9, 2024).

In this study (Y.H Mai, 2002),, the bilateral trade statistics of products that are subject to definitive anti-dumping measures to understand the impact of the EU's anti-dumping measures against China on trade are analysed. As of June 2000, out of a total of 330 cases on the EU's current anti-dumping and anti-subsidy list, 49 cases were directed at China. Among these cases, there were 11 instances of definitive measures imposed before 1995, 21 cases with definitive measures imposed during 1995-19985, 1 case with definitive measures imposed in 1999, 10 new cases under investigation with 5 provisional duties imposed, and 6 cases initiated since late 1999 but terminated without any definitive measures.[78]

The study shows that anti-dumping actions tend to be highly restrictive on trade. Following the enforcement of anti-dumping duties, there's a noticeable shift in bilateral trade patterns, from a trajectory of growth to decline. For instance, in 1995, the European Union began an investigation into the imports of footwear with textile uppers from China. Following this, between February and October of 1997, a provisional duty of 94.1 percent was implemented. From November 1997 onwards, a definitive duty of 49.2 percent was established. Before these duties were put in place, exports of these Chinese products to the EU had seen an increase from US$171 million to US$178 million. However, in line with the imposition of these anti-dumping measures, there was a significant drop in exports, falling from US$178 million in 1996 to US$95 million in 1997, and further down to US$90 million in 1998.[79] During the years 1995-1998, the total value of Chinese exports to the EU grew by US$9,051 million. The decrease in Chinese exports to the EU, which occurred at the same time as the implementation of final anti-dumping duties between 1995-1998, represents 3 percent of the overall increase in Chinese exports to the EU.

4.5 IMPORTANCE OF AD IN DEVELOPING COUNTRIES

It is evident from the instances given above that unlike earlier Anti-dumping practices, the post-WTO era involves a lot of intricacies due to global participation. The countries at every phase of development are an AD user. On the one hand, there are developed

[78] Y H Mai, *AN ANALYSIS OF EU ANTI-DUMPING CASES AGAINST CHINA*, 9 ASIA-PAC. DEV. J. 131 (2002).
[79] *Id.* at 140.

economies such as the United States, Canada and EU and on the other hand, developing countries like India, Brazil, Argentina and China participates in AD club. India and China had a fast GDP growth and currently is the highest GDP producing countries next to US. These states came into the global ground of trade when it became a norm to have free trading system and it is an exception to have trade barriers. At that time, emerging nations faced a dilemma regarding globalization, open trade, and the growth of local industries. Consequently, these developing countries formed a powerful new group, and failing to acknowledge their issues would weaken the WTO's credibility and its support for trade openness.

Developing countries face a significant challenge in increasing their access to markets, especially those in developed countries. The developed countries bias exists because they represent the most important markets for the exports of developing nations. Nevertheless, there are various trade barriers in place in these countries. Among these barriers, anti-dumping duties stand out as particularly egregious. Over the past 30 years, there has been a substantial increase in the use of anti-dumping cases, making it the most common obstacle under the WTO regime.

The consequences of Anti-Dumping measures disproportionately impact developing nations. Typically, developing countries have a minimal share in global trade. When they bring a case against a developed nation, it has little impact on the exports of the accused country. Conversely, when a developed country challenges the exports of a developing nation, it can have a highly destabilizing effect. Developing countries are unable to bear the protectionist costs of Anti-Dumping measures.[80]

Developing countries may sometimes commence Anti-Dumping actions primarily to build the capability to contest cases brought against them and to display some retaliatory threats. Possibly, they may initially target other developing nations, which are evidently more vulnerable. This initiates a chain reaction, leading to a rise in the number of cases involving

[80] ARADHNA AGGARWAL, *supra* note 29 at 5.

both developing nations as defendants and complainants. Therefore, the increasing use of this measure against developing countries is partly accountable for its growing use by them.

The debates that structured international bodies like WTO have always witnessed the conflict of interest between developed and developing countries. Therefore, international trade law studies and analyses every phenomenon through the eyes of the categories of developed and developing nations. The scholars study the Anti-Dumping phenomenon by studying the traditional users such as the United States, EU, Canada, and Australia and, on the other hand, developing countries as a category. Unlike the former classifications, the latter is much more complicated. There are more points of difference among the latter group other than the factor of "developing" as a category. For instance, the market structure of these countries is not the same as that of developed countries.

Throughout the 21st century, protectionist measures have once again become prominent due to the global economic crisis. Since 2007, there has been a noticeable increase in the number of these measures implemented annually. For example, in 2008, 70 measures were enforced, and there has been a consistent rise or a slight decrease each year. There was a decline in the number of measures in 2020, mainly due to the impact of the Covid-19 virus. However, the following year saw a significant surge in the implementation of anti-dumping measures, reaching a peak of 245. Additionally, data indicates that countries such as the US, the EU, India, and China are among the top 10 exporters and reporting countries recognized by the WTO.

Still, little attention has been paid to the individual antidumping regimes of India and China. Yet, without question, both countries are increasingly important to world trade. The latest round of global trade talks collapsed in July 2008 because these two Asian emerging powers were unwilling to sign on to a compromise brokered by the industrialized nations that constitute the established trading powers.[81]

The traditional powers' decline due to financial difficulties, the rising GDP of India and China, and their vast markets make them formidable forces. European powers are shifting

[81] Stephen Castle & Mark Landler, After 7 Years, Talks Collapse on World Trade, N.Y. TIMES, July 30, 2008,

their economies toward a more service-oriented approach and reducing their focus on manufacturing. Meanwhile, India and China are increasing their production in both agriculture and industry. Both governments are using international trade laws to safeguard their domestic industries, primarily through antidumping measures.[82]

Starting from 1999, whenever the United States or EU has imposed antidumping duties on India, India has responded by imposing antidumping duties of its own. India has employed the same retaliation strategy towards its Asian neighbours (China, Indonesia, South Korea, Taiwan, and Thailand). Therefore, it's not surprising that Americans and Europeans have come to believe that India's increased use of antidumping sanctions has, to some extent, been motivated by a desire for retaliation.

The Indian experience with anti-dumping policies is important to study. India's role as both an exporter and reporting country is significant in WTO statistics and requires in-depth analysis. While the impacts cannot be solely attributed to anti-dumping measures, they play a strategic role in global trade relations and diplomacy. India holds a prominent position as one of the largest markets in the world and attracts multinational corporations regardless of the products or services offered. Additionally, India is emerging as a significant production hub and it is crucial to maintain good relations with foreign economies and markets.[83]

[82] Mark Wu, Antidumping in Asia's Emerging Giants, 53 HARV. INT'l L.J. 1 (2012).
[83] Aradhna Aggarwal, *Trade Effects of Anti-Dumping in India: Who Benefits?*, 25 INT. TRADE J. 112, 117 (2010).

CHAPTER 5 -INDIAN EXPERIENCE WITH ANTI-DUMPING REGIME

Indian economy is one of the fastest-growing major economies in the world. Its economy expanded by 7.2 percent during the fiscal year 2022-2023. The total foreign trade of India surpassed $1 trillion in the calendar year 2023. India shipped out commodities and services worth $422.23 billion, while imports amounted to $625.87 billion by November 2023. Over the last ten years, India's imports have increased by 7% annually, reaching $716 billion in 2022/23 from $450 billion in 2013/14. India's top trade partners are the United States and China.[84]

As one of the world's leading trading nations with high prospects, the significance of Indian policy and practice regarding trade remedies, particularly anti-dumping, cannot be overstated. Considering the volume of current import and export and the potential of Indian market with the world's second largest population, every player in the global trade market has an eye on India. Considering India's past as a British colony and a self-reliant, import-restricted economy, India's shift towards an open and free economy has resulted in many intricacies. India followed an inward-oriented development mechanism. In the late 1980s and early 1990s, India experienced significant external shocks that caused major macroeconomic imbalances. Consequently, in 1991, India sought a stand-by arrangement (SBA) from the IMF. As part of the conditions imposed on India, the central government was required to carry out substantial structural changes, such as trade liberalization, financial sector reform, and tax reform. [85]

Before the IMF arrangement, the average tariff on Indian imports in 1990-1991 was 87% based on weight and 128% based on a simple average, with some tariffs exceeding 300%. This indicated that importing goods into India for commercial purposes was exceedingly difficult. Following the SBA, the highest tariff dropped from 355% to 150% within the initial year of implementing economic policy reforms. Subsequently, it was further reduced

[84] FAZAL RAHIM, *India's Foreign Trade In 2023: Its Top Trading Partners And Most Traded Commodities*, FORBES INDIA, https://www.forbesindia.com/article/news/indias-foreign-trade-in-2023-its-top-trading-partners-and-most-traded-commodities/90611/1 (last visited Jun 10, 2024).
[85] Chad P. Bown & Patricia Tovar, *Trade Liberalization, Antidumping, and Safeguards: Evidence from India's Tariff Reform*, 96 J. DEV. ECON. 115, 117 (2011).

to 38.5% in the 2001-2002 fiscal year.[86] The exogenous nature of India's IMF-mandated trade liberalization and other reforms has been studied and analyzed as a natural experiment. However, there are chances of reversal of these reforms through WTO-consistent trade remedies. To correct imbalances caused to the domestic industry due to unexpected influx of foreign capital and goods, anti-dumping acted as the most used protective measure.

The Indian AD practices are particular due to various reasons. The size of India as a trading partner, its untaped potential due to dense population and occurrence of unanticipated events at a short period of time, the trade liberalization of India and the establishment of WTO as a global trade organization happened within a span of 4 years and soon after, India adopted and executed AD measures. In addition to that, the success rate of Indian AD actions is quite high. In the first ten years, out of 396 AD investigations, 320 resulted in AD duties. The success rate of AD investigations in India is 81 percent which highest than other users except China. Also, the diversity of Indian AD actions, in terms of the sectors, was also vast. In the four-digit sector classification, India targeted 93 sectors which is higher than every other state except the United States. Also, in terms of number of target countries India targeted 55 countries in the statistics of first 10 years. This shows that Indian use of anti-dumping was vast and extensive. In a technical sense, it was successful as a protective measure against unfair trade practice. [87]

5.1 ANTI-DUMPING LEGISLATION IN INDIA

The first Indian Anti-dumping legislation existed in 1985 when the Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1985 were notified. The legal basis for the present AD law investigations and enforcement in India comes from Sections 9A,9B and 9C of the Customs Tariff Act, 1975 as amended in 1995. In addition, Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for

[86] Srinivasan, T.N., 2001. *India's Reform of External Sector Policies and Future Multilateral Trade Negotiations,* Economic Growth Center, Discussion Paper no. 830, Yale University
[87] Aggarwal, *supra* note 83 at 120,121.

Determination of Injury) Rules, 1995 were also notified to make Indian laws compatible with WTO ADA and other provisions.

India does not possess specialized legislation regarding anti-dumping. However, the various clauses in the Customs Tariff Act of 1975 practically serve as India's anti-dumping law. The 1995 amendment to the Act was implemented to bring the existing customs law in line with WTO provisions. The Customs Tariff Rules establish the procedural guidelines for identifying, evaluating, and collecting anti-dumping duties. These rules outline a comprehensive process for initiating an investigation, determining injury, and imposing the anti-dumping duty.[88]

The application or complaint for AD investigation can be filed by or behalf of the concerned industry which has faced injury due to dumping. The application should be filed before the 'designated authority' under the Directorate of Anti-Dumping and Allied Duty, Ministry of Commerce, Government of India. The application should include prima facie evidence in respect of dumping, material injury and the casual link between dumping and injury.[89]

The designated authority is responsible for examining the application. The Authority checks the accuracy and adequacy of the evidence provided. In case of certain minor discrepancies, the authority shall issue a deficiency letter asking the applicant to confirm to the provisions in providing necessary information. Prior to the investigation, the Designated Authority has to notify the exporting country's government regarding the initiation of the AD investigation.

The AD investigation begins with an official notice published in the gazette. Said notice contains details about the item being investigated, the country of origin, the start date, the duration of the inquiry, the grounds for alleged unfair pricing, a brief overview of the factors contributing to the claim of harm, the contact information for the involved parties, and the deadlines for responses. The interested party is provided a 40 day period within

[88] Owais Hasan Khan, *A Critique of Anti-Dumping Laws* 84-85 (Cambridge Scholars Publishing 2018).
[89] Rule 5(2), Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1995

which they can file a reply to Designated authority. The reply must be provided in prescribed questionnaires.

The rules allow for initial conclusions and ultimate conclusions. If preliminary findings are made, the Designated Authority must move quickly to conduct the investigation and must document preliminary findings about export price, normal value, dumping margin, and harm to the domestic industry. The preliminary findings offer immediate assistance to the domestic industry while the investigation is being completed and the final decision is being made. The Designated Authority is empowered to impose a provisional duty not exceeding the dumping margin.

The Designated Authority shall give final findings on the goods under investigation as of it being dumped or not in Indian market. The final finding shall contain the name of the supplier or the origin country, description relevant for customs purposes, dumping margin, rationale behind the investigation methodology, export price and normal value etc. It must also include the factors regarding injury determination and final determination. The Customs Excise Gold (Control) Appellate Tribunal has the authority to challenge the final findings of the Designated Authority in the first instance. Further, the High Courts are having appeal jurisdiction. In response to the exhaustion of domestic remedies, the trading country has a locus standi to take and represent the matter at WTO Dispute Settlement Understanding.

Parallelly, Administrative reviews are available through various review mechanisms such as sunset review, Mid-Term review and New Shipper's review. These reviews are intented to limit the scope of the AD measures as minimum as possible. It is against the goals of WTO to have a permanent AD measure. AD measure is supposed to be taken back if there is no dumping prevailing.

In India, the Administrative Authority entrusted with the duty of implementing AD measures and allied functions was the Directorate General of Anti-Dumping and Allied Duties (DGAD) under the Ministry of Commerce. The DGAD was replaced by Directorate General of Trade Remedial Measures (DGTR). It provides a single national entity framework to deal with all kinds of trade remedial measures such anti-dumping,

countervailing measures and safeguard. The restructuring came into effect on 17th May 2018.[90]

The AD regime in India confers discretionary powers to the Designated Authority in determining the scope of 'domestic industry'. It will examine implication of 'domestic industry can be extended to producers, who are related to exporters or importers of the alleged dumped article. The Designated Authority is empowered with discretionary powers to determine that existing producers and importers of the same product are to be considered domestic industry.

In the cases *of Nirma Ltd. v. Saint Gobain Glass India Ltd*[91] and *State of Gujarat Fertilizers & Chemicals Ltd. v. The Additional Secretary and Designated Authority*[92], the Madras High Court and the Calcutta High Court confirmed the understanding that the discretion lies with the Designated Authority. Similarly, the Designated Authority enjoys wide discretion in determining the scope of the product under consideration and its domestic variants. The WTO panel in the EC-Salmon case has affirmed this discretionary power.[93]

Until 1993, the anti-dumping (AD) law in India was widely regarded as merely symbolic due to the substantial import tariffs in place, which effectively prevented dumping or subsidization from causing significant harm to Indian industries. However, following the reduction in import duties starting in 1995, the Indian government has increasingly invoked the AD law to address instances of dumping and subsidization. The Supreme Court of India had the opportunity to thoroughly analyze the purpose and intent of India's anti-dumping law in the case of *Reliance Industries Ltd. v. Designated Authority and others*[94]. It point out the following:

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[90] Department of commerce India Government of, *Directorate General of Trade Remedies (DGTR)*, MCOMMERCE, https://commerce.gov.in/about-us/attached-offices/directorate-general-of-trade-remedies-dgtr/ (last visited Jun 11, 2024).
[91] Nirma Ltd. v. Saint Gobain Glass India Ltd, 2012 (281) ELT 321 (Mad).
[92] State of Gujarat Fertilizers & Chemicals ltd. v. The Additional Secretary and Designated Authority, (2012) 4 CALLT 103 (HC).
[93] Panel, European Communities - Anti-Dumping Measure on Farmed Salmon from Norway, WT/DS337/R, 16 November 2007, para 7.58
[94] Reliance Industries Ltd. v. Designated Authority and others, (2006) 10 SCC 368

> "The anti-dumping law is, [..], a salutary measure which prevents destruction of our industries which were built up after independence under the guidance of our patriotic, modern-minded leaders at that time and it is the task of everyone today to see to it that there is further rapid industrialization in our country, to make India a modern, powerful, highly industrialized nation"

The purpose of the AD provisions under the Customs Tariff Act and rules is the reason behind the extensive use of AD provisions by India since its first action in 1992 against the imports of PVC Resin from Brazil, Mexico, USA and Korean Republic.

5.2 HISTORY OF INDIAN AD PRACTICES

Since 1992, India is one of the leading users of AD measures globally. According to a United States International Trade Commission document released in 2010, India has filed roughly 20 percent of all global antidumping cases, quite disproportionate to its share of global imports of 2 percent.[95] To this date, WTO reports that India has taken 337 instances of AD measures, accounting for 13.9 percent of the global AD actions post-WTO. On the other hand, 112 AD are being faced by Indian Industries by foreign governments. This accounts for 4.6 percent of WTO AD measures. Before 2009, India never touched 10 cases per year. After that, India shows a steady growth in the number of AD measures. In 2017 and 2021, India initiated 47 and 49 cases respectively.[96] India's better economic position in the post global recession is one of the major reasons for such an extensive application of AD measures.

India initiated its first AD investigation and imposed duty in 1992. The lack of any instances prior to 1992 was because of the highly protectionist trade regime and economic policy. It was characterized by import weighted tariff as high as 87 percent for consumer

[95] Robert M Feinberg, *Trends and Impacts of India's Antidumping Enforcement*, U. S. INT. TRADE COMM., 1 (2010).
[96] Antidumping investigation initiations - Trade Remedies Data Portal, *supra* note 68.

goods and 92 percent for manufactured goods. In addition, there were restrictive licensing and quantitative restrictions, so dumping could not really take place.

India joined the AD bandwagon fairly late. The AD national legislation was passed in 1985, but the first AD case wasn't started until 1992. However, this slow start was quickly followed by a surge of cases. From 1995 to 2004, India launched 400 cases against various countries. China is at the top of the list of targeted countries, followed by the EC.[97] The US International Trade Commission publishes a work by Feinberg and it relies on World Bank for data on Indian Anti-dumping practices. In this, India's AD initiations constituted 29 percent of the global antidumping initiations. In the early 1990s, Indian AD measures did not cross a single-digit count; in 2002, it peaked at 80. Feinberg clarified the exceptionality of this measure by looking into its proportionality with India's share of global import which is just over 2 percent. [98] In other statistics collected and consolidated by A. Aggarwal, in the first five years of WTO India accounts for the 12 percent of the global antidumping instances. The AD cases per billion of goods' import are 0.69 in India as compared to .0.06 for the world. In this period, India is the second largest country in terms of incidence. [99]

Indian Anti-dumping initiations are important not because of its quantity but due to the majority incidents ended up in imposing measures. India files a high number of cases per year, and the majority of cases result in very high duties. Between the years 1992 and 2002 at an average 25.9 cases were filed per year. Out of these 285 cases, 212 cases resulted in some preliminary duty and final duty was imposed in 230 cases constitutes 96.23 percent. The final determination of 'no dumping was recorded in one case and only two cases found no evidence for injury, The average preliminary duty was 80.91% and the average final duty was 80.91% and the highest recorded absolute duty is 693%. [100] Considering the number of measures in effect in the last 5 years, India stands just behind the US in WTO trade remedial measures. From 1995 to 2010, exporters from fifty-five WTO members were subjected to anti-dumping investigations by India. A considerable number of

[97] Bodhisattva Ganguli, *The Trade Effects of Indian Antidumping Actions*, 16 REV. INT. ECON. 930, 932 (2008).
[98] Feinberg, *supra* note 95 at 3.
[99] ARADHNA AGGARWAL, *ANTI DUMPING LAW AND PRACTICE: AN INDIAN PERSPECTIVE*, 3 (2002).
[100] Bodhisattva Ganguli, *supra* note 97 at 932.

countries saw their exporters involved in more anti-dumping cases in India than in any other country. Also, WTO ranks India in terms of AD measures levied against trading partners, and since 2000, India has been consistent in maintaining the top five positions.[101] In the post-WTO era, it is evident that India has become a rigorous user of anti-dumping.

5.3 INDIA AS AN EXPORTER COUNTRY

India is one of the important players in the global trade of commodities. India is facing a trade deficit scenario in which imports surpass exports in terms of value and volume. Presently, India is facing 112 AD measures globally and the US constitutes 33 percent of these measures. Product categories such as base metals and articles of base metal, chemical products, textiles, plastics, and rubber are the majority among the products facing AD measures imposition. [102]

Pallavi Kishore (2014)[103] relied upon data on AD initiations and measures against India from the beginning of WTO till 2012. Based on the data, the European Commission, South Africa, and the United States are the main users of anti-dumping mechanisms against India. The data also indicates that India faced 166 anti-dumping initiations and 97 anti-dumping measures over a period of 17 years. These numbers suggest a significant number of anti-dumping initiatives and measures against India. In fact, between January 1995 and 2000, India was affected by 15 percent of all anti-dumping measures. For a developing country like India, it was difficult to handle these initiations and measures in the very primary stage of its changed economic and trade policy. This will cause considerable barriers to Indian exports in the other member countries' markets.[104]

In order to understand the position of India as an exporter, an examination of certain cases will provide some insight on this aspect. In the US- OFFSET ACT (BYRD AMENDMENT) case[105], India along with other WTO members including EC, challenged the US Continued Dumping and Subsidy Act of 2000 under which anti-dumping and

[101] Mark Wu, Antidumping in Asia's Emerging Giants, 53 HARV. INT'l L.J. 1, 18&19(2012).
[102] WTO Trade Remedial Data Portal
[103] Pallavi Kishore, India's Experience with the Anti-Dumping Mechanism, 2014 INT'l Bus. L.J. 317 (2014)
[104] Ibid, at 319
[105] DS217, 234

countervailing duties assessed on or after 1 October 2000 were to be distributed to the affected domestic producers for qualifying expenditures. Complainants argued that the CDSOA violated the Anti-Dumping Agreement by providing financial incentives to domestic producers to file anti-dumping petitions. In 2003, a WTO dispute settlement panel found the CDSOA to be inconsistent with both the Anti-Dumping Agreement and the SCM Agreement. The panel's decision was upheld by the WTO Appellate Body later that year. The Appellate Body confirmed that the CDSOA encouraged the filing of anti-dumping and countervailing duty petitions, which was not permissible under WTO rules. The case is not an issue of specific anti-dumping rather questioned the AD practice of US which utilized AD duties for financing the competitors.

In Brazil- Anti-Dumping duties on Jute Bags from India case[106], the Brazilian government has decided to keep imposing anti-dumping duties on jute bags and bags made of jute yarn from India. This decision was based on a document that allegedly contained false information about the dumping margin linked to a non-existent Indian company. India has requested Brazil to review this determination. Despite being made aware of the non-existence of the company, the decision to continue anti-dumping duties on Indian jute products remains unchanged. India has been seeking for consultation. The consultation so far is unsuccessful and Indian industries are facing non-trade barriers.

Prior to this, India had lodged two complaints against the EC and demonstrated that the EC had consecutively launched investigations against Indian goods, which constitutes an abuse of the anti-dumping mechanism. India also indicated that such actions hinder a member from reaping the benefits of liberalization. The initial case, EC-Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India[107], did not yield a decision because the EC could not prove dumping and injury. Nevertheless, Indian exporters had to endure the adverse repercussions of an anti-dumping inquiry, leading to a decline in their exports. In the second case, EC-Bed Linen case[108], which was drawn out, India accused the EC of 31 violations of the Anti-dumping Agreement. Notably, the EC's application of

[106] DS 229
[107] WTIDS140
[108] WT/DS141

zeroing, leading to inflated dumping margins, was invalidated. This case also shed light on the inadequacy of art.15[109]. India alleged a breach of this article as the EC failed to explore potential remedial measures, despite the panel believing it should have, the implementation of the ruling was deemed impossible.

The European Commission (EC) targeted the steel industry with anti-dumping measures that were more extensive than those in the textile industry. Between 1994 and 2001, the EC launched the highest number of investigations in this sector. The EC imposed discriminatory final anti-dumping duties on Indian steel products, leading to the EC-Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India[110]. This was resolved through mutual consultations, after which the EC retroactively closed all anti-dumping procedures against India. However, India's dispute with the US in another case was less smooth. In the US-Steel Plate case[111], the US imposed high anti-dumping duties on Indian steel products, leading to a complete halt in exports to the US. The US claimed that the Steel Authority of India Limited (SAIL), a public Indian company, did not cooperate in providing relevant information, forcing the US to rely on available facts in the anti-dumping petition. The panel ruled in India's favor but ambiguously responded to the legal issue regarding the rejection of provided information. Furthermore, it denied the application of art.15 to India, arguing that it refers to developing members and not their enterprises/companies, despite SAIL being a public company.

As an exporter, India has faced hurdles in defending the Anti-Dumping measures from other WTO members. India’s stronghold industries such as textile, iron and steel and pharmaceutical industry. In the South Africa- Anti-Dumping Duties on certain Pharmaceutical Products from India[112], India alleged violation of Art.15 against South Africa. The interesting factor here is that both parties are developing country. But this case on standstill, as no consultation has been done irrespective of repeated requests. In many

[109] WTO Anti-Dumping Agreement, Article 15: Developing Country Members (constructive remedies)
[110] WT/DS313 EC-Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India, Request for consultations of July 5, 2004 and mutually agreed solution of October 27, 2004
[111] WT/DS206 United States-Anti-Dumping and Countervailing Measures on Steel Plate from India, dated June 28, 2002.
[112] WT/DS 168

cases, India is still facing non-tariff barriers. Moreover, these cases made India realise the importance of Anti-dumping as a modern trade remedy instrument.[113]

5.4 EFFECTS OF ANTI-DUMPING ON IMPORTS

The Anti-Dumping measures are going to have a direct effect on imports. It will affect the imports by adding cost to importing as well as cost of product in the market. It is important to study whether such a cause-effect relationship is still prevailing in a macro-economic scenario. The issue to be discussed is whether anti-dumping investigations and measures result in decreased levels of imports.

In general, an anti-dumping initiation or measure will not affect the volume or value of imports per se. The AD measures are mostly country-specific. This means that import volume can be compensated by imports from a third country. If the impact of import diversion on the third country is greater than the impact of import reduction on the target country, then it is possible that an anti-dumping duty does not result in a decrease in total imports from all trading partners. However, according to the Integrated Database of the WTO Secretariat, the actual data indicates that the total import of the affected products increased by approximately 30% while an anti-dumping duty was in effect. This suggests that an anti-dumping duty only provides temporary relief from imports.[114]

In a study by Ganguly (2008)[115], India's AD actions against major target countries were taken into account for the purpose of understanding the relationship between AD and import. It took AD actions between 1992- 20022. The study finds that AD actions cause a drop in import values. In the relevant period, just after the initiation of an AD action, there was a 7.4% drop in imports. In the subsequent year, during the period of investigation, import value dropped by 11.8%. In the following year, after the decision was made, imports dropped by 13.2%.

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[113] Pallavi Kishoire, Supra Note 103
[114] Nakgyoon Choi, *Did Anti-Dumping Duties Really Restrict Import?: Empirical Evidence from the US, the EU, China, and India*, 21 EAST ASIAN ECON. REV. 03, 15 (2017).
[115] Bodhisatwa Ganguli, Supra*a* note 97 at 936

But on the other there will be some compensating kind of import by third countries into Indian market. In each year above mentioned, there will be rise of import by other countries at the rate of 4.5%, 7.5% and 11% respectively. Though there is trade diversion this is not adequate to compensate the loss of trade value due to AD measures. Moreover, Indian AD duties are higher than 20% which can be a significant barrier in a competitive market. [116]

Likewise, Fienberg observes that (relying on Ganguli) anti-dumping measures lead to a decrease in the value of imports from targeted countries by up to 74% in the three years following the start of a typical case (which is not surprising, considering an average final duty of 77%); the value of non-targeted imports increases, but to a lesser extent (by approximately 53% in two years, and by more than 60% over three years, although the impact in the third year is not quite statistically significant). Overall, total imports decrease by about 50% over the three years following the start of the measures, indicating that anti-dumping has been highly effective in providing protection to Indian manufacturers in the specific categories to which it has been applied.[117]

The years before AD allegations and investigation will show a great surge of imports. An aggregate of 80 percent increase is evident in the three years prior to the period of investigation. During the first year of initiation, there was a massive decline in the share of aggregate imports of named countries from 80 percent to 55 percent. If the investigation resulted in charging AD duties, the share of the named countries declined to 50 or 40 percent. Further, the studies show that in some cases unit value of imports from named countries were higher than that of non-named countries.[118]

From these studies and data available, we can see that AD measures are effecting the import trade in India. It is affecting both in terms of volume and value. Though, there is increase in the third-party (country) trade of the same product, it cannot compensate the loss of import trade caused due to AD measures. AD measures will eventually cause trade diversion and benefit the market as it provides wider foreign exporters. Similarly, effects

[116] Prusa, *supra* note 53.
[117] Feinberg, *supra* note 95 at 5.
[118] Samir Kumar Singh, *An Analysis of Anti-Dumping Cases in India*, 40 ECON. POLIT. WKLY. 1069, 1072 (2005).

on consumers is not that significant. Only less than 10% products investigated were consumer goods. The user industry is diversified enough and many of the producers belong to small scale industry. Further, the protection provided to the domestic industry can also beneficial for the consumers to have products at a reasonable price.

5.5 THE EFFECT OF AD MEASURES ON VARIOUS SECTORS

The AD measures are primarily initiated for the purpose of protecting domestic industries from the unfair trade practices of foreign industries. AD measures are both country-specific and product-specific. In the process of AD investigation, the concept of 'like products' is important in determining dumping, dumping margin and material injury. Under WTO, the products are categorised under the Harmonised System of Commodities. The Indian government had intervened through AD measures mostly in sectors of industrial importance such as chemical industries and base metals. Indian AD measures currently in force is constituted mostly by Chemical and allied industries constituting 43 percent. The base metal industry and plastic/rubber industry also have a share of 13 percent each in the AD measures in force. Textiles and allied industries also have a good share in the AD measures in force. The pharmaceutical products are also included in the Chemicals industry. [119]

In the early years till 2005, most of the investigations had led to imposition of AD measures. Nealy 15 percent of the AD initiations were made on pharmaceutical industry separately from chemical industry. Consumer goods constituted just below 10 percent in the early 10 years of WTO. The average of imports from 1992 to 2004 shows that 12% of Indian manufacturing imports during that period were in products affected by antidumping or safeguard initiations. The products such as Acrylonitrile Butadiene Rubber, hot-rolled steel products, graphite electrodes and some other products faced heavy antidumping in first decade of 21st century, but shown a surge in import values. This is not to say that AD measures have no impact and it is likely to have a trade diversion in those products.[120]

[119] Mark Wu, supra note101
[120] Feinberg, *supra* note 95 at 9.

Among the sectors, the chemical industries are most affected. It is affected due to the AD measures both by India as well as against India. In case of measure in effect against India, chemical industry takes 15 percent share of the total AD cases. Out of 7 AD measures imposed by China, 6 products are categorised under the chemical and allied industries category. While anti-dumping duties protect domestic producers, they can also lead to higher prices for consumers and downstream industries that rely on imported chemicals.

Over 92 percent of all the anti-dumping cases have been initiated against raw materials and other intermediate products. Of the remaining 8 percent, almost 7 percent are constituted by capital goods and the remaining 1% involves final consumer goods.[121]

5.6 INDIA AND CHINA TRADE RELATIONS AND ANTI-DUMPING

The diplomatic relation between India and China is not smooth since its inception. India is the first non-socialist bloc country to establish diplomatic relations with the People's Republic of China. India established its diplomatic relation on 1st April 1950, three months after the adoption of Indian Constitution. The bilateral trade between India and China in the financial year 2023 is counted as $113.83 billion. China is India's largest trading partner in the last financial year. Major Chinese imports are electrical machinery, organic chemicals, plastics and fertilizers.[122]

Irrespective of the political power struggle between the emerging giants, their trade relations flourished day by day. China holds the top position with the highest number of AD measures imposed by the Indian AD authority. AD measures in China amount to 37 percent of the total AD measures imposed by India. India has imposed AD duties on a total of 155 commodities against China. India is having a trade deficit against Chinese imports. China is known for its high productivity, infrastructure and stable political system which stimulates increased productivity. In addition, China is facing allegations of unfair trade

[121] Aggarwal, *supra* note 87 at 131.
[122] Exploring India China Trade and Economic Relations | IBEF, INDIA BRAND EQUITY FOUNDATION, https://www.ibef.org/indian-exports/india-china-trade (last visited Jun 14, 2024).

practices such as under-invoicing, granting of excessive export subsidies, handling special concessions to state-owned enterprises, non-transparent trade practices and round-tripping from Hong-Kong. Such unfair practices provide Chinese exporters an unfair advantage, thereby causing injury to India's domestic industry. Moreover, the presence of China as a non-market economy adds fuel to the issues. [123]

The studies shows that AD measures have been imposed on chemicals, plastics and rubber followed by iron and steel from China. In addition, exports from extractive industries like mineral products and articles of stone from China also faced AD duties. Among the products, 54 percent shows decreased import of the product in post-initiation years, whereas the remaining portion shows increased imports. Classification of commodities that were negatively affected due to the AD measures as well the commodities that had an increased import is very interesting. The categories of iron and steel, chemicals, plastics and rubber had commodities that fall in both categories of trade effect. This indicates that there is no particular pattern to show the effectiveness of AD duties. The Chinese industries' practice of under-invoicing or roundtripping the goods through ASEAN countries can negate the effects of AD duties. According to the Global Financial Integrity Report[124], India lost US$13 billion due to trade misinvoicing. Two-thirds of this lost value, which is US$8.6 billion, is attributed to misinvoicing by Chinese entities. Additionally, the Chinese engage in shipping a similar but not identical form of the commodity for which AD duties have been imposed. For instance, they export a slightly different version of the goods instead of shipping a finished commodity to avoid AD duties. This tactic allows them to ship a product that is very close to the original product, thereby circumventing AD duties. [125]

It is not surprising that the last 14 AD cases out 15 cases listed by DGTR is against China. Even after such number of cases, Chinese import is causing a trade deficit in India. In that case, it is to be understood that the AD measures imposed on China is not effective till date.

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[123] Ashwani Mahajan, Phool Chand & Harsha Vardhan Pasumarthi, *An Analysis of Impact of Anti-Dumping Duties on India–China Trade*, 22 SOUTH ASIA ECON. J. 233, 2 (2021).
[124] GLOBAL FINANCIAL INTEGRITY, *India: Potential Revenue Losses Associated with Trade Misinvoicing*, 1 (2019).
[125]Mahajan, Chand, and Pasumarthi, *supra* note 123 at 11,14.

China is even dumping the most advanced requirements such as Solar glass well as vitamin A Palmalite.

5.7 PHARMACEUTICAL INDUSTRY

Unlike many other sectors, the pharmaceutical industry may have a life-threatening effect due to anti-dumping measures. The Indian pharmaceutical sector heavily relied on anti-dumping actions in previous instances. In comparison to its share of total imports, which stands at about 4%, the industry accounts for a significantly large proportion (19%) of all anti-dumping cases. Its contribution to the Gross Domestic Product (GDP) is approximately 3%.

One of the most significant policy changes occurred in the pharmaceutical industry. The Indian drug policy was updated to include product patents, and the government eased price controls. Trade in this sector has also been liberalized to address the increased prices of imported goods. By examining the effectiveness of anti-dumping (AD) measures in this industry, we aim to determine if trade liberalization, which reduced the effective rate of protection from 97% to 40% between 1986-1990 and 1996-2000, is being replaced by AD legislation as a means of restricting imports. If AD legislation proves to be an effective replacement, it could further impact consumers in a country where only 30% of the population can afford access to modern drugs.[126]

From the very beginning of WTO backed trade liberalization, India had initiated AD actions against pharmacy products. In most of the cases till this date, it resulted in successful imposition of duties. The pharmaceutical industry in India has experienced several significant policy adjustments. The relaxation of price controls and the implementation of intellectual property rights, as outlined in WTO discussions, are expected to result in increased costs for pharmaceutical drugs for the general public. Additionally, import restrictions such as the AD legislation are another setback for consumers, leading to the transfer of income from consumers to producers and the government in the form of tariff revenue.

[126] Malhotra and Malhotra, *supra* note 72 at 3.

Between 1992 and 2002, the data shows that imposing duties on pharmaceutical products resulted in restrictions on imports from countries named in the petitions. Little or no trade was diverted to countries not named in the petition. In the case of Vitamin C, where many petitions resulted in trade diversions, this does not appear to reflect the entire pharmaceutical industry in India. This suggests that the main beneficiaries of the protection are domestic, not foreign, producers. Import protection may be a significant setback for consumers, as they could face higher prices.[127]

5.8 AD MEASURES AND FDI

The main reason for using anti-dumping measures is to protect local industries from strong competition. Governments can use these measures, indirectly supported by WTO rules, to attract more foreign direct investment. The implications of AD measures are multi-faceted. Some scholars identify it as a means to protect the domestic industry against foreign competition. Whereas for others, it is merely an extension of earlier protectionist measures that hinders free trade and shows adverse effect on trade and productivity. One of the non-traditional approaches to understand AD measures is that it can be a strategic instrument to raise FDI. [128]

The rationale behind this is very simple. If foreign firms face AD measures on their importing, they might invest directly in the domestic economy. This helps them grab the market. In a market like India with the world's fastest growing population, no company would like to lose the market at any cost. Moreover, it is beneficial for a developing country with such a huge pool of potential employees. But nothing is simple in the real market.

It is logical to assume that if the foreign firm prefers to import when tariff is low, the strategic AD initiative could be effective encouraging AD. On contrary, if the foreign firm faces establishment cost and expects that it would be higher with higher level of strategic trade costs, then the firm would prefer importing. According to National Council for Applied Economics Research (NCAER)[129], the FDI flows were fluctuating in all sectors

[127] *Id.* at 12.
[128] Dibyendu Maiti, *Anti-Dumping, Competitiveness and Welfare: A Study with Special Reference to India*, INDIAN ECON. REV. 147, 148,149 (2016).
[129]National Council for Applied Economic Research, *FDI in India and its Growth Linkages*, at 1 (Aug. 2009).

except in paper and related substances showing downward flow. All other sectors shows a rising trend on average in time period of 2000-2006.

The mechanical and electrical equipment sector have been the largest recipients of FDI. It shows a growth from 28 percent to 44 percent within a six-year span of time. The FDI share in chemicals and allied industries has increased from 8.7% in 2000 to 21.9% in 2004 and then dropped to 10.7% in 2006. But, on average, it registers an increasing trend during this period. This is also true for the other three AD-intensive sectors. The flow in resigns, plastic and rubber products has been relatively low in terms of the percentage share but is still rising in absolute terms. All these sectors have shown a positive rate of increase in AD measures. Therefore, AD initiative seems to have gone up in the FDI intensive sectors, but it cannot be the sole reason and sometimes may not be the reason.

5.9 RECENT TRENDS IN INDIAN AD INITIATIONS

India has been actively initiating and extending anti-dumping investigations and duties on a variety of products. For instance, ongoing investigations are focused on products like acrylic solid surfaces, welded stainless-steel pipes and tubes from Thailand and Vietnam, and vacuum insulated flasks from China. The country has targeted specific sectors that are crucial to its economic growth. For example, there is a proposal to extend anti-dumping duties on Chinese EVA backsheets, which are essential components in solar panels. This move aims to support the domestic solar manufacturing industry by preventing market distortions caused by dumped imports. Anti-dumping duties have been applied to high-value and essential goods such as aluminium foil, vitamin A palmitate, acetonitrile, and trichloroisocyanuric acid. This focus helps protect significant domestic production capabilities and key industries from adverse impacts due to dumping.

In the year of 2023, there were 32 AD initiations, out of which 22 were new petitions, 8 sunset reviews, one each mid-term review and anti-circumvention anti-circumvention investigation. China topped the list of target countries with 25+ AD investigations.[130] In

[130] Ankur Sharma, Jayan, Et. al, *Trade remedial measures in India*, https://lakshmisri.com/insights/articles/trade-remedial-measures-in-india/ (last visited Jun 20, 2024).

the year 2024, the DGTR has initiated 10 cases till this date. It is interesting to see that in every investigation initiation, China PR is a party.

India's anti-dumping measures span multiple countries and regions, reflecting a broad approach to safeguarding various industries. Products from countries like China, Thailand, Vietnam, Indonesia, Malaysia, and several others are under scrutiny. In the latest concluded investigation, it has found that chlorinated Polyvinyl Chloride from China and Korea RP was imposed with duty. Aluminium frame for solar panels, Solar cells and EVA sheets for solar panels from China and Taiwan are facing AD investigation presently[131]. Solar energy related commodities is one of the major target in the last five years. [132]

The Indian designated authority is maintaining a frequency of AD imposition more than the global average. This means that India is moving very vigorously with the tool of Anti-dumping. Following the COVID-19 pandemic, India has seen a significant increase in anti-dumping measures, with a total of 80 initiations or investigations taking place to this day. This means that the effects of anti-dumping measures discussed above will have a greater impact than ever before. The increased anti-dumping measures will affect the quantity and value of imports. If the quantity of imports does not decrease despite these measures, it will indicate an inefficient application of anti-dumping policies. The inefficient AD measures are neither beneficial for manufacturers and industries nor final consumers.

If the anti-dumping measures are unable to increase domestic production through internal production or foreign investment, they will not be useful. Although there has been an average increase in foreign direct investment (FDI) in anti-dumping intensive fields, this may not be directly attributed to the effects of anti-dumping measures, as the growth rate is relatively low. India has been welcoming foreign investment post-liberalization, which may reflect the pro-FDI stance of Indian governments and not necessarily be a result of

[131] Sunset review investigation of anti-dumping duty imposed on imports of Chlorinated Polyvinyl Chloride (CPVC) – Whether or not further processed into compound from China PR and Korea RP., (2024).
[132] India terminates anti-dumping probe into solar cell imports from China, Thailand & Vietnam, THE ECONOMIC TIMES, Nov. 13, 2022, https://economictimes.indiatimes.com/industry/renewables/india-terminates-anti-dumping-probe-into-solar-cell-imports-from-china-thailand-vietnam/articleshow/95484210.cms?from=mdr (last visited Jun 17, 2024).

anti-dumping measures. This suggests that the impact of anti-dumping measures on FDI is not significant enough to offset the reduced production due to anti-dumping investigations.

The sectoral AD approach taken by India in AD measures are very strategic. Looking at the very latest AD investigations, the sectors involving energy-related products, infrastructure products and chemical industries. These industries are vital in India's present production pattern. Its contribution to GDP is very high and is very much involved with capital and employment. Therefore, Indian AD is very much efficient in terms of protection of domestic industry.

Moreover, the target countries of anti-dumping are very wide in the past. But it is getting narrower every year. The actions are very crucial in protecting both large and small-scale industries. It is very important in terms of diplomatic relations. In addition, the success rate of these AD initiations is reflecting the success of anti-dumping.

CHAPTER 6 - CONCLUSION

Trade was always a decisive factor in international relations between states or regions. Trade is the most patent manifestation of a friendly relationship between states or territories. The phenomenon of dumping and the subsequent implementation of anti-dumping measures are pivotal in the contemporary global trade environment. This dissertation tried to understand it from its historical background and the current trend. For that purpose, this work has delved into the historical evolution of dumping as a concept and practice in history and its response in the antidumping legislations. It also tried to understand the WTO AD Agreement through its evolution from GATT 1947 till the establishment of WTO through its various rounds of negotiation. To understand the AD mechanism in India, this work relied on the pattern that happens in developing countries, particularly China. To study the effects of AD measures in India, the dissertation looked into various aspects such as imports, India as a target country, the pharmaceutical industry, its relation with FDI, and India's latest AD actions.

When it comes to the historical evolution of AD measures, we can understand that AD was mostly a post-industrial revolution phenomenon due to the massive production activity. In the post-Industrial Revolution era, the production capacity rose at a tremendous rate. The enterprises or countries that had the competitive advantage of the Industrial Revolution, like Great Britain, manufactured products at a level that was more than enough for their normal domestic market as well as their usual export markets. This caused industrialized countries to dump their products at the lowest possible rate to get rid of surplus stock and control or destroy the local market. This was done through various mechanisms, including the provision of state bounties. Product price dumping was one of the fierce weapons during the conflicts between America and the U.K., commonly understood as predatory dumping.

Mostly, the dumping and anti-dumping was an affair mostly dealt by the countries having large production capabilities.[133] Most of the imperial powers had dumped their products in the foreign markets with different aims. Most European imperial powers such as Britain,

[133] ARADHNA AGGARWAL, *supra* note 29 at 3.

Germany, Austria, France, Belgium and Russia dealt with the issue of dumping both as an active enabler and a victim. The Asian empire such as Japan was alleged with dumping in foreign markets. It was mostly the response to these dumping activities that paved way for the enactment of anti-dumping legislations.

The Canadian Anti-dumping (AD) law of 1904 aimed to address the adverse effects of US steel dumping for railroads, balancing interests of industrialists, farmers, and consumers. It was an early example of AD laws, which often supplemented existing customs or anti-trust regulations, like the US Sherman Anti-Trust Act of 1890. These laws could also arise from socio-political contexts, such as anti-German sentiment during WWI. Before the General Agreement on Tariffs and Trade (GATT) in 1947, dumping disputes were less common in developing countries, which had faced trade distortions under colonial policies similar to AD impacts. GATT initiated global discussions on dumping. In the 19th and 20th centuries, states supported dumping to boost economic growth and strategic positions, often through subsidies. Despite treaties against such practices, the lack of penalties rendered them ineffective.

After World War II, global geopolitics shifted, with many countries gaining independence. The early GATT discussions largely ignored dumping, with only price dumping being considered, leading to the inclusion of Article VI in GATT 1947, which outlined basic anti-dumping (AD) measures but lacked implementation clarity and procedural safeguards against misuse.

From 1947 to 1964, GATT held four tariff concession negotiations, excluding anti-dumping provisions in the first three rounds. Anti-dumping became a focal point during the 1964 Kennedy Round, influenced by the US Trade Expansion Act of 1962, eventually leading to the creation of the Anti-Dumping Agreement (ADA) in 1968, providing a framework to protect domestic industries from unfair trade practices.

Article VI's ambiguity on applying anti-dumping measures was addressed during the 1964 Kennedy Round, leading to the establishment of clear international rules against dumping. This marked the beginning of more prevalent anti-dumping actions, highlighted by the European Community adopting similar legislation in 1968.

Post the Kennedy Round, and especially after the Tokyo Round, the use of anti-dumping measures surged. The Tokyo Round, joined by 27 developed countries, expanded the ADA's requirements but notably excluded developing nations, showcasing a continued emphasis on developed countries in applying anti-dumping measures. Between the Tokyo round and the Uruguay round, the international community witnessed a rise in the use of AD measures, and in addition, developing countries took active participation. In the course of Uruguay round negotiation, there were 1300+ instances of AD measures. We can see that before the establishment of WTO, Anti-dumping turns out to be a global phenomenon with high frequency of implementation. Even the non-contracting parties to the WTO Agreements have legislated anti-dumping regulations mostly on par with the WTO Agreements.

The AD Agreement or Anti-Dumping Code was necessary to address the various practical aspects of AD actions. The code or agreement aims to provide a uniformity of provisions of AD legislation globally without compromising the sovereign power of the state. The AD Agreements throw some ideas for both procedural and substantial issues. The Agreement provides for a broader outline of the investigation process. It provides basic instruction for the establishment of domestic legal and institutional framework. Certain crucial concepts such as like-product, dumping margin, injury and relevant are broadly defined by the code. Both procedural and substantive aspects in the domestic law must be within the purview of the AD agreement.

6.1 DEVELOPING COUNTRIES AND AD AGREEMENT

The dissertation tried to understand the trend and impact of the AD Agreement on developing countries, the group in which India can be categorized. The rise of AD measure implementation was concurrent with the use of the same by developing countries during the period of Uruguay rounds. In the era of globalization, the transition economies opened up their market, and they were keen on using anti-dumping to protect their domestic economy. It is also important to understand that the anti-dumping actions accounted for 89.1 percent of the total contingent measures taken. Countries like Brazil, Argentina, Mexico, and Turkey were heavily using AD measures during this period.

During the Uruguay Round, there were intricate discussions on anti-dumping, pitting traditional industrialized users like the US and the European Community against mostly agriculture-based developing nations. These developing countries were distinguished by their trade-restrictive markets and recent independence post-1960s decolonization. As such, demands from these divergent groups rested on distinct grounds: developed nations sought free market access in developing countries, while the latter aimed to leverage globalization and technology for their community's development. Consequently, both clusters of countries advocated for specific anti-dumping measures, although with differing objectives.

The use of anti-dumping measures increased significantly in the 1990s compared to the previous decade, with a notable increase in the number of countries actively implementing these measures. There was a shift in the countries using anti-dumping measures, with developing countries becoming more active in initiating anti-dumping cases. Additionally, the number and share of anti-dumping actions taken by traditional economies decreased in the initial decade of the WTO, while there was a significant increase in both the number and share of anti-dumping actions by developed economies.

Developing economies didn't have a long history with anti-dumping (AD) laws like developed countries did. Initially, they managed foreign trade and protected domestic industries through tariffs and import restrictions without formal complaints about dumping. However, after joining the GATT/WTO, which required reducing tariffs, these countries adopted AD legislation and began actively filing AD cases. Countries like Mexico, Argentina, South Africa, along with others like India, Indonesia, Turkey, Malaysia, and more, quickly embraced AD measures, filing numerous cases. This indicates a significant shift towards using AD laws as a tool for trade protection. Before joining the WTO, some developing countries already had antidumping laws, but they began applying them more rigorously after becoming members.

Originally, most Anti-dumping (AD) charges were made by a few countries before globalization took hold, with actions often initiated between these nations. In the 1990s, however, the landscape changed to include new countries engaging in anti-dumping

practices. The consistency of AD investigations between these traditional nations continued into the next decade, highlighting a shift in participants but not in the frequency of these actions.

The primary reason for the increase in anti-dumping measures is that countries use them as a reaction to import sanctions, aiming to protect their domestic industries and ensure fair treatment for their exporters abroad. These measures serve as part of a strategy to deter other countries from applying restrictive trade laws, effectively making exporting more costly in hopes of discouraging reliance on such laws.

In the context of developing nations, deploying anti-dumping (AD) measures in trade has its pros and cons, akin to the experience of more developed economies. The assessment is that, even though it's argued that AD policy can lead to anti-competitive results, the impact on welfare is significant, particularly for local consumers and businesses utilizing these products.

Putting barriers against dumping is usually seen as getting in the way of trade. Actions taken to stop dumping greatly reduce the amount of goods coming into a country. When there's a fight over dumping and it leads to extra charges or gets settled, usually, the amount of goods being imported drops by about 70% and the prices of these imports go up by more than 30%. It's interesting to note that even if the dumping complaint ends up being dismissed, it still affects trade. Just investigating these cases messes with the market. Even when no wrongdoing is found, imports still fall by around 20%.

After taking steps to fight dumping, local industries may change how they produce and operate. Local businesses that are losing out to imported goods can win back some of their markets by using these anti-dumping laws. For instance, from 1994 to 1998, Mexico saw 24 dumping cases. There's an argument that local industries like chemical, steel, food, rubber, and paper production benefitted most from the protection these anti-dumping laws provided.

Implementing anti-dumping policies can have major long-term economic effects on developing countries. Past examples show that once these policies are in place, and local

companies start benefiting from them, it's hard to get rid of them. Even though the World Trade Organization requires a review every 5 years to possibly end these measures, the rule doesn't really help in getting rid of the policies once they're established. Countries that frequently use anti-dumping measures rarely stop or reduce using them. This can have significant economic consequences for a country's economy.

For the purpose of getting more grip on the subject and topic of this dissertation, China was specially mentioned and studied in brief. China is similar to India in many ways. India and China were coined as the emerging giants by various scholars. China emerged as the largest production house of the world for more 5 decades. Though still categorized as a developing country, China is far ahead in many aspects among developed countries. To this date, China is facing the highest number of AD measures globally among WTO members. It is noteworthy that China became part of the WTO only in 2001.

On studying the effects of AD measures against China, it can be understood that specific product facing the AD measure may have a downward movement of export quantity as well as value of imports. In the case of US AD measures, the Chinese products show a growth of imports after the decline happened in the post-initiation period. Similarly, in case of EU AD measures, the overall import to EU increased, albeit the fall in the import of the particular product due to the imposition of final measures. Also, it is to be understood that the number of Chinese AD measures comparing to the AD measures faced by China is very low. Chinese AD measures are lower than Indian as well as many other developing countries AD measures.

6.2 INDIAN EXPERIENCE WITH ANTI-DUMPING: MAJOR FINDINGS

India’s transition from a self-reliant, import-restricted economy to a globalized economy was not something that can characterized as gradual and normal. It was the result of certain economic shocks and Stand-by Arrangements in terms with requirements of global institutions. From a heavily guarded trade restricted economy India had more or less a quick transition. India’s tariff rates had drastic change for facilitating international trade. The exogenous nature of India’s trade liberalization had varying effects on various

stakeholders of the society. This caused imbalances in the economy. To remedy this imbalance anti-dumping has been the most used trade remedy instrument.

India is among one of high frequency of user AD actions. Similarly, the success rate of Indian AD initiations are high. The diversity of products subjected to Indian AD measures are also wide. In addition, the number of target countries are also good numbers compared to other AD users. In all these sense, Indian AD actions are quite successful.

The Indian AD law was part of Customs Tariff Act as the provisions for the AD measures were incorporated into the Act in 1985 through an amendment. It was only after seven years India made its first AD action in 1992. Indian Anti-dumping initiations are important not because of their quantity but because the majority of incidents ended up in imposing measures. India files a high number of cases per year, and the majority of cases result in very high duties.

India faced AD measures in India's critical industries such as Iron and steel, textile, and chemical products. In the very beginning of WTO, India faced AD measures from the EU and the US. In the earlier times, India was also subject to AD measures by other developing countries such as Brazil. In the Jute Bag case[134] and EC Bed linen case[135], India could not get favorable relief from the dispute settlement mechanism. In many of these cases, India is still facing AD duties. Indian industries faced anti-dumping measures in the iron and steel sector during the early stages of the WTO. Both the EC and the US took actions against Indian industries. They were also hesitant to provide a constructive remedy under Article 15 regarding anti-dumping duties. "The recent measures have dealt a significant blow to the Indian production sector. The iron and steel industry is crucial to India, and the cotton and textile sector is where India had a competitive advantage. The anti-dumping measures on these products from two major international markets are very disadvantageous for us. Additionally, India was unable to obtain the expected relief from the WTO dispute settlement mechanism."

[134] WT/DS 229
[135] WT/DS 141

Indian AD measures have impacted its imports. The impact of Anti-Dumping (AD) actions on import values is quite significant. It has been observed that following the implementation of AD measures, import values experience a substantial drop over a span of a few years. Despite this, there has been an observed increase in imports from third countries into the Indian market annually. However, this increase is not sufficient to offset the decline caused by AD measures. Furthermore, it has been highlighted that Indian AD duties, which surpass 20%, create a significant barrier in a competitive market. Consequently, it is predicted that there will be a decline in the total value of imports for at least 3 to 4 years.

It's important to note that the decrease in import values needs to be analyzed in conjunction with the fact that in the years leading up to AD actions, there is a substantial surge in imports. In the three years preceding the investigation, there was an impressive 80% increase in overall imports. However, during the first year under scrutiny, the proportion of total imports from specific countries decreased significantly from 80% to 55%. If anti-dumping duties were applied, the contribution from these countries could further fall to 50% or even 40%. Additionally, it was discovered that at times, the price per unit of imports from these specific countries was higher compared to other countries.

AD measures are affecting industries of critical importance. The Indian government has implemented anti-dumping measures primarily in sectors of industrial significance, such as chemical industries and base metals. Currently, 43 percent of the anti-dumping measures in force are related to chemical and allied industries. The base metal industry and plastic/rubber industry each account for 13 percent of the anti-dumping measures in force. Textiles and allied industries also have a significant share of the anti-dumping measures in force. In the early years leading up to 2005, most investigations resulted in the imposition of AD measures, with nearly 15 percent of the AD initiations specifically targeting the pharmaceutical industry, separate from the chemical industry. Over 92% of anti-dumping cases target raw materials and intermediate products. The remaining 8% consists of capital goods (7%) and final consumer goods (1%).

Indian AD measures on China are an interesting fact. Despite being India's largest trading partner in the last financial year, 14 out of the last 15 cases listed by the DGTR are against China. The products involved range from pharmaceuticals and aluminum foil to solar panels, which are of strategic importance to India's potential growth. It is important to note that Chinese firms often engage in under-invoicing and round-tripping of goods, which negate the effects of anti-dumping measures and cause a loss to India's economy.

Furthermore, China's geopolitical frictions with India, as well as its status as a neighbouring nation and a member of BRICS, creates complex dynamics where China can be seen as both a potential adversary and a partner, especially in third-world country conferences such as BRICS. Despite the numerous anti-dumping measures in place, China remains a top trade partner for India, leading to a trade deficit in the India-China Bilateral trade.

AD measures affect FDI. The rationale behind this is very simple. If foreign firms face AD measures on their importing, they might invest directly in the domestic economy. This helps them grab the market. Most of the sectors exhibited an increasing growth of FDI as the AD measures are imposed. But it is important to note that, the AD imposition and its resultant downward flow of imports cannot be the sole reason for increased foreign direct investment.

In addition to these critical points, the recent trends in Indian AD initiations are noteworthy. India has been investigating various products such as acrylic solid surfaces, welded stainless-steel pipes and tubes, and vacuum-insulated flasks. The products involved in the renewable energy sector and infrastructure industry are subject to AD measures. There were more than 5 AD initiations on products that are related to solar energy production. Majority of these measures are against China. In addition, south-east nations are also among the major target groups. It can be understood that India is trying to have a strategically planned AD initiation mechanism. Moreover, the dysfunctional WTO DSU mechanism is another reason for lag in having further decisions on international disputes. In the cases of *India-Anti-Dumping Measure on Batteries from Bangladesh*[136]*, India-Anti-*

[136] WT/DS306

Dumping Measures on Imports of Certain Products from the EC[137] *and India-Anti Dumping Measures on Certain Products from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*[138] is not yet resolved as no panels were established for these cases.

6.3 SUGGESTIONS

The developing states, including India, were always arguing for trade remedial measures to rectify the imbalances created in the economy because of the liberalized economic structure. Protectionism is the key to saving domestic industries in developing countries from unfair trade practices of foreign firms. But the emergence of WTO and the rise of the concept of a single global economy, bring down the right of these states to provide protectionist measures. The WTO agreement mandates the pulling down of tariffs and non-tariff barriers. Ant-dumping is a protectionist measure backed by WTO agreements that have a direct effect on import volume and price. However, the designated authority cannot extensively use this measure to protect the domestic industry as this will give us decreased GDP and a not-so-friendly position as a trading partner. Therefore, from an international trade point of view, it is important to reduce protectionist measures, and the imposed protectionism must ensure its effectiveness.

One way to bring down this misuse is to consider the position of the importers when the national authority, such as the DGAD, makes decisions in this respect. The anti-dumping is affecting the manufacturing units in India, and similarly, the importer is also affected by the decision. Both these parties might have different interests. Normally, the domestic industries getting affected by the import are heard before the DA. Similarly, the importer's position must be taken into account before imposition of AD duty. The DGAD should also consider public interest. It should not only take into account the interests of domestic industry, but also that of consumers who benefit from lower prices and intermediary industries that use the imports for production purposes. Currently, monopolistic enterprises

[137] WT/DS304
[138] WT/DS318

with protectionist intent request the imposition of anti-dumping measures. The government takes them seriously because they are better organized than the consumers.[139]

With the current rate of Anti-Dumping measures, it is impossible for India to have a different policy against the present policy. The majority of the large-scale sectors are benefiting from the AD system. This practice should not affect the efficiency of the existing firms by not having enough competition from the global market. The AD measures will be limiting the domestic industries from advancing towards modern technologies and further cost reduction methods. India must effectively implement the sunset review provision to review the existing AD duty.

Also, the government should take enough steps to convert the AD imposition and resultant decrease in imports to attract FDI. Though, the FDI is showing an average growth in proportion with the AD impositions, it must be realized to maximum potential of the market without destroying the domestic industry.

Another important threat to the efficiency of AD measures is the circumvention of products. "Circumvention means 'to get around', and in this context, it refers to avoiding anti-dumping duties. The WTO defines circumvention as 'getting around commitments in the WTO.' Circumvention of anti-dumping measures is a trade strategy used to export complicated manufactured products when an importing country applies, or is likely to apply, anti-dumping duties to protect a national product."[140]

The objective of an anti-circumvention regime is to prevent unfair avoidance of duties which are imposed to counter the effects of injury to the domestic market caused by imports below the normal value. An article subject to anti-dumping duty is imported into India through exporters /producers in a country not subject to anti-dumping duty, such exports shall be considered circumventing the anti-dumping duty. China has been accused of duty-imposed products through ASEAN countries to India. This means that the products will be imported to India without any duty and will diminish the effectiveness of anti-dumping.

[139] Prakash Narayanan, "Anti-dumping in India-Present State and Future Prospects" 40(6) Journal of World Trade 1081, 1095 (2006)
[140] Bhumika Billa, Strategising Protectionism: An Analysis of India's Regulation of Anti-Dumping Duty Circumvention, 10 TRADE L. & DEV. 417 (2018).

This will eventually cause tampering with the protection of domestic industry. Therefore, it is better to have an Anti-Circumvention legislation subject to due care so that it should not become a glorified Protectionist abuse.

The designated authority under the DGTR must be provided with more funding and technological facilities for getting accurate data and investigation measures. Enhance the capabilities of the Directorate General of Trade Remedies (DGTR) through increased funding, training, and resources to conduct more effective investigations. In addition, India must negotiate in the WTO platform for further changes in the Anti-dumping agreement. There are various discussions going on related to various aspects such as investigation, determining dumping margins, review of AD duties, etc. The five-year sunset review must be amended to limit the time frame of AD duties.

In a nutshell, it is recommended that India take interest in taking forward AD measures in the future considering the following aspects:

- There must be a long-term vision to bring down protectionist measures not only within the jurisdiction of India but in other trading partners through persuasion.
- Take into account the importer's position with enough weightage before imposing AD duties.
- AD measures should not hinder normal competition from the market.
- The provision of sunset review must be implemented properly. No measure shall be implemented for effective eternity.
- The government should take initiatives to channel AD measures in strategically critical sectors like energy, base metals, heavy machinery, etc.
- AD measures must reciprocate with FDIs. An AD measure having a substantial effect on imports must attract FDI in the particular sector.
- The Government and the DGTR should evaluate not only the impact of dumping in a specific sector but also the effects during the post-AD duty period.
- Regulations against circumvention, misinvoicing, and other unfair trade practices must be made stringent.

- The DGTR must ensure transparency within activities performed under the purview of AD investigation.
- The DGTR should undertake rigorous and regular research in critical areas to understand the comprehensive effects of AD measures.
- India must strengthen its international cooperation to have a more seamless flow of trade.
- The major beneficiary and party to AD investigations are large-scale business owners. The govt. should equip SMEs to engage in AD procedures.
- India must engage in WTO platforms to amend the provisions for the benefit of our trade policy.

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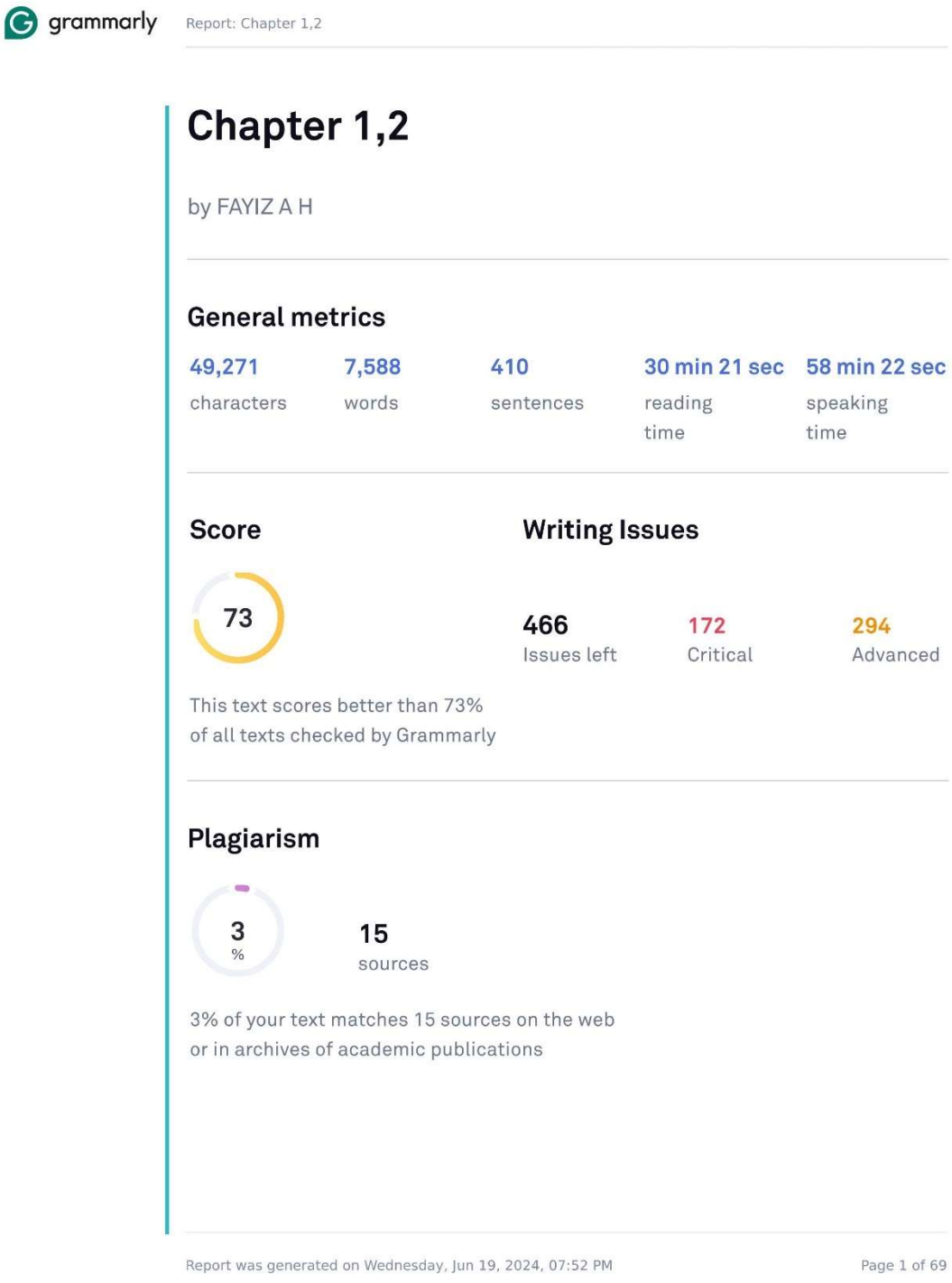
APPENDIX



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