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From the Director's Desk

Dr. Surajit Mitra

World economy since the Uruguay Round and establishment of WTO has witnessed substantial reduction in tariffs. This reduction in tariffs, supported by complementary liberalized policies have resulted in expansion of world trade. Both developed and developing economies have benefitted from such liberalization. However, with the reduction in tariff, world economy has also simultaneously noticed rise in non-tariff barriers (NTBs).

Anti-dumping (AD) is one such NTB that has emerged as a significant barrier to trade and competition especially in the Post Uruguay Round period. A modern form of trade protection now widely used by a set of developed and developing countries seriously damaging free trade. The issue of AD is therefore at the centre of ongoing Doha Negotiations.

Article VI of the GATT which provides the right to any contracting party to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" and whose dumped imports cause injury to a domestic industry in the importing country is currently challenged, as the mechanism of arriving at actual impact of injury is not very clear. Though AD actions are intended to counter unfair competition arising from price discrimination between different geographical markets, it is yet to provide a safety valve that was initially thought of.

There are ambiguities in the very definition of dumping, calculation of dumping and injury margin that such ambiguities facilitate dumping findings. Though the ministers from developing and developed countries agreed to negotiations on the Anti-Dumping and Subsidies agreements, in order to clarify and improve disciplines while preserving the basic concepts, principles of these agreements, and taking into account the needs of developing and least-developed countries (LDCs), yet they haven't arrived at an amicable settlement in Doha. Whatever may be the intention of the member countries of the WTO, in the larger interest of global good, the issue needs to be settled at the earliest so that the confidence of member countries especially developing and LDCs are restored in the multilateral trading system.

Future of WTO Anti-dumping Agreement :
Issues in the Doha Development Agenda

Mitali Das Gupta*

Anti-dumping (AD) measures have emerged as a significant non-tariff barrier to trade and competition particularly in the post-Uruguay Round period. Historically, multilateral negotiations on anti-dumping have been extremely contentious. There are ambiguities in the various provisions of the AD Agreement. At the November 2001 Ministerial meeting of the WTO in Doha, member countries launched a new round of trade talks known as the Doha Development Agenda (DDA). One of the negotiating objectives called for 'clarifying and improving disciplines' under the WTO Anti-dumping Agreement. Even today trade remedy actions, particularly AD actions, continue to be a subject of intense debate within the US Congress, the WTO, and the international business community. Issues like ban on zeroing, manadatory lesser duty rule and price undertakings, changes in the injury determination procedure, mandatory termination of AD orders and granting special and differential treatment to developing countries, have been addressed.

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Introduction

ANTI-DUMPING (AD) measures have emerged as a significant non-tariff barrier to trade and competition particularly in the post-Uruguay Round period. Article VI of the GATT provides the right to any contracting party to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the importing country. Thus AD actions are intended to counter unfair competition arising from price discrimination between different geographical markets.

However, the economic rationale behind anti-dumping actions is seriously disputed. There are ambiguities in the very definition of dumping, calculation of dumping and injury margin and that such ambiguities facilitate dumping findings (Tharakan 1991, 1999; Tharakan and Waelbroeck 1994 among several others). Negotiations in the Uruguay Round have resulted in a revision of this AD Agreement in terms of precision and detail. In the November 2001 declaration of the Fourth Ministerial Conference in Doha (popularly known as the Doha Declaration) the ministers agreed to negotiations on the Anti-Dumping and Subsidies agreements, in order to clarify and improve disciplines while preserving the basic concepts, principles of these agreements, and taking into account the needs of developing and least-developed countries. In the Doha Development Agenda (DDA), a coalition of developed and developing nations known as the "Friends of Anti-dumping" (FAN)[1] pushed for reforms that many in Congress oppose and US negotiators are resisting. Even today trade remedy actions, particularly AD actions, continue to be a subject of intense debate within the US Congress, the WTO, and the international business community and it is increasingly felt that this gap is difficult to bridge.

In this background, the paper discusses some select provisions in the AD Agreement and their systemic deficiencies, and the recent negotiations that are going around these issues.

Select AD Provisions in the WTO and their Systemic Deficiencies

The Anti-dumping Agreement clarifies and expands Article VI of GATT 1994 by laying out guidelines for determining if dumping has occurred, identifying the "normal value" of the targeted product, and

assessing the dumping margin. In any AD investigation the following three things have to be established first. These are: the actual occurrence of dumping, injury to the domestic industry producing the like product, and causal link between dumping and injury.

One of the most complicated issues in anti-dumping investigations is the determination whether sales in the exporting country market are made in the "ordinary course of trade" or not. One of the basis on which countries may determine that sales are not made in the ordinary course of trade is if sales in the domestic market of the exporter are made below cost. The Agreement states that circumstances in which home market sales are at prices below the cost of production, such sales may not be considered to be made in the ordinary course of trade, and thus may be disregarded in the determination of normal value (Article 2). In some cases where there are no sales in the exporting country of the product under investigation, it is not possible to base normal value on such sales, and the Agreement recognizes this. Two alternatives are provided for the determination of normal value if sales in the exporting country market are not an appropriate basis. These are (a) the price at which the product is sold to a third country; and (b) the "*constructed value*" of the product, which is calculated on the basis of the cost of production, plus selling, general, and administrative expenses, and profits. The export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. But again there are exceptions to this if for instance, the export transaction is an internal transfer, or if the product is exchanged in a barter transaction. In all such cases, there are alternative methods of calculating the export price. There has been a submission by Canada (TN/RL/W/47) which talks about identifying the manner in which Members have operationalized the criteria of sales "*in the ordinary course of trade*" and "*particular market situation*", and arrive at an agreement as to the conditions and circumstances of sales that are to be considered under these specific provisions.

The Agreement contains rules governing the calculation of dumping margins. In the usual case, the Agreement requires either the comparison of the weighted average normal value to the weighted average of all comparable export prices, or a transaction-to-transaction comparison of normal value and export price (Article 2.4.2). There have been submissions[2] made by several developing countries to clarify Article 2.4.2 to explicitly prohibit the practice of zeroing (average dumping margins by definition should be based on the average of all comparisons, including those that generate negative margins and that regardless of the basis of the comparison of export prices to normal value, all positive and negative margins of dumping should be added up.

The Agreement provides specific rules for administrative authorities responsible for conducting injury investigations. The Agreement defines the term "injury" to mean either (i) material injury to a domestic industry, (ii) threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry, but is silent on the evaluation of material retardation of the establishment of a domestic industry. However, the AD authorities must identify the domestic industry before addressing the injury issues. Domestic industry is defined by Article 4. It means "the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products" (Article 4). The law does not define the term "major proportion". In practice, therefore, injury determinations are normally based on the data submitted by the complainants and the best available information. Sometimes injury analysis may also be carried out for producers who account for as low as 25 per cent of the domestic production. Sometimes, injury is defined to the domestic industry without the consideration of national or consumer welfare. Further the injury indicators are not well established. Injury determination is just a matter of judgment and there is no scientific method to establish injury as of today.

The Agreement requires a demonstration that there is a causal relationship between the dumped imports and the injury to the domestic industry. This demonstration must be based on an examination of all relevant

evidence. However, the Agreement does not specify particular factors or give guidance as to how the causal relationship will be evaluated. India has made a second submission to the Negotiating Group on Rules so as to elaborate Article 3.5 so that appropriate guidance can be given to the investigating authorities while distinguishing the injurious effects of other factors from the injurious effects caused by the dumped imports and further mentioned that to invoke anti-dumping measures, there is a need to specify an appropriate standard for establishing causality between dumped imports and material injury (TN/RL/W/26).

Anti-dumping investigations are to end immediately in cases where the authorities determine that the margin of dumping is insignificantly small (defined as less than 2% of the export price of the product, known as the *de-minimis* margin), or if the volume of dumped imports is negligible (i.e. if the volume from one country is less than 3%of total imports of that product) although investigations can proceed if several countries, each supplying less than 3 per cent of the imports, together account for 7 per cent or more of total imports (Article 5.8). These figures are same for exports from the developed as well as the developing countries. There have been several submissions on increasing these thresholds particularly for the developing countries and India in particular has requested for the deletion of the stipulation that anti-dumping action can still be taken even if the volume of imports is below the threshold of 3 per cent, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports.

Article 8 of the Agreement contains rules on the offering and acceptance of price undertakings, in lieu of the imposition of anti-dumping duties. It establishes the principle that undertakings between any exporter and the importing Member, to revise prices, or cease exports at dumped prices, may be entered into to settle an investigation, but only after a preliminary affirmative determination of dumping, injury and causality has been made. However, there is no satisfactory definition of a voluntary price undertaking and Articles 8.1 and 8.3 should be elaborated to limit the discretion of investigating authorities in rejecting proposals for price undertakings.

Another important aspect of the AD Agreement is the lesser duty rule. Article 9.1 specifies that it is desirable that the AD duty be less than the margin of dumping if such lesser duty would be adequate to remove the injury. However, there is no binding obligation to adhere to the lesser duty rule. Some countries do not even calculate the injury margin and impose AD duty to the full extent of the dumping margin.

Article 11 of the Agreement establishes rules for the duration of anti-dumping duties, and requirements for periodic review of the continuing need, if any, for the imposition of anti-dumping duties or price undertakings. anti-dumping measures must expire five years after the date of imposition (*sunset* requirement), unless an investigation shows that ending the measure would continue to result in injury (Article 11.3). These requirements respond to the concern raised by the practice of some countries of leaving anti-dumping duties in place indefinitely. In practice although AD actions are supposed to be purely temporary, in practice, they turn into a long-term obstacle for trade and competition.

Article 15 of the AD Agreement says "……special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures….." In practice, major users of anti-dumping legislation do not distinguish between developed or developing countries in their application of AD instrument. Hence the provisions of Article 15 should be concretized for instance, elaborate on the idea of "*special regard*" and "*constructive remedies*", provide higher *de-minimis* margins in AD proceedings involving developing countries, etc.

The provisions discussed here are not exhaustive. There are several other loopholes in the entire AD Agreement. Despite these provisions being ambiguous and in some cases the requirements being stringent, experiences worldwide show that a large number of investigations result in affirmative findings. As a matter of fact, rather than the economic motives, it is now the political, strategic and retaliatory

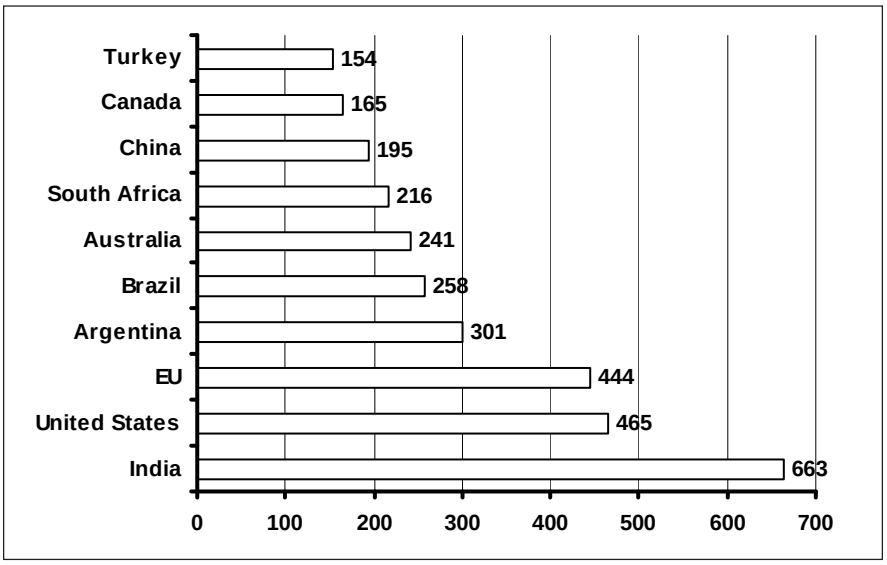
motives that are affecting the anti-dumping investigations and outcomes the most.

AD Statistics

The exclusive restriction of AD initiations by the "Big Four" (Australia, Canada, EU and the US) has been replaced by a diversified group of applicants. Between 1995 and 2012, AD initiations all over the world have increased 26 times, from a total of 157 initiations to 4125 initiations. Argentina, Brazil, China, India, Mexico and South Africa have become active users of AD. Figure 1 shows the top 10 countries as far as AD initiations are concerned.

FIGURE 1

TOP TEN AD INITIATORS (BETWEEN 1995 AND 2012)



Source: WTO website.

Between 1995 and 2012, India initiated the maximum number of AD investigations numbering about 663, followed by the US (Figure 1). During this period, the maximum number of AD initiations was against China (884 initiations and 643 measures in June 2012), followed by Korea, US, Japan and Indonesia. India faced 160 initiations and 95 measures. Traditional applicants like the "Big Four" continue to be responsible for a large share of AD investigations, accounting for about 32 per cent of all AD investigations initiated between 1995-2012. Most of them are targeted towards the developing countries like China, India, Thailand, South Africa, Korea, etc.

Considering their meagre share in world exports, developing countries are worst affected by AD initiations. Further evidence of this is shown in Table 1, which shows the top ten countries for whom the largest number of AD investigations were initiated in the year 2011. The table also shows the number of AD

TABLE 1

NUMBER OF ANTI-DUMPING INITIATIONS PER BILLION DOLLAR OF EXPORTS IN 2011

Country/territory	AD cases in 2011	Total merchandise exports (US$ bn)	Share in world exports(%)	Average value of merchandise exports per case	Number of cases per billion dollar of exports
China	49	1,898.3	10.40	38.74	0.026
Korea, Republic of	11	555.2	3.04	50.47	0.020
United States	10	1,480.4	8.11	148.04	0.007
Taipei, Chinese	8	308.2	1.69	38.53	0.026
Thailand	8	228.8	1.25	28.60	0.035
India	6	304.5	1.67	50.75	0.020
Japan	5	822.5	4.51	164.50	0.006
Indonesia	5	200.6	1.10	40.12	0.025
Russian Federation	3	522.1	2.86	174.03	0.006
Brazil	3	256	1.40	85.33	0.012

Source: WTO Trade Profiles 2012.

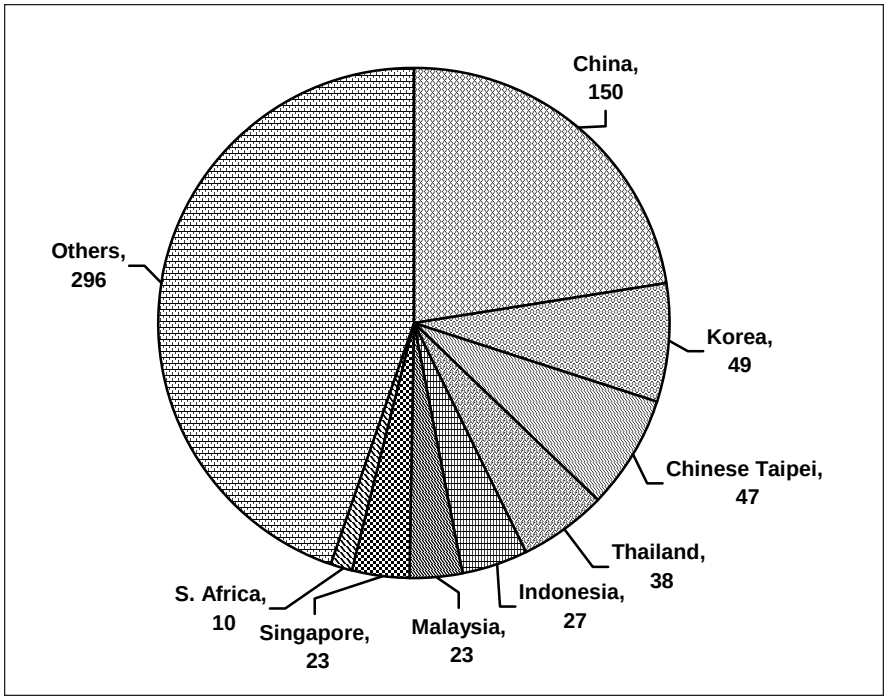
initiations per billion dollar of exports for these countries. It appears that countries like Thailand, China, Indonesia and India are some of the worst sufferers of AD actions against their exports. The table shows that on an average Thailand faced one new case of AD initiation for every $28.6 billion of exports. Compared to this, the US in 2011 exported merchandise valued at $1,480 and faced 10 new initiations, which on an average accounted for one new AD initiation for $148.04 billion of exports.

Apart from North-South conflict over the imposition of AD measures, the South-South conflict is very much in evidence. Initiation of AD investigations has become an important phenomenon among the developing countries itself. Figure 2 shows initiations by India against other developing exporters. The maximum number of cases that India has initiated is against China, followed by Korea.

If divided sector-wise, it can be seen that over the period, AD cases have been divided into twenty broad sectors. Of this, base metals and articles thereof has been the most threatened sector as far as the total number of AD cases are concerned, followed by products of chemicals and allied industries; resins, plastic and rubber articles; machinery and electrical equipment; textiles and paper. So far, India has faced the maximum number of initiations in the base metals sector (about 50). On the other hand, the country has imposed a large number of AD measures against chemicals, plastics and rubber, textiles and machinery and equipments.

FIGURE 2

INDIA'S AD INITIATIONS AGAINST OTHER DEVELOPING COUNTRIES (1995-2012)



Source: WTO website.

Recent Development on Negotiations

It is important to note that the DDA mandate specifies that negotiations on trade remedies are intended to "clarify and improve" the WTO Agreements rather than to eliminate them. With this in mind, many WTO members have identified key provisions they seek to address in future negotiations through proposals formally submitted to the WTO Negotiating Group on Rules.

Ban on Zeroing

In the process of finding the dumping margin, sometimes an investigating authority disregard negative dumping margins or put a value of zero on instances when the export price is higher than the home market price. This practice is called "zeroing". By doing so, the authorities skew their calculations in favour of higher dumping margins. This practice is followed typically by the USDOC. In a typical anti-dumping investigation, DOC calculates weighted-average net prices for each product sold in the US. It then compares each of those US prices to the product's normal value, which can be calculated in a number of ways, but is ideally the weighted-average net price of the most similar product sold in the home market. When normal value is higher than the US price, the difference is treated as the dumping amount for that sale of

that comparison. However, when the US price is higher, the dumping amount is set to zero rather than its calculated negative value. All dumping amounts are then added and divided by the aggregate export sales amount to yield the company's overall dumping margin. This practice has been challenged in the WTO on a number of fronts.

On 13 April 2004, a WTO dispute panel ruled against the US practice of zeroing in a case brought by Canada involving softwood lumber. The panel found that the United States has violated Article 2.4.2 of the AD Agreement by not taking into account all comparable export transactions. The practice of zeroing was also challenged earlier in a previous case brought by India against the European Union involving bed linen. In that case, the WTO Appellate Body ruled in March 2001 that the EU's practice was WTO-inconsistent for the same reason. Since the European Union's and the United States' practice of zeroing had already been found to violate the Anti-dumping Agreement in the dispute settlement cases brought by India and Canada respectively, many observers speculated that any dispute proceeding against the United States on the practice will produce similar results. However, the US practice of zeroing is neither required, nor prohibited, by US law. Hence it is not clear as to how and where this issue will be resolved. The problem of WTO anti-dumping rulings is that they do not have precedentiary value. This means that the jurisprudence that emerges from the Panel and Appellate Body reports to resolve issues in dispute is very much case-specific and does not have any impact on other cases. There is no binding obligation, except with respect to resolving the particular dispute between the parties to that dispute. Hence the wronged country would have to drag the defaulting country to the Panel each time an infringement occurs. As a result, a number of AD investigations have been initiated on this account. For instance, on 24 November 2004, Japan requested consultations with the United States on zeroing, citing 15 cases when the practice was used while calculating dumping margins on Japanese merchandise (WT/DS322/1, G/L/720, G/ADP/D58/1). Mexico too requested consultations on zeroing with the US on 10 January 2005, as it related specifically to a dumping determination on stainless steel products (WT/DS325/1). On 10 December 2004, Thailand also requested WTO consultations on zeroing challenging use of US practice when establishing provisional duties on shrimp exports (WT/DS324/1).

India, as well as a majority of WTO members, has called for the complete prohibition of zeroing methodology in calculating anti-dumping margins as practiced by the United States. The FAN group, of which Pakistan is a member, took a very strong position on *zeroing* and termed it as detrimental to the export interest of developing countries. Japan, which is leading the "friends of anti-dumping coalition", called for a complete ban of zeroing methodology. Australia, Canada, and the European Union (EU) also called for prohibiting zeroing methodology.

Finally, on 6 February 2012, facing repeated confrontation with countries, US Trade Representative Ron Kirk announced that the United States signed an agreement with the European Union (EU) and Japan that will end a longstanding dispute at the World Trade Organization (WTO) over the United States' use of *zeroing*. Under the agreement, the United States has committed to completing the process of bringing its anti-dumping calculation methodology into compliance with the WTO rulings. However, it remains unclear as to how US will tackle the issue and whether the same practice will be followed for goods imported from non-EU countries.

Mandatory Lesser Duty Rule

Article 9.1 of the Anti-dumping Agreement encourages the imposition of an AD duty lower than the full dumping margin if investigating authorities determine that the lesser amount is sufficient to offset the injury suffered or threatened to the domestic industry. Many WTO members favour amending the Anti-dumping Agreement to require a mandatory, rather than a discretionary "lesser duty rule" (Jones, 2006). Developing countries are especially interested in seeing a mandatory rule applied to exports from their countries, and have proposed this measure as part of a "special and differential treatment" package of

trade concessions offered by developed nations to developing countries. Proposals have been made by countries like Brazil, Hong Kong, China, India, and Japan to make the ''lesser duty rule" mandatory (TN/RL/GEN/99). This, in turn, would require Members to agree on disciplines for determination of the injury margin first. But currently there is no ''lesser duty rule" in US law or practice, and enactment of a mandatory rule might require congressional action.

Price Undertakings

Article 8 of the Anti-dumping Agreement allows the use of "voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices" provided that investigating authorities are satisfied that the injurious effect of the dumping is eliminated. Many WTO members favor mandatory use of "price undertakings" because they believe that the practice is less damaging to exporters, while also eliminating the injury to domestic producers. There have been various proposals by countries to operationalize this issue. But before that there should be clarity on a number of procedural issues like definition of "satisfactory" and "un-satisfactory" price undertaking; define 'reasons of general policy' in the context of refusal by authorities of proposals for price undertakings in Article 8.3; take into account the needs of developing countries; provide an outline of the procedure to be followed in cases where only some exporters submit price undertakings, and others do not.

Proposed Changes in Injury Determinations

Another major focus of proposals for amending the Anti-dumping Agreement is redefining and streamlining the methodology by which administrative authorities determine injury (Jones 2006). Some WTO members believe that the guidelines and definitions in the Agreement are too subjective and that procedures lack transparency in many countries. Sometimes price differentials result from applying normal business pricing practices or adjustments to price levels prevailing in the importing country, which should not constitute unfair trade practices and hence, should not be penalized. Also sales below fully allocated costs of production are not contrary to normal business practices and this is recognized in the competition policy of certain countries. As a matter of fact, sales below fully allocated cost of production but which permit the recovery of average variable cost of production within a reasonable time period should be considered as having been made in the ordinary course of trade. Also, for instance, during global economic slowdown, a substantial number of industries across the world are likely to display symptoms of injury. Should all be eligible for anti-dumping protection, subject to a demonstration of dumping? The industry complaining of injury may be suffering from a wide variety of external weaknesses like changes in demand, changes in costs or changes in the character of import competition. It may not be always that the cause of the industry's ill-health is dumped imports.

Mandatory Sunset of AD Orders

The current Anti-dumping Agreement specifies that each anti-dumping order must be terminated after five years unless authorities determine in a review that its expiration would be likely to lead to a recurrence of dumping and subsequent injury to the domestic producer. In particular, many countries have complained that US authorities base sunset review determinations inordinately on submissions by the domestic industry. They claim that, US AD orders are likely to remain in place as long as the domestic industry opposes their removal. China has proposed that anti-dumping measures taken by developed country Members against exports from developing country Members should automatically cease after five years, and that no application of any new investigation against the same product from the same developing country shall be accepted before 365 days after the previous measures have ceased (TN/RL/W/66). Canada has proposed for the clarification of circumstances that might lead to the continuation of a measure, and provide an indicative list of factors that authorities should consider in determining whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury (TN/RL/W/47).

Special and Differential Treatment of Developing Countries

The most damaging impact of AD actions on the developing countries is their influence on exports. The process of opening an investigation have negative effects on trade flows regardless of whether a duty will be finally imposed or not. The mere threat of opening an investigation induces a drop in exports. The situation is worsened by the possibility to levy duties retroactively, which is mentioned in Article 10.8 of the WTO Agreement. Also involvement in AD investigations is very expensive, since legal costs are too high. Apart from legal costs, the opening up of an investigation ties down the exporting enterprises with uncertainty over the outcome, which can last for years.

As a result of this, the FAN Group and several other countries have requested that Article 15 should have special provisions so that the developing countries can be actually provided with meaningful special and differential treatment when facing AD actions. Recommendations involve accepting price undertakings and raising the *de-minimis* margins for developing countries. Other recommendations also calls for standardizing certain investigative procedures, so that AD initiation is less costly (TN/RL/W/138).

Conclusion

With a large number of systemic deficiencies in place, the limitation of unjustified AD investigations is one of the most pressing issues. The negotiating mandate for anti-dumping, agreed at Doha severely restricts the areas of possible change since negotiators have agreed that the basic concepts of Anti-dumping must remain intact and that the contemplated reforms were limited to "improving and clarifying" the current system. According to Moore (2005), "*major changes would only occur if an overwhelming majority of countries required anti-dumping reforms were the* sine qua non *of broader trade liberalization. This seems particularly unlikely given the rapid expansion of anti-dumping's use in many new nations in the multilateral system*".

Moreover, the US negotiators are very reluctant to concede any negotiating agenda, particularly on anti-dumping that might impinge on American trade laws. Currently, the gap between the US position on anti-dumping and that of our WTO trading partners appears to be very wide and is difficult to bridge. Hence the future of AD reforms seems to be grim. The Chair of the WTO Negotiating Group on Rules has reported that based on his consultations, he has detected "very little appetite" for resuming the negotiations in the Group. As a matter of fact the negotiations on AD reforms cannot proceed unless there is a change or shift in the underlying dynamics in the Doha Round.

NOTES

[1] FAN includes Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Taipei, Thailand and Turkey.

[2] TN/RL/W/6; TN/RL/W/26; TN/RL/W/66; TN/RL/W/113

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NEWS
(NATIONAL/INTERNATIONAL)

US Asks Govt. Not to Raise Duties on Power Gear Imports

THE US Government has expressed concern over the proposed duty hike on power equipment imports.

The US Trade Representative, Mr. Ron Kirk, has written to the Prime Minister, Dr. Manmohan Singh, asking the Centre not to increase duties on import of such equipment. The 21 per cent duty hike proposed by the Power Ministry — meant mainly to protect local equipment firms such as L&T and BHEL from "cheap and low quality" Chinese imports as well as create a level-playing field — will also hurt American equipment majors such as GE.

It is learnt that Mr. Kirk has written that the duty hike will make power equipment imports more costly and, in turn, result in higher electricity costs for consumers.

Recently, the Association of Power Producers had written to the Power Ministry saying that increasing customs duty on equipment imports would further increase electricity tariffs and also lead to delays in capacity addition. About half of the coal-based capacities are dependent on power equipment imports, it pointed out.

The private power producers' body also said that financial problems, fuel availability concerns and the distribution utilities being in bad shape had already resulted in higher generation costs. It added that if import duties were hiked at this point, it would adversely affect not only the sector but also the economy.

The Prime Minister's Office had directed the Power Ministry to circulate a Cabinet note on the proposed duty hike. Currently, the Ministries of Commerce, Finance, Heavy Industries and Power are holding discussions on the issue, the sources said.

As of now, there is a 5 per cent customs duty on equipment imports for below-1,000 MW projects. The proposal to hike duties would also affect ultra mega power projects that are exempted as of now.

Differences

Mr. Kirk's letter assumes significance in the backdrop of the recent differences between India and the US on a host of trade and investment issues. The US had already taken India to the World Trade Organization (WTO) on the ban on poultry imports from the US, while India moved the WTO on US' "high" visa fee for skilled workers as well as duties on some steel products.

The US Secretary of Commerce, Mr. John Bryson, during his visit to India in March, had also raised the issue of India's "high tariffs" on capital goods such as power-generating equipment, some medical products, grapes, citrus, and other fruits. He had termed these as "barriers" to building US-India economic ties and also said local sourcing requirements in sectors such as solar energy and IT/electronics (telecom) "makes it harder to invest in India."

The US Ambassador to India, Ms. Nancy J. Powell, in April expressed concerned over "challenges" to trade and investment in India, including "high tariff and non-tariff barriers, restrictions on foreign investment, lack of transparency, and defence offset requirements".

(*The Hindu Business Line*, 12 July 2012)

Turkey Agrees to Remove Penal Duties on Indian Cotton Yarn

TURKEY has agreed to remove penal duties "wrongfully" imposed on Indian cotton yarn, spelling victory for New Delhi that is fighting growing protectionism in several countries against its products.

The two countries are likely to sign a memorandum of understanding (MoU) on the issue soon, following which India would withdraw its complaint against Turkey filed with the WTO.

"Both countries have reached a satisfactory understanding on the penal duties," the official said. "As soon as the memorandum of understanding spelling details of duty removal is signed, India will withdraw its complaint."

Global economic uncertainty has prompted a number of countries including the US, Egypt and Turkey to raise protectionist walls against imports from other countries including India to safeguard their domestic firms.

Canada, too, has started investigations to impose penal duties against certain Indian steel products. "It is true that protectionism worldwide is growing. India does not have a problem with import restrictions as long as countries respect the rules framed by the WTO. But we will definitely fight against all violations," the official said.

New Delhi has filed official complaints against restrictive duties imposed by the US on steel products and Egypt and Turkey on cotton yarn at the WTO.

"In the case of Turkey, we are happy that the issue is being amicably settled without the need for a dispute settlement panel," the official said. Egypt and Turkey are the fifth and sixth largest export destinations for Indian cotton.

Industry body Texprocil, which has been working with the government on the legal aspects of the penal levies imposed by Turkey and Egypt on Indian cotton yarn, says all wrongful attempts to block exports have to be severely discouraged.

"If we do not take action against illegal measures adopted by another country to curb imports, we are in a way encouraging other countries to follow suit."

Turkey imposed safeguard duties between 12 and 17 per cent over and above the customs duty of 5 per cent with effect from July 2011. This made Indian exports to the country costlier.

Egypt, on the other hand, imposed a specific duty of 55 cents per kilogram of yarn in December 2011. Safeguard duties are import levies imposed over and above the existing duties to protect domestic industry against a surge in imports. India contested Turkey's decision to extend safeguard duties after they expired last year, without carrying out a review to the WTO Committee on Subsidies and Countervailing Duties.

(The Economic Times, 8 June 2012)

US Hikes Duty on Indian Steel Pipe

THE United States piled another layer of preliminary duties in the past on a certain type of steel pipe from India, after India complained at the WTO about an earlier US round.

The US Commerce Department said it had determined that Indian companies were selling circular welded carbon-quality steel pipe in the United States at 48.43 per cent below fair market value.

The duties will require importers to post bonds or cash deposits based on the preliminary rates until a final decision on anti-dumping duties is made later this year.

The department also set preliminary anti-dumping duties on this kind of pipe of zero to 27.96 per cent for Vietnam, 5.59 per cent for Oman and 3.29 to 11.71 per cent for the United Arab Emirates.

The US companies – Allied Tube and Conduit, JMC Steel Group, Wheatland Tube and United States Steel Corp petitioned the government last year for import relief.

In March, the Commerce Department set preliminary "countervailing" duties of nearly 286 per cent on the same type of steel pipe from India to offset government subsidies.

That prompted India to request consultations with the US on the action at the WTO, the first stage in filing a formal trade dispute.

India rejects the US view that Indian manufacturers are subsidized because a portion of the iron ore they use to produce the steel pipes comes from India's top iron ore miner NMDC, a state-run company.

The United States in 2011 imported about $64.5 million of the steel product from India, $53.9 million from UAE, $50.1 million from Vietnam and $28.0 million from Oman.

(*Business Standard*, 25 May 2012)

Canada Likely to Side with India against US

INDIA may get an ally in Canada in its fight against the US on imposition of penal import duties on certain steel products.

Canada, a major exporter of steel products, is keen on joining the talks between New Delhi and the US at the WTO on 30 May. It has sought permission from the WTO to participate in the talks on countervailing duties on hot-rolled steel products exported by India.

If the talks fail, India may ask for establishment of a dispute settlement panel to settle the issue.

"Canada has a substantial trade interest in these consultations since the US is the largest market for Canadian hot-rolled carbon steel flat products. Accordingly, Canada requests to join these consultations," stated an official communication by Canada to the chairperson of the dispute settlement body.

New Delhi dragged Washington to the WTO on the steel issue, after it failed to persuade the US to revoke penal duties imposed on hot-rolled steel products that are exported by Indian companies, such as Essar, Tata and Jindal. These duties are as high as 500 per cent in some cases.

India has objected to the US treating the sale of iron ore by NMDC as a subsidy.

"We should not have a problem in allowing Canada to participate in our consultations. We may, in fact, benefit from the arguments that it brings in," told a government official, who did not wish to be quoted.

As Canada itself has been at the receiving end of random imposition of countervailing and anti-dumping duties by the US, they would most certainly have interesting observations on US' conduct, believes Abhijit Das, Head of the Centre for WTO Studies, IIFT. "Canada may want to air its views on how the US conducts its investigations which may be beneficial for India," Shri Das said.

Canada has also been fighting against penal duties imposed by the US on a number of steel products, including wires exported by it at the NAFTA, or North American Free Trade Agreement.

(*The Economic Times*, 25 May 2012)

US, EU Question India's Special Import Levies to "Safeguard" Domestic Industry from Import

THE US and the EU have questioned India's special import levies to "safeguard" domestic industry from import, saying they may have been calculated in a non-transparent manner.

India has said the safeguard duties were within the bounds of WTO rules.

"Our representatives at the meeting made it absolutely clear to those raising concerns that our safeguard procedures are fully consistent with the WTO."

The US and the EU expressed concerns about the transparency and due process in India's safeguard investigations at a recent meeting of the WTO's safeguard committee.

Despite India's assurance that duties were in order, the US said it would be submitting specific concerns to New Delhi within a few days.

"We would gladly answer all queries, but they have to be made first," the official added.

The WTO allows member countries to impose safeguard duties, which are short-term import levies over and above the existing import duties, if there is evidence of a surge in import of a particular product. The affected country also has to prove that the surge in imports was causing injury to the domestic industry.

"We have a detailed procedure on the lines of norms prescribed by the WTO to carry out our safeguard investigations and duties are imposed only when we are fully satisfied that all conditions have been met," the official said.

There were about 10 instances of safeguard duties imposed on imports by India between 1998 and 2004. The country did not impose any safeguard duties between 2004 and 2008 when it relied mainly on anti-dumping duties to check cheap imports.

(*The Economic Times*, 3 May 2012)

Pakistan Imports: Duty Cut on 260 Items in Four Months

INDIA will honour its promise to Pakistan to reduce import duties on about 260 items within the next four months according to a senior government official.

Both countries are also ready with a new visa agreement that will allow business visitors a one-year multiple entry visa for multiple cities. "Since Pakistan started its trade normalization process with India in March, we will abide by our commitment of reducing our sensitive list by July-end", the official told.

Pakistan Commerce Minister Mr. Makhdoom Amin Fahim will discuss the items where it wants duty cuts in his meeting with his Indian counterpart Shri Anand Sharma.

India had promised Pakistan that it would reduce its sensitive list of 865 items not given preferential market access under the South Asia free trade agreement by 30 per cent within four months of Pakistan starting its trade normalization process. Pakistan had recently switched over to a negative list allowing import of all items from India other than about 1,209 in the list which will be dismantled by the year-end.

(*The Economic Times*, 13 April 2012)

Higher Import Duty to Affect Auto Exports to Sri Lanka

INDIAN auto makers exporting to Sri Lanka will pass on the burden of an import duty hike to consumers, hitting demand, analysts said.

In a bid to contain the rising fiscal deficit, the local government sharply increased the import duty on automobiles with effect from 1 April. The import duty on cars has gone up from 120-291 per cent to 200-350 per cent; on three-wheelers, it has gone up from 51-61 per cent to 100 per cent, and on two-wheelers, from 61 to 100 per cent.

Duty on buses, trucks and tractors remains unchanged.

Sri Lanka is an important export destination for several Indian auto makers, including Bajaj Auto Ltd and Maruti Suzuki India Ltd.

Executives at the auto firms conceded sales would get affected at least in the medium term as the market is price sensitive.

Bajaj Auto, India's largest exporter of motorcycles and three-wheelers, draws 20 per cent of its total exports from Sri Lanka. In the fiscal year ending March 2012, the Pune-based firm exported 107691 units, an expansion of 54 per cent over last year.

Rakesh Sharma, president, international business, at the firm, said, "The increase is so significant that we have no choice but to pass it on (to consumers)." The hike, according to Shri Sharma, is likely to deter consumers from buying new vehicles at least for the time being.

With Sri Lanka's economy improving and showing a fundamental upward trend, buyers will come to terms with the price hike over a period of time, he said.

With Bajaj Auto having a relatively high exposure to the Sri Lankan market, it will feel the maximum impact among Indian auto makers, wrote Joseph George, analyst at brokerage IIFL Ltd in a 2 April research report.

While Bajaj Auto's three-wheelers have 80 per cent of the Sri Lankan market, its two-wheelers account for half, he said. "Sri Lanka accounts for 35-40 per cent of Bajaj's three-wheeler and 10 per

cent of two-wheeler exports. This is equivalent to about 7 per cent of Bajaj's total revenue and an estimated 9 per cent of earnings before interest, tax and depreciation."

The firm estimates that the import duty hike led to a 20-30 per cent increase in the price of vehicles.

Car market leader Maruti Suzuki's 5 per cent of exports sales comes from Sri Lanka. Mayank Pareek, managing executive officer, marketing and sales at Maruti Suzuki, said: "It's quite a significant market for us and bound to have an adverse impact on sales as Sri Lanka is a price-sensitive market." The company is awaiting clarity on duty on second-hand vehicles in the market.

Currently, duty on pre-owned cars in Sri Lanka is higher than new vehicles. If there is no change, it will give a boost to the second-hand car market in the region, which accounts for 80-85 per cent of total car sales, said Shri Pareek.

Although Sri Lanka is a big market for TVS Motor Co. Ltd and Hero MotoCorp Ltd, overall exports are not as big a revenue generator for these companies as they are for Bajaj Auto. *Mint* wasn't able to reach these two firms for comment.

Among other measures including a half percentage point hike in the policy rate, imposing credit growth targets for banks and substantial price hikes on petroleum products, the higher import duty on vehicles has been viewed favourably by the International Monetary Fund, which recently disbursed the last tranche of $427 million of the $2.1 billion it had committed to the country.

(*Livemint*, 3 April 2012)

European Union Whines Despite India Agreeing to Halve Import Duty on its Wines

INDIA has proposed to halve import duties on wines and spirits bought from the European Union under the bilateral free trade agreement being negotiated between the two, but the 27-country union is demanding steeper cuts.

EU officials argued liquor imported from the region would become affordable for Indian customers only if there are "meaningful" cuts in duties.

"They said that state taxes on liquor were extremely high in some cases which raised the incidence of duty on foreign liquor to very high levels. Customs duty on liquor, therefore, needed to be reduced substantially," an official familiar with the talks said.

India imposes 150 per cent customs duty on wines and spirits, which it has now proposed to cut to about 75 per cent for the EU countries.

New Delhi has also offered to reduce duties further to about 40 per cent on some categories of alcohol over the next four years after implementation of the FTA.

The EU has demanded an immediate reduction in import duties to about 30 per cent so that there is a substantial dent in the total incidence of taxes, an official said.

EU trade commissioner Mr. Karel De Gucht had expressed his unhappiness with India's offers. Due to high taxes imposed by states, incidence of taxes on foreign liquor was as high as 200-790 per cent of the sale price, depending on the type of liquor and its price and also the state in which it is being sold.

India's import of alcoholic beverages went up 55 per cent in the first three quarters of the fiscal to ₹593 crore, compared to ₹382 crore in the same period last year, according to figures compiled by the commerce department.

Given these imports, India is reluctant to make steeper cuts as its domestic industry is still in its nascent stage and slashing tariffs is a politically sensitive issue.

"We have insulated the liquor sector from all FTAs we have signed so far. Although we are ready to cut duties on both wines and spirits for the EU, it cannot expect us to be insensitive to the demands of our industry" remarked an official.

These offers are, of course, linked to EU's readiness to open markets for items such as textiles and fisheries and substantially liberalize its services sector. Both sides hope to implement the FTA in goods, services and investments, later this year.

(*The Economic Times*, 22 March 2012)

Some Respite for Steel Makers

THE Finance Minister has proposed to increase the customs duty on flat steel import to 7.5 per cent from the present 5 per cent. Nittin Johari, Director (Finance), Bhushan Steel, said, "This will help local companies sell more, as imports will get expensive. Also, local steel makers may look to increase the price by one to two per cent, or ₹500-1,000 per tonne." Ravindra Deshpande, equity analyst, Elara Capital India, said, "This is good news for Indian steel companies. They have been asking this for some time."

The current financial year has been a difficult one for makers at home, battling slowing demand amid a high input cost regime. Shri Deshpande said, "Demand growth this year has been excessively below expectations. Companies will (now) try to raise prices by at least ₹1,000 per tonne."

With the demand slowdown, prices could not be increased to address the higher input costs.

Steel demand in India was expected to grow at eight to 10 per cent this year. However, at the end of the April-February period, it had risen by only 5.2 per cent. And, imports in these 11 months have gone up by 3.4 per cent, to 6.23 million tonnes, much to the vexation of domestic steel companies, who saw this as a lost opportunity for them. They now hope the increase in customs duty would help bring down imports.

Despite the slowing witnessed in home steel demand, the government's *Economic Survey* for the year, was fairly satisfied with the sector's performance and termed it "optimistic". The Survey blamed inflationary pressures, interest rate rises and the depressed global economic scenario for the lower growth in steel demand here.

India consumed 70 million tonnes of steel in 2010-11. The number, assuming a 10 per cent growth rate, should have reached 77 million tonnes at the end of the current financial year. However, the apparent consumption in April-February was about 66 million tonnes and is expected to be no more than 71-72 million tonnes for the full year.

(*Business Standard*, 17 March 2012)

Anti-dumping Duty Likely on Imports of Soda Ash

INDIA may impose an anti-dumping duty of up to US$38.79 per tonne on a chemical, used mainly in detergents, imported from seven places including China, EU, Pakistan and the US, to protect domestic players against cheaper imports.

The Directorate General of Anti-dumping and Allied Duties (DGAD) has recommended imposition of the duty on imports of "soda ash", the Commerce Ministry said in a notification dated 17 February.

The Directorate's recommendation comes on the basis of its findings that increased imports have caused "material injury" to the domestic industry, it said.

Alkali Manufacturers' Association of India had filed a petition for imposition of an anti-dumping duty on behalf of the domestic industry.

The duty ranged between US$2.38 per tonne and US$38.79 per tonne, it said.

The DGAD, which is under the Commerce Ministry, in its recommendations said that the chemical has been exported to India below its normal value from China, European Union (EU), Kenya, Iran, Pakistan, Ukraine and the US.

"... the Authority is of the view that imposition of definitive anti-dumping duty is required to offset the dumping and injury," it added.

Soda ash is an essential ingredient in the manufacturing of detergents, soaps, cleaning compounds, float glass, container and specialty glasses and other industrial chemicals. It is also widely used in textiles, paper, metallurgical industries and desalination plants.

The country has already imposed anti-dumping duty on imports of fabric, yarn, nylon tyre cord and several chemicals.

Unlike safeguard duties, which are levied in a uniform way, anti-dumping duties vary from product to product and from country to country.

Countries initiate anti-dumping probes to check if domestic industry has been hurt because of a surge in cheap imports.

As a counter-measure, they impose duties under the multilateral WTO regime.

(*The Economic Times*, 23 February 2012)

Anti-Dumping on 4 Items Imported from China Extended for 5 year

IN the backdrop of widening trade gap with China, effecting January 2012, India extended for five years anti-dumping duty on import of four Chinese products, including silk fabrics and a sweetener.

The duty is imposed to protect the domestic industry from cheap imports.

Import of certain type of silk fabrics from China will attract anti-dumping duty of US$1.82 to US$7.59 per metre, a notification of the Revenue Department said.

The duty was first imposed on the fabrics in December 2006 till December 2011.

India had a trade deficit of US$16 billion against China during 2010-11. It has already crossed US$20 billion in the first seven months of the current fiscal.

The Directorate General of Anti-Dumping (DGAD) had carried a *suo motu* sunset review probe in December 2010 to examine whether cessation of the duty would lead to continuation of dumping and injury to the domestic players.

Following the review, the DGAD had recommended continuation and enhancement of the anti-dumping duty.

"The anti-dumping duty imposed shall be levied for a period of five years (unless revoked, superseded or amended earlier) ...," the Revenue Department said.

It further said the duty on import of certain type of nylon filament yarn from China, Chinese Taipei, Malaysia, Thailand and Korea will be imposed at US$0.20 to US$1.51 per kg. for another five years. Notifications for extension of anti-dumping duty on imports of cellophane transparent film and saccharin from China for five years have also been issued.

Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar.

Meanwhile, the government has also levied provisional anti-dumping duty on import of phosphoric acid (excluding agriculture/fertilizer grade) from Israel and Taiwan. The duty at US$116.25 to US$260.26 per tonne has been imposed for six months.

India has so far initiated about 150 anti-dumping cases against China, which account for over half of such actions taken by the country against foreign nations.

(*The Economic Times*, 13 January 2012)

No Freezing of Customs Duty at Current Level, Says Sharma

INDIA has ruled out any freezing of Customs duties at current level. It has also deflated the pressure for any dilution of the flexibilities available under the World Trade Organization (WTO) regime for imposing export restrictions and taxes in case of the agricultural produces.

Addressing a group of 20 countries ahead of the 8th Ministerial Conference of the WTO in Geneva, the Commerce and Industry Minister, Shri Anand Sharma said, "Tariff standstill (freezing of the custom duties at the current levels) will amount to the developing countries ceding their policy space and being denied any recognition for their autonomous liberalization."

Besides unhinging the negotiated formula on tariff reductions, it would force the developing countries to take on commitments going much beyond what was envisaged for at the end of the Doha Round, he added. Shri Sharma desired that WTO, while taking up all manner of the new challenges, does not forget the traditional challenge of development.

He called for continued solidarity and reinvigorated engagement so that the current impasse in the Doha negotiations is broken and the attempts to replace the development centric agenda are thwarted.

He cautioned against the possibility of losing the progress and the balance achieved so painstakingly over the last decade, particularly on the reforms of the agricultural trading system. He urged the global community not to allow this

opportunity to slip away or allow a dilution of the Doha mandate. Earlier, speaking at the meeting of the G33 countries (a coalition of agricultural economies, coordinated by Indonesia) he called for ushering in much delayed changes in the current agricultural trading regime which negatively impact the livelihood concerns of billions of subsistence farmers in the developing world.

(*The Hindu Business Line*, 15 December 2011)

Palmolein Import Tax Unlikely to be Raised

INDIA, the world's second-biggest user of cooking oil, will resist calls from local processors to increase tax on refined palmolein imports, as a plunge in the rupee makes overseas purchases abroad more expensive, according to the government officials.

The government will keep $484 a tonne as the base price for taxing imports at 7.5 per cent at least the next three months, said the officials, who have direct knowledge of the matter. An increase in the base rate would have raised the prices of imported oil, fuelling inflation. The rate may be raised in the annual budget in February.

India's rupee fell to a record 52.73 per dollar on 22 November, on concern Europe's debt crisis would hurt demand for emerging market assets. The 14.6 per cent slump in the currency this year threatens to boost import costs, fueling inflation. The food price index has stayed above 9 per cent for the last 16 weeks.

"If the current base price continues, refined oil imports will likely increase and hurt domestic refiners." "Unfortunately, the government is more concerned about the food inflation."

The processors in September asked the government to increase the base price and import duty on refined palmolein after Indonesia, India's biggest supplier, cut export tax on refined palm oil and raised export duty on crude palm oil.

Food Minister Mr. K.V. Thomas declined to comment. India set the base price for various cooking oils more than five years ago, while the actual cost of imported fats have surged, according to processors' group. Refined palmolein is imported at about $1,080 a tonne, while buyers need to pay tax only at $484 a tonne, it said. The benchmark prices, introduced to prevent traders from paying lower import duties by understating edible oil prices, are revised in line with international edible oil prices.

(*Bloomberg*, 1 December 2011)

Anti-Dumping Duty on Caustic Soda Imports

IN a major blow to the manufacturing industry, the finance ministry has imposed an anti-dumping duty on the use of caustic soda till 2013.

The duty will be levied on all imports originating from Saudi Arabia, Korea and the US. While the notification issued by the anti-dumping directorate has not spelt out the duty amount, it has clarified that it would be based on the reference rate which is around $400 and landed cost of the commodity.

Companies such as Hindustan Unilever, Procter & Gamble, Hygiene and Health Care, Colgate-Palmolive, Godrej Consumers Products, Nirma, Reckitt Benckiser and Henkel SPIC (India) Ltd are some of the major consumers of caustic soda, besides the paper industry, textiles and pharma sector.

The decision of the Union finance ministry to impose an anti-dumping duty on imports of caustic soda, have failed to impress the domestic industry.

Caustic soda makers termed the quantum of duty "very low" against the already lower international prices, while consumer industries including soap makers, textiles and paper industry cried foul over the sudden spike in caustic soda prices in the domestic market, while import option will be more costly once the government decision comes into effect.

An official with one of the petrochemical companies said: "Caustic soda is a major chemical ingredient and domestic manufacturers have been suppressing a price rise for some time, since import was cheap. Many domestic manufacturers of this chemical refrained from a price rise, even at the

cost of lower margins or loss and many industries have leaned down production. But now, with this anti-dumping duty, chemical manufacturers can increase prices which could trigger a price rise of its end products."

Despite representations by domestic soap makers, including Hindustan Unilever, that their requirements are not met by supplies from domestic companies and they have to resort to imports, the anti-dumping directorate has advocated that the duty is required to provide level-playing field for domestic manufacturers *vis-a-vis* imports.

Caustic soda is a soapy, strongly alkaline, odourless liquid widely used in paper, viscose yarn and staple fibre, aluminium, textiles, toilet and laundry soaps, detergents, dyestuffs, drugs and pharmaceuticals, vanaspati and petroleum refining industry, among others.

Caustic soda companies also see the size of the duty as lower than expected. "The imposition of duty on caustic soda imports is not going to benefit the domestic industry as the quantum of the duty seems to be very low. This duty fails to settle the prevailing disparity between international and domestic prices of caustic soda. Even after paying the duty, international prices would continue to remain lower," said an industry source.

According to industry insiders, companies that are dependent on imported caustic soda may have to shell out more. Domestic supplies of caustic soda may also get costlier.

It is evident from the fact that soon after the imposition of the duty, the sentiments have already turned bullish as the prices of caustic soda in the domestic markets have started showing upward signs. In the past one week, caustic soda prices have jumped by ₹3,000 to ₹4,000 per tonne.

Caustic soda liquid was priced in the range of ₹28,000 to ₹29,000 per tonne, while flax prices hovered around ₹31,000 to ₹32,000 per tonne.

"Caustic soda prices have already started rising in the domestic market as a fallout of the imposition of import duty. But it is less likely that consumer industries would pass on this price hike to its finished products, because they are already faced with low demand. Rather they (consumer industry) are more likely to adopt a wait-and-watch strategy for prices to fluctuate," said an Ahmedabad-based leading caustic soda trader.

But to some, the imposition of import duty may prove to be irrelevant. "We have our own caustic soda plant, with all the in-house raw material supplies available. Hence we do not depend on other companies for our requirements. So it is irrelevant to us if the anti-dumping duty stays or goes," said a source at Nirma Limited, India's largest detergent maker.

Meanwhile, sources from Tata Chemicals, India's leading caustic soda maker, maintained that the imposition of duty would benefit the Indian caustic soda industry. "The move will surely help domestic manufacturers. Going forward, there could be some impact on prices as imports would get costlier," said a company official, requesting anonymity.

The anti-dumping directorate was conducting a sunset review of the duty which had expired in 2008.

The initial appellants were Gujarat Alkalies & Chemicals Limited, Grasim Industries Limited, DCM Shriram Consolidated Limited, SIEL Industrial Complex and Bihar Caustic & Chemicals Limited

Later, the petition had been supported by a host of other companies, including Reliance Industries Limited, Kanoria Chemicals & Industries Limited, Gujarat Fluorochemicals Limited, Solaris Chemtech Limited, DCM Limited and Jayshree Chemicals Limited.

Officials said the views of all stakeholders, including importers were taken before the decision was made. Some of the major importers who have responded are National Aluminium Company (NALCO) and Hindusthan Lever Ltd.

The anti-dumping duty on imports from Indonesia, European Union and Taiwan had been levied between 2006 and 2008. The directorate initiated a review of the duty in 2010 following representations from the industry.

(*Business Standard*, 16 October 2011)

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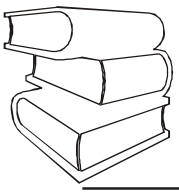

BOOKS/ARTICLES NOTES

BOOKS

The Anti-Dumping Agreement and Developing Countries: An Introduction by Aradhna Aggarwal; Oxford University Press; 16 July 2007; pp. 299.

IN the era of globalization, trade policy has become a key development tool and exports expansion a major policy objective. But throughout the global economy, pressures for protectionism are abundant, threatening to reverse developing countries' gains. In this context, anti-dumping has emerged as a critical topic of international debate.

This book analyzes the importance of the anti-dumping issue from the perspective of developing countries and discusses their roles and concerns. The author's analysis reveals biases against developing countries and stresses the need for reform of current anti-dumping codes.

The book traces the genesis and evolution of the existing anti-dumping agreement and its legal porvisions, discusses various economic and non-economic justifications of anti-dumping use, empirically analyzes the macroeconomic factors motivating developed and developing countries to use anti-dumping rules and examines wide ranging proposals for reform of the WTO anti-dumping code.

The author analyses various plausible approaches for refining the existing provisions and explores the possibility of reform by including a Public Interest Test. She also suggests updating the Special & Differential Treatment instruments to remedy the existing imbalances.

ARTICLES

Reforming Anti-Dumping Law: Balancing the Interests of Consumers and Domestic Industries by Jean-Marc Leclerc, *McGill Law Journal*, 1999, (1999) 44 McGill L.J. 111

THE paper analyzes various issues relating to anti dumping. While GATT has been largely successful in reducing barriers to trade, anti-dumping provisions remain a significant obstacle to liberalized trade that would benefit consumers. Numerous studies demonstrate the extent to which anti-dumping legislation does not appear to be motivated by anything other than protectionism. It does not prevent predatory pricing, since predatory pricing is an improbable phenomenon at best; nor does it prevent the alleged harm caused by sporadic dumping, since that too is unlikely. Even if consumers are harmed by sporadic dumping, this may not be a valid reason to prohibit the practice, since it is rational, pro-competitive behaviour on an international scale. Moreover, anti-dumping legislation cannot be supported on non-efficiency grounds, since the protection of small communities and less fortunate people are usually not the focus of an anti-dumping investigation.

Despite these conclusions, however, there does not appear to be a realistic chance of reform of either GATT or SIMA in the near future. Any chance for reform is caught in a "catch-22" situation. Domestic legislatures are unwilling to drop protectionist measures unless their trading partners do likewise. Hence, SIMA seems out of reach. GATT does not appear ripe for reform either, since without anti-dumping laws, many countries would balk at further liberalized trade. Finally, any opportunity for advocates of consumer welfare interests to work within the system, whether under section 45 of SIMA or

through representations made by the Director of Competition, have effectively been denied by the GATT's narrow reading of the purpose of anti-dumping laws. Even recommendations made by Parliamentary Sub-Committees charged with the task of reforming SIMA are far removed from real reform which would balance the interests of consumers against domestic industries faced with dumping.

Perhaps the only hope that consumer welfare advocates can find in this state of affairs is in regional free trade agreements (RTAs). The European Union, for instance, no longer engages in anti-dumping actions against its trade partners, and limits any investigations of unfair trade through dumping to instances where predatory pricing is at issue. However, in the NAFTA context, the United States "has shown extreme unwillingness to participate in any meaningful negotiations to eliminate the use of anti-dumping ... laws"' On a bright note, Canada has succeeded in "phasing out the use of anti-dumping remedies in the recently concluded Canada-Chile Free Trade Agreement." Furthermore, since the United States is unwilling to compromise its anti-dumping duties within NAFTA, recent reports have suggested that Canada and Mexico are considering exempting each other from the application of their respective anti-dumping laws. While they will first seek an agreement between themselves, reports say they apparently hope to later include the United States in the agreement.

As RTAs proliferate, and as countries realize that repealing anti-dumping laws does not hurt their economies, perhaps the trend to eliminate anti-dumping laws in RTAs will extend itself to GATT. For instance, if Canada does not feel threatened by Chile dumping its products into Canada, why would it feel the need to protect against dumped products from a country like Spain? Also, if it is true that Canada does not feel threatened by dumped products originating from its largest trading partner, would it feel threatened by dumped products coming from smaller trading partners? Through incremental changes in regional trade agreements, countries like Canada will increasingly realize that national economies (and consumers in particular) benefit from dumping. Hopefully an understanding that Article 6 of GATT is veiled protectionism, devoid of valid economic or political rationale, will follow.

The WTO and Anti-dumping in Developing Countries by Chad P. Bown, Brandeis University, November 2007, *www.brandeis.edu/...*

SINCE the 1995 inception of the World Trade Organization (WTO), developing countries have become some of the most frequent users of the WTO-sanctioned anti-dumping trade policy instrument. However, little is known about the pattern of actual industrial use of anti-dumping in developing countries. This paper exploits available data to examine nine of the major "new user" developing countries, matching data on production in 28 different 3-digit ISIC industries to data on anti-dumping investigations, outcomes and imports at the 6-digit Harmonized System product level. The author has used a cross-country panel of industry-level data to estimate determinants of anti-dumping protection. The author presents evidence consistent with theory that developing country industries that seek and receive anti-dumping import protection are responding to macroeconomic shocks, exhibit characteristics consistent with endogenous trade policy formation, and face some changing market conditions consistent with requirements of the WTO Anti-dumping Agreement. On average, a one standard deviation change in the key determinants affects the probability of an industry-level anti-dumping investigation by 50 per cent. However, the evidence also suggests substantial heterogeneity in determinants of anti-dumping use across developing countries, which highlights the flexibility of this policy as a protectionist tool responsive to many different types of political-economic shocks. Nevertheless, this also indicates that WTO rules may have imposed relatively little discipline on national use of the policy during this time period.

The paper investigates determinants of industry pursuit of anti-dumping across nine major developing countries in the 1995-2002 period and provides evidence that this use is consistent with industry characteristics predicted by the WTO's evidentiary requirements, the theory of endogenous trade policy and macroeconomic shocks. After controlling for country-specific effects,

a general increase in anti-dumping use in these countries over this time period, and that industries like chemicals and steel are major users across countries. It is found that the industries that successfully pursue new import protection via anti-dumping have the following characteristics: they are larger, they face substantial import competition and more rapidly declining industry output, and they are more likely to have been confronted with negative exchange rate and real GDP shocks. The results by the author are statistically and economically significant, and they are robust to subsamples of data. Nevertheless, the results are the average across countries, and estimates on country-specific subsamples of data indicate substantial heterogeneity in the key determinants of anti-dumping use at the industry level. This highlights both the flexibility of the trade policy instrument, and the lack of discipline that WTO rules have likely had on limiting its use during this time period.

Understanding the causes of developing country's use of anti-dumping is important for a number of reasons. First, many of these countries are increasingly taking on the WTO commitments that restrict their ability to use other trade-restricting policies. The resulting pattern of anti-dumping import protection may thus be an increasingly important indicator for their overall pattern of industrial import protection. Furthermore, the increase in anti-dumping use by developing countries raises the concern that much of the trade liberalization commitments they undertook as part of the Uruguay Round negotiations may be offset *de facto* by new protection. However, some analysts have suggested a potentially important function of the anti-dumping undertaken by these developing countries. Finger and Nogués (2005), for example, contains arguments that anti-dumping in many of the Latin American countries in author's sample helped provided an escape valve to manage an overall programme of trade liberalization. The theory is that anti-dumping may positively affect the sustainability of the overall liberalization commitment and/or increase a country's *ex ante* willingness to take on more extensive liberalization commitments than it would take on without such an option.

Even if anti-dumping contributes to a country's process of trade liberalization, it is equally important to identify the potential long-term economic costs of this contribution. As a caveat, the author concludes by pointing to some of the costs experienced by the historical users of anti-dumping where the policy has a longer track record. First, there is evidence that it is difficult for governments to remove an anti-dumping measure once it has been imposed and an industry is benefiting from the protection it provides. While Article 11 of the WTO Anti-dumping Agreement introduced a mandatory 5-year "sunset review" investigative procedure for each imposed measure, evidence for the US suggests that this requirement has little impact on the removal of already imposed measures (Moore, 2006; Liebman, 2004). Furthermore, among WTO members, there is no historical precedent for a country that has been an intensive user of anti-dumping suddenly to curtail that use (Zanardi 2004; table 2). These combined findings suggest that over time, the *cumulative* impact of imposed anti-dumping measures may be substantial even though each distinct new AD investigation may cover only a few products and may thus seem to pose little overall economic threat. Indeed, in a study of the cumulative effects of the US use of anti-dumping law, Gallaway, Blonigen and Flynn (1999) conclude that US-imposed import protection under anti-dumping made it the second most costly trade policy programme in terms of lost US economic welfare in 1993, trailing only the Multi-Fibre Arrangement.

Anti-Dumping Law and Practice: An Indian Perspective by Aradhna Aggarwal, ICRIER Working Paper No. 85, April 2002, *www.icrier.org.*

TRADE policy regimes in most countries have transformed from inward oriented protectionist regimes to more outward and liberal trade regimes. However, any government that maintains a liberal trade policy is subject to pressures for temporary protection to specific industries. GATT therefore contains some contingent measures, which permit the signatories to withdraw their normal obligations under specified circumstances and impose higher

protection against import of one or more goods from one or more countries. Contingent protection measures fall under three categories – anti-dumping, countervailing and safeguard measures.

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

There has been a spectacular growth of anti-dumping investigations in recent years. The number of such investigations launched in 1999 was more than double that of those started in 1995. It increased from around 156 in 1995 to 358 in 1999 (WTO, 2001). Moreover, the use of anti-dumping is no longer confined to a limited number of industrialized countries. A large number of developing countries are now launching anti-dumping investigations. The share of developing countries in total cases was 10 per cent at the beginning of the 1990s; it is almost 50 per cent now. A large-scale recourse to anti-dumping has raised fears among researchers, analysts and specialists of its (mis)use as a protectionist measure. While some have raised questions about the ambiguities in anti-dumping regulations and procedures, others have questioned economic rationale behind such actions. Economic analysis by many scholars suggests that anti-dumping legislation is economically inefficient and that anti-dumping practices do not conform to the economic explanation of protection [Hutton and Trebilcock 1990, Hyun Ja Shin 1998, Bourgeoise and Messerlin 1998, Willig 1998, Leclerc 1999, Prusa and Skeath 2001]. The analyses of the legal provisions and anti-dumping practices in various countries [Murray and Rousslang 1989, Lindsey 2000, Araujo *et.al* 2001, Vermulst 1989, Tharakan 1994, 1995, Didier 2001, Hsu 1998, Almstedt and Norton 2000 among others], at the same time, indicate that the anti-dumping code is vague and that this vagueness has allowed the countries to have their own interpretation of the law. As there are ambiguities in the very definition of dumping and in every step of calculating dumping and injury margin, such ambiguities facilitate dumping findings (see, Tharakan 1991,1996,1999 Tharakan and Waelbroeck 1994).

The paper aims at addressing the issues concerning anti-dumping system in the Indian context. India has emerged as one of the most frequent users of anti-dumping measures among the developing countries. The first anti-dumping duty in India was levied in 1993. Between 1995 and 2000 India initiated 176 cases (individual country-wise) which is 12 per cent of the total cases initiated over the world.

The analysis is organized in two sections. Section II of the paper analyzes various economic justifications offered to support anti-dumping legislation and explores whether there are any reasons based on economic efficiency to support the imposition of anti-dumping duties in India. It addresses the questions: What are the different forms that dumping may take? Under what conditions might dumping be harmful? What indicators could help determine whether these conditions will be met in practice? Have actual anti-dumping cases in India met these conditions? Section III addresses anti-dumping related issues in India at the legal and the operational level. It examines anti-dumping provisions and the administration of these provisions in India. While analyzing the legal and operational aspects of the anti-dumping legislation, this study heavily draws on the existing studies, as well as the anti-dumping provisions in the selected active user countries - US, Canada, European Union, Mexico, Argentina, Brazil and Korea. Finally, Section IV concludes the analysis by drawing policy implications for reforming the anti-dumping system.

The paper provides some in-depth analysis and useful findings. The paper provides many economic perspectives and examines whether the policy could be justified using economic arguments. The most frequently offered justification for anti-dumping laws is the prevention of predatory pricing. The paper examines whether predatory behaviour was actually present when protection was granted. The analysis was carried out with the aid of four criteria, which, it was argued, must be met if predatory dumping is to be a likely explanation: the number of foreign sellers should be small; the share of subject countries should be high in total imports; import penetration should be high; and finally, exporters should be enjoying dominant position in their markets. Cases that fail to meet any of these criteria probably do not involve predatory dumping. Applying these criteria to anti-dumping investigations in India between 1993 and 2001, this paper found that they were met only in a few cases. Although the methodology and the data set were subject to severe limitations and could not be expected to identify accurately every instance of predation, the analysis did indicate that anti-dumping investigations in India did not deal with predatory behaviour in general. The paper also examined whether the anti-dumping actions could be justified on the grounds of the optimal tariff argument and the strategic trade policy arguments. The analysis indicated that conditions attached with these arguments were not satisfied in the Indian case. It may therefore be concluded that in the majority of the cases anti-dumping policy cannot be justified on economic grounds. Preliminary evidence presented in the paper indicates that the political economy argument is the strongest argument in explaining India's current anti-dumping actions. Such actions have given protection to highly concentrated industries. Dominant producers lobby and litigate anti-dumping cases. In the process, they incur huge expenditure sacrificing economic efficiency. Besides, since most cases are in the intermediate products' markets higher prices may be having adverse effects throughout the economy. One may therefore conclude that anti-dumping policy that is designed to ensure fair competition and improve economic efficiency may in fact reduce them. These results are consistent with evidence reported elsewhere in the literature.

Analysis in Part II focused on legal provisions and discussed shortcomings in the anti-dumping code in India. As per the agreement, India has specially undertaken to bring its anti-dumping legislation in conformity with the anti-dumping agreement. However, it would still require drafting of regulations to fill gaps in the anti-dumping agreement, to address issues where the agreement explicitly offers members choices between different approaches. These are for instance, treatment of various adjustments, definition of control, consumer interest, review mechanism and so on. Several ambiguities in the legal provisions such as a number of allowable adjustments with limited interpretation; the use of constructed normal and export values and unrealistic adjustments, use of surrogate country methodology for non-market economies, asymmetrical comparisons between the export and normal values introduce bias in favour of finding positive dumping margins. Determination of injury margin is subject to even more severe ambiguities and is highly discretionary. The administrative procedure is considered highly confidential increasing the risk of its misuse. To minimize the manipulation of the law for protectionist purpose and to limit discretionary powers of the authorities, more explicit rules should be developed and definitions of different concepts used in the process should be given clearly and the procedure of determining dumping should be made more transparent.

It may, however, be noted, that further fine-tuning and refining of the anti-dumping policy is not the answer to prevent its misuse. Scholars argue that the antidote is competition policies. Efforts should be directed at integrating anti-dumping policy with the competition policies. The competitive merits of anti-dumping requests in that case will be evaluated by the competition authorities using the same standards and the framework of competition policies. This will result in the adoption of stricter criteria for determining predation in such cases and will prevent its misuse. Moreover, the injury standard for anti-dumping cases should also be brought closer to the antitrust standard, which takes into account the behaviour's

effect on the competitive structure of the industry as a whole, rather than the material injury it causes to domestic firms. This, however, requires the implementation of comprehensive competition policies and credible enforcement agencies. This has not been the case in India. The existing legal framework is weak and has been marked by a notable lack of economic analysis in its implementation. The current law does not even have a properly defined concept of predatory pricing. In similar cases of alleged predatory pricing, the Commission used different standards and came to very different conclusions. In recent years, there seems to have been a growing use of the section of the Act dealing with predatory pricing in cases dealing with international trade (the case of soda ash from the US). However, evidence suggests that the current law is not efficient in tackling such cases. Some scholars in India therefore argue that the use of competition policy framework for anti-dumping actions may not prevent their misuse. However, the problem is due to weak and ineffective law and the solution is: make it more effective. The new competition policy bill has been pending with the parliament. It should be of utmost importance to get it passed and integrate the anti-dumping policy with this law.

The paper concludes by highlighting that the first best option would be to abolish anti-dumping altogether. Governments must attempt to dismantle the anti-dumping mechanism and merge it with the competition policy. While this would be preferable, it may not be feasible in practice to pursue it unilaterally. It could be pursued through bilateral agreement or in the context of plurilateral arrangements. The two instances - the EEC and the ANZCERTA, of successful abolition of the anti-dumping law indicate that there is possibility of doing away with this form of protection within the framework of regional integration agreements. Countries could also negotiate "cease-fire" arrangements on anti-dumping measures with those major trading partners who arewilling to reciprocate through bilateral agreements. Another option would be to follow a strict predation standard in investigating anti-dumping cases and limit the scope of anti-dumping to predatory cases alone. This requires a major revision of the definition of dumping in the next round of multilateral negotiations limiting the concept of anti-dumping to predatory pricing. The national authorities can then pattern their anti-dumping procedures along the lines used by competition authorities in countries where competition law is well developed.

Some Aspects of Anti-dumping In Law and Practice by Raj Krishna, www.kita.net

THE paper tries to suggest that in recent years anti-dumping (hereinafter sometimes "AD") has been catapulted to the forefront of the most controversial practices in international trade. While politicians scarcely hide their support for anti-dumping, there is little love lost between it and economists as well as trade reformers. Interestingly in World Bank's trade policy loans or loans in which trade policy reforms are a significant element, anti-dumping has generally not been a major issue either within the Bank or between the Bank and the borrowing Government. In most cases anti-dumping has been dealt with according to the exigencies of the situation. In view of the importance of anti-dumping to international trade and the fact that States do not appear to be too eager to renounce it in the near future, this paper discusses some significant issues involved and the changes introduced by the Uruguay Round of trade negotiations, with the hope that such discussion will be useful to policy- and decision-makers in the international trade arena.

The last fifteen years have witnessed a phenomenal growth in the literature relating to dumping in international trade. The politicians, economists and lawyers have all participated in the ongoing debate on dumping with a zeal that is somewhat unprecedented even in respect of a trade issue. To a considerable extent the intensity of the debate is the direct outcome of the proliferation of anti-dumping laws and the increase in the incidence of the anti-dumping actions in the principal practitioners of this art among the developed countries and some developing countries who seem well set to catch up with the former. Although both Canada and US have emerged as major users of anti-dumping and countervailing against each other as well as against other countries including

developing countries and the US is regarded as the "world's leading prosecutor of unfair trade", Brazil, Korea and Mexico "have been rapidly attempting to turn the tables." According to the US International Trade Commission (USITC), from 1980 through 1993, 682 anti-dumping and 358 CVD cases were filed in the United States. Of these, 39.4 per cent of the anti-dumping and 21.2 per cent of CVD cases resulted in affirmative final determinations and remedies.

Anti-dumping and CVD investigations dramatically increased during the 1980s. Boltuck and Litan show that between 1980-89, the number of anti-dumping investigations in the US alone reached 451 and that of CVD to 301 and that while the majority of investigations related to steel and lumber products even products of everyday use have not escaped such investigations. During 1980-89, 1789 AD investigations were launched in the US, EU, Australia and Canada. The number is much larger if investigations under various modalities of safeguard actions are taken into account.

In the last two years, however, as reported to GATT/WTO, a downward trend in the anti-dumping actions taken globally is discernible. During the period 1 July 1993 – 30 June 1994 the total number of anti-dumping investigations reached 222, two less than the previous corresponding period. The initiation of actions reported was: EU (47), US (47), Australia (45), Brazil (30), Mexico (23), Canada (22), New Zealand (2), India (1), Japan (1) and Korea (4). During the period 1 July 1994-30 June 1995, the total number of anti-dumping investigations declined further. Of the 142 investigations initiated during this period, Argentina reported (6), Australia (6), Brazil (12), Canada (9), Colombia (1), EU (37), India (9), Korea (3), Mexico (18), New Zealand (9), Singapore (2), and the US (30). By June 1995, the total number of measures in force was 724 of which the US accounted for (305), EU (178), Canada (91), Australia (86) and Mexico (42).

With the increase in its pending investigations, Mexico has now earned the dubious distinction of having the greatest anti-dumping caseload in the world. A recent entrant into this field is India and China is likely to follow soon. Along with trade liberalization measures of the early 1990s, India energized its anti-dumping procedures which had been lying dormant in the statute book for about a decade. By January 1995, one final determination of dumping had been made and ADD imposed, one provisional anti-dumping ADD imposed and six investigations were in the pipeline. From 1993 through July 1996 about 40 complaints are said to have been received. Another new user of anti-dumping is Thailand. Two investigations have been carried out so far with one resulting in the imposition of anti-dumping duty against India. The spread of anti-dumping actions to developing countries was anticipated and should not come as a shock or surprise.

While the number of countries resorting to anti-dumping weaponry has increased, the overall growth rate of AD actions, as pointed out earlier, appears to be slowing down for the principal users. This may very well be the result of the enhanced discipline introduced by the Uruguay Round of trade negotiations.

Anti-dumping actions have often proved to be dilatory and cumbersome. At times more than 25 companies have been subject to investigations. The filing of 72 trade cases against 20 countries by the US steel producers in 1992 and the subsequent imposition of preliminary ADD and CVD "provoked outrage in the world steel community." The US Department of Commerce ruled that steel products from 19 countries were being dumped in the US.

The paper finally concludes that the alarming increase in the number of anti-dumping actions pursued by the developed and developing countries has caused considerable concern among economists and trade reformers. These concerns have led to the suggestions of substituting antitrust principles for anti-dumping laws and regulations or for using safeguard measures under Article XIX of GATT 1994 and the URSA. At the current stage of the development of international trade law neither proposal appears feasible. Moreover, anti-dumping actions have become a fact of life and the international community recognizes such actions as the only legitimate tool to combat dumping as defined by and determined in accordance with law. Despite the urgings in

some quarters neither municipal legal systems nor international agreements have mandated an "economy-wide" cost-benefit analysis of proposed anti-dumping actions. Due to political, technical and other implications, the acceptance of such a methodology in the near future is unlikely. The Uruguay Round Agreements (URAA) Act has enhanced the discipline and made a number of improvements, although it cannot claim to have plugged all loopholes for the misuse of anti-dumping. In those matters where URAA is silent, ambiguous or provides room for flexibility in adopting a rule, national authorities should adopt a less trade restrictive rule or practice. A case in point is the US practice relating to voting in the ITC. A 3-3 vote in AD and CVD investigations constitutes an affirmative decision. It will be preferable to require a clear majority rather than to treat an evenly divided vote as sufficient to establish a finding of injury. The URAA in conjunction with the Dispute Settlement Mechanism of the WTO is expected to further curb the proliferation and misuse of anti-dumping. Thus, a US business executive, Intel's Maibach, is quoted as observing: "Almost every step of the procedure is going to be more difficult for United States petitioners... Higher requirements for information will make it more difficult to file complaints... Proving injury will be harder because of changes in standards that relate to proof of injury... Proving the actual size of dumping margins will also be more difficult because of technical changes affecting how profits are calculated and other factors... Cases will also be likely to end up before a World Trade Organization panel, which may have judges that are less sympathetic, and possibly less objective, in interpreting dumping laws..."

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DOCUMENTS

To be published in Par-I Section I of the Gazette of India Extraordinary

No. 14/25/2012-DGAD
Department of Commerce,
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
Udyog Bhawan, New Delhi

Dated the 11th April 2013

INITIATION NOTIFICATION

Subject: Initiation of Anti-dumping investigation concerning imports of Clear Float Glass originating in or exported from Pakistan, Saudi Arabia and UAE.

No.14/25/2012-DGAD: M/s Gold Plus Glass Industry Ltd., M/s HNG Float Glass Ltd. and M/s Saint-Gobain Glass India Ltd., have jointly filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the Rules) for initiation of anti-dumping investigation concerning imports of Clear Float Glass (hereinafter also referred to as the subject goods), originating in or exported from Pakistan, Saudi Arabia and United Arab Emirates (UAE) (hereinafter also referred to as the subject countries).

2. And whereas, the Authority *prima facie* finds that sufficient evidence of dumping of the subject goods, originating in or exported from the subject countries, 'injury' to the domestic industry and causal link between the alleged dumping and 'injury' exist to justify initiation of an anti-dumping investigation; the Authority hereby initiates an investigation into the alleged dumping, and consequent injury to the domestic industry in terms of Rule 5 of the Rules, to determine the existence, degree and effect of any alleged dumping and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the 'injury' to the domestic industry.

Domestic Industry & 'Standing'

3. The Application has been filed by M/s Gold Plus Glass Industry Ltd., M/s HNG Float Glass Ltd. and M/s Saint-Gobain Glass India Ltd., on behalf of the domestic industry. Apart from the above domestic producers M/s Asahi India Glass Limited (AIS) and Gujarat Guardian Ltd. (GGL) also produce the subject goods. Since AIS is an importer from the subject countries and GGL has its related party in Saudi Arabia, the Authority proceeds to

consider the applicant eligible as part of the domestic industry and does not consider AIS and GGL as part of the domestic industry. As per the evidence available on record, the production of M/s Gold Plus Glass Industry Ltd., M/s HNG Float Glass Ltd. and M/s Saint-Gobain Glass India Ltd, accounts for a major proportion of the total domestic production of the like article and is more than 50% of Indian production of the like article. The Authority, therefore, determines that the applicant constitutes domestic industry within the meaning of Rule 2 (b) and the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules *supra*.

Product under Consideration

4. The Product under Consideration in the present application is "Clear Float Glass of nominal thicknesses ranging from 4mm to 12mm (both inclusive)", the nominal thickness being as per BIS14900:2000 (hereinafter referred to as the "subject goods" or the "Product under Consideration"). The subject goods are used in interior construction in suspended ceiling and partition applications. The subject goods are classified under Chapter Heading 70 "Glass and glassware". The classification at the 8-digit level is 70051090 even though the same are being classified and imported under various sub-headings like 7003, 7004, 7005, 7009, 7019, 7013, 7015, 7016, 7018, 7020, etc. The customs classification is indicative only and in no way, it is binding upon the product scope of the investigation.

Like Article

5. The applicant has claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject goods and the product under consideration manufactured by the applicant. The two are technically and commercially substitutable and hence should be treated as 'like article' under the Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicant in India are being treated as 'Like Article' to the subject goods being imported from the subject countries.

Countries Involved

6. The countries involved in the present investigation are Pakistan, Saudi Arabia and United Arab Emirates.

Normal Value

7. The applicant has constructed the normal values in respect of these subject countries stating that neither they were able to get any documentary evidence or reliable information with regard to domestic prices of the subject goods in the subject countries nor the same are available in the public domain. The Authority has *prima-facie* considered the normal value of subject goods in subject countries on the basis of constructed values as made available by the applicant for the purpose of initiating this investigation.

Export Price

7. The applicant has claimed export prices on the basis of data obtained from Infodrive India Pvt. Ltd, Kolkata. Price adjustments have been allowed on account of ocean freight, marine insurance, inland transportation, commission, port handling, port charges, etc. to arrive at the net export price. There is sufficient evidence of the export prices of the subject goods from the subject countries to justify initiation of an anti-dumping investigation.

Dumping Margin

8. The normal value and the export price have been compared at ex-factory level, which shows *prima facie* significant dumping margin in respect of the subject countries. There is sufficient *prima facie* evidence that the normal value of the subject goods in the subject countries are significantly higher than the ex-factory export price, indicating, *prima facie*, that the subject goods are being dumped into the Indian market by the exporters from the subject countries. The dumping margins are estimated to be above *de minimis*.

Injury and Causal Link

9. The applicant has furnished evidence regarding the 'injury' having taken place as a result of the alleged dumping in the form of increased volume of dumped imports, price undercutting, price

underselling, price suppression and decline in profitability, return on capital employed, cash flow, market share, production, capacity utilization, etc. of the domestic industry. There is sufficient *prima facie* evidence of 'injury' being suffered by the domestic industry caused by dumped imports from subject countries to justify initiation of an anti-dumping investigation.

Period of Investigation (POI)

10. The Period of Investigation, as proposed by the applicants, was from 1st October 2011 to 30th September 2012 (12 months). However, to make required analysis on the basis of more updated data, the Authority has determined the POI as 1st October 2011 to 31st December 2012 (15 months). For the purpose of analyzing injury, the data of previous three years, i.e. April 2009-March 2010, April 2010–March 2011, April 2011-March 2012 and the period of investigation will be considered.

Submission of Information

12. The known exporters in the subject countries and their Governments through their Embassies in India, importers/users in India known to be concerned and the domestic industry are being informed separately to enable them to file required information in the form and manner prescribed. Any other interested party may also make its submissions relevant to the investigation within the time-limit set out below and write to: The Designated Authority, Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce & Industry, Department of Commerce, Udyog Bhawan, New Delhi -110011.

Time limit

13. Any information relating to this investigation should be sent in writing so as to reach the Authority at the above address not later than 40 days from the date of publication of this notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record their findings on the basis of the 'facts available' on record in accordance with the AD Rules.

Submission of Information on Non-Confidential Basis

14. In terms of Rule 6(7) of the Anti-dumping Rules, the interested parties are required to submit non-confidential summary of any confidential information provided to the Authority and if in the opinion of the party providing such information, such information is not susceptible to summarization, a statement of reason thereof, is required to be provided. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Designated Authority may record findings on the basis of facts available and make such recommendations to the Central Government as deemed fit.

15. Notwithstanding anything contained in para above, if the Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.

Inspection of Public File

16. In terms of Rule 6(7) any interested party may inspect the public file containing non-confidential versions of the evidence submitted by other interested parties.

Non-cooperation

17. In case any interested party refuses access to and otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

Sd/-
(J.S. Deepak)
Designated Authority

(Source: http://commerce.nic.in/writereaddata/traderemedies/adint_Clear_Float_Glass_Pakistan_Saudi_Arabia_UAE.pdf)

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