

HAND BOOK ON ANTI DUMPING

Hand Book on Anti Dumping is published by The Coimbatore District Small Industries Association, CODISSIA to spread aware ness among Small Business in India about Anti Dumping regime of the WTO.

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Caution:

While every effort has been made to ensure accuracy of the texts on Anti Dumping, the hand book cannot be taken as official legal interpretation of the agreements. In addition simplifications are used to make the text simple and clear. It does not substitute reading fine print before arriving at decisions. Further, the views expressed in the 'Hand book' about subject are purely of the author and are not the expressions of CODISSIA.

thinks is the best and it is for the Rest to follow the West'. The experience of not just the Rest, but the West too, has exposed the serious limitations of the WTO regime and confirmed the worst apprehensions of those who felt that the global regime structured by the West actually experimented the experience of the West on the Rest. That the future WTO negotiations cannot take place in any country where people are free to voice their dissent and that the WTO has to hide behind dictatorial powers of the Islamic Shariat government which will not allow demonstrations on their soil is evident from the fact that for the 4th WTO meet is being planned in Doha in the Middle East. So much for an organization working out the most open, democratic and rule-based trade regime.

Undoubtedly the WTO regime. Including the antidumping regime in it, are internalized in the western expertise being based on the western experience for the last century and more. The greatest fault of the Indian establishment, which was one of the founders of the GATT was in merely accepting the western architecture for the WTO, and in not suggesting an alternative architecture for free world trade. The most unpardonable fault, after that was that even after accepting the western architecture for the WTO, was in keeping even the best in India unaware of the implications of the new trade architecture legislated by the WTO. Every one including the bureaucracy and politicians businessmen and professionals, media and intelligentsia was responsible for this gross national ignorance which has cost the nation in the post-WTO situation and continues to cost the country dearly. This applies to the anti-dumping regime of the WTO as much as to the entirety of the WTO regime.

It is in this context that whenever I had occasion to meet with any fellow professional or any official of business association. I used to urge them to study the WTO regime and create awareness about this western-construct among their clients and members.

PREFACE

CODISSIA has recently released a Guide on WTO for Small Businesses along with a translation in Tamil. The book has the pride of place in that for the first time a version in vernacular has been made available in the country to help the people of the state to understand the depth of WTO and its implications.

To reinforce further in this all-important subject, CODISSIA now proudly releases this Hand Book on Anti-dumping. The book aims at providing the basic education to the small scale industries. This again in the first of its kind for the country, which will equip the industries to face the adverse effects of globalisation.

CODISSIA's efforts to bring this book is largely facilitated by the remarkable words of Mr. Venkatesh, Chartered Accountant, Chennai but for whom the book would not have seen the light of the day. We place on record our heartiest thanks to Mr. Venkatesh for his precious contributions.

While all sincere efforts have been taken in bringing out this book, CODISSIA makes it abundantly clear that they cannot be held responsible for any errors or omissions in this book. However, readers may kindly feel free to bring to our attention their views for further improvement.

CODISSIA

1. INTRODUCTION

Since the early twentieth century, industry began setting up huge manufacturing facilities to take advantage of economies of scale. Consequently, the installed capacity exceeded the requirement of the country in which the plants were located. In order to have such plants running at higher capacities, companies started poaching on export markets. With the gradual reduction in the Tariff barriers and codification of various Technical Barriers to trade since the advent of GATT in 1947, the lucre of dumping goods at prices sufficient to recover variable costs became irresistible. It is also a fact that countries may have a comparative advantage intrinsically related to the geographical or other factors. This too may help countries to produce goods and export the same at competitive prices. However, our practical experience shows that dumping does not have a relationship with an exporter's competitive advantage alone. Conditions for dumping usually arise from a trading environment, which confers unfair advantages on certain exporters and usually to the detriment of the Domestic industry in the country of imports. The Agreement on Anti Dumping, laid out as per the Uruguay Round of agreements (1994) seeks to address and regulate this mischief of Dumping arising out of trading environment rather than one of competitive advantage.

Dumping has the deleterious effect of exerting downward pressure of prices in the importing market. This is because the supply may exceed demand. Moreover, such supplies may usually be at lower prices, sometimes below cost of production. Over a period, Dumping may result in pushing out domestic producers (especially infant industries in developing countries)

2. INTRODUCTION TO DUMPING

Dumping is said to take place when the exporter introduces a product to the country of import at a price less than the price at which he sells in his domestic market. This happens when the exporter tries to penetrate the export market by offering lower price to compensate for various barriers that he may face.

Types of Dumping : Complexity of Economics.

Long-term (market expanding) dumping is undertaken where increasing output reduces unit costs (i.e. increasing returns) and provides additional profits even with lower export prices.

- Intermittent (cyclical) dumping occurs when temporary surpluses are sold off.
- Predatory dumping applies where discriminatory prices are maintained to raise market share. More importantly it drives rivals from the market (especially in the importing Market) and consequently seeks to obtain monopoly power in such markets. This is the 'unfair' competition that the agreement on Anti-Dumping seeks to address.

Overview : Arbitrary usage of defined rules.

Because anti-dumping measures are an exception to the concept of free trade, the GATT 1994 provides for a clear-cut guideline and Rule based mechanism in invoking them. Unlike Safeguard Measures, the implementation of Anti-Dumping measures does not require any compensatory concessions. This is precisely the reason that has increasingly led to the abuse of anti-dumping measures. For example, anti-dumping investigations are often commenced based on insufficient evidence, used repeatedly and anti-dumping duties may be retained long after the conditions for

accounting principles in the exporting country

- Setting profits in constructed value
- Quantitative criteria laid out for initiating proceedings
- Concept of de minimis dumping margins and Termination of investigations on account of the same (Dumping margin less than 2 percent of the export price) or negligible import volumes (less than 3 percent of total import volumes). If the aggregate volume of imports from all countries exporting individually less than 3% exceeds 7 percent, this proviso will not apply
- Establishment of strict time limits (normally 1 year with extension up to no more than 18 months after initiation)
- Agreement on refunds of Anti-dumping duties
- New disciplines on sample-based investigations, and
- Accelerated investigations for new market entrants
- The Agreement introduced a sunset clause:
- Cumulative assessment of injury and
- Conditions for review by WTO dispute panel

Nevertheless, there still exist some gray areas requiring immediate attention and redressing them is in India's interest. These include guidelines on the Valuation of Second hand goods that are alleged to be dumped, repeated investigations and enhancement of De-minimis margins especially for developing nations.

Legal basis : On strong footing

Article VI of the General Agreement Tariffs and Trade (GATT) lays down the principles to be followed and the investigative mechanisms

practices, there is nothing inherently illegal, immoral or that which is expressly prohibited by Law about the practice of dumping. However, only where dumping causes or threatens to cause material injury to the domestic industry in the country of imports, the Authorities concerned can step in and initiate necessary action for investigations and subsequent imposition of anti-dumping duties.

Establishing Dumping : Rule based computations

Dumping occurs when the export price of goods is less than the price of similar goods sold in the domestic market of the exporter.. Imports at cheap or low prices do not per se indicate dumping.

The Following three factors must be cumulatively present for establishing Dumping:

- (i) The quantum of goods Dumped is at-least 3 % of the total volume of goods imported
- (ii) The difference between the export Price and Local price (Technically called Dumping Margin) is at-least expressed as a percentage 2% of Export Price
- (iii) The alleged Dumping should cause injury to the local industry.

The first two factors are Trade Statistics and can be easily established from evidences collected through various government and non-government sources. The third factor is a subjective one and merits detailed explanation as laid out hereunder.

The general view is that the concept of injury to local industry is subjective. The agreement on Anti Dumping Measures 1994 does lay some indicative factors useful in determining the injury effect on the local industry. They include the built up of Stocks, lower realisations, effect on profits, change in the terms of trade,

is whether under the circumstances Local industry can survive, thrive and prosper. If the answer to any of the questions is no then one can reasonably conclude the causal link between the Dumped imports and injury to local industry.

The consequent economic and financial impact of the dumped imports on the concerned Indian industry can be demonstrated, *inter-alia*, by the following factors (already detailed above), viz., decline in output, loss of sales, reduced profits, decline in productivity, decline in capacity utilization, reduced return on investments, price effects and the adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc.

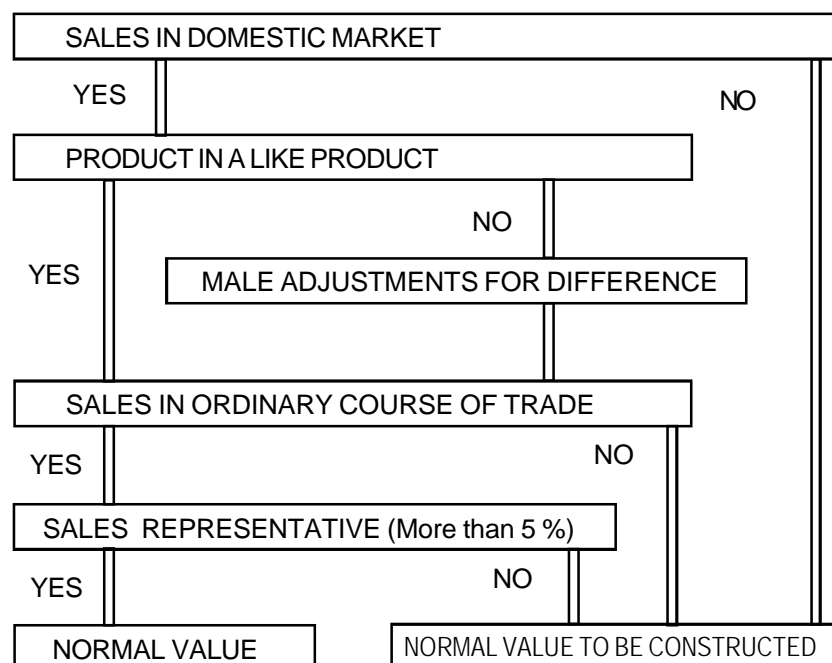
Determination of Dumping

Under the agreement of implementation of article VI of GATT 1994 dumping is said to take place when goods are exported at price less than the **normal value** of **like articles** sold in **domestic market** of the exporter. Usually the price at which articles are sold in the exporters' home market is referred to as normal value. Where the products do not have a local market or the market is negligible the Normal Value needs to be computed.

Normal Value

The normal value is the price at which "**like goods**" are sold in the **ordinary course of trade** in the domestic market of the exporter. If the normal value could not be determined due to the absence of domestic sales than the following two alternate methods are involved.

- Cost of production in the country of manufacture is constructed with reasonable additions for administration, domestic selling and general cost and with the reasonable



To summarize, if the normal value cannot be determined by means of domestic sales, the Agreement provides for the following two alternative methods:

- (i) Comparable export price to an appropriate third country
- (ii) Cost of production in the country of origin with reasonable addition for administrative, selling and a general costs and for profits.

The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

If there is no export price or the export price is not reliable because of a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer. If the articles are

3. MARGIN OF DUMPING

Margin of dumping refers to as a difference between the normal value and export price of the product under consideration. Margin of dumping is calculated based on either comparing the weighted average normal value with a weighted average of price of comparable export transactions or comparing all normal values and export price of a transaction to transaction basis. It is significant to note that alternate method of comparing the normal values and export price is a major change introduced in the Uruguay Round of Agreements.

Comparison of Normal value and Export price

It is important that the goods for exports must be compared the sales in the local market on the same level of Trade, normally at Ex factory levels, and as near as possible in time. Usually the following comparisons are taken into account before comparing the domestic and export sale. These factors are:

- Physical characteristics,
- Level of trade
- Quantities and terms of sale,
- Local taxation.

The above factors are only indicative. Any factor that can be demonstrated to affect the price comparability is considered by the authority.

Like Articles

Anti dumping action can be taken only if the domestic industry compares like articles to the allegedly dumped imported goods. The articles produced in India must be either to be identical to the

4. INJURY TO DOMESTIC INDUSTRY

The critical aspect to the anti dumping agreement is that dumping is neither objectionable nor prohibited. However, action for the Protection of the local industry can be taken only if the domestic industry is able to prove that dumped imports are causing or are threatening to cause material injury to it. The material injury concept cannot be based on mere statement or conjecture. Sufficient evidence must be provided to support the contention of material injury.

Injury is due to the following reasons :

- (i) Volume effect – where there has been or there is likely to be a significant increase in the volume of dumped imports either in absolute terms or in relation to production or consumption in India and its effect on the domestic industry
- (ii) Price effect – where the price at which the products have been imported causes price depression in the local markets or prevents the price increase on the goods which otherwise would have occurred.

It must be demonstrated that due to either of these two factors are causing **Material injury** to the domestic industry and consequently the domestic industry is suffering by means of :

- Decline in input,
- Loss of sales,
- Loss of market share,
- Reduced products,
- Decline in productivity,
- Decline in capacity utilization,

5. APPLICATION FOR INVESTIGATION

The dumping investigation can be initiated only upon receipt of the written application by or on behalf of the domestic industry. The application should satisfy the following two conditions:

- (i) Domestic producers supporting the application must account not less than 25 % of the total production of the like products in the country and
- (ii) Domestic producers expressly supporting the application must account for more than 50% of the total production of the like articles by those expressly supporting and those opposing the application.

Domestic Industry

Domestic industry shall mean producers of like articles or those producers collective output constitutes the major proportion of total Indian production. Producers who are related to the exporters or importers who are themselves importers of the allegedly dumped goods shall be deemed not to fall within the above definition.

the export price shall be excluded from levy of the Anti Dumping duties even if the existence of dumping, injury as well as causal link are established. Further, investigation against any country is terminated, if the volume of dumped imports from that particular country are found to be below 3% of the total imports, provided the cumulative imports from all those countries individually accounting for less than 3%, are not more than 7%.

The concept os lesser duty : Appearing to be fair

Under the GATT provisions, the national authorities cannot impose duties higher than the margin of dumping. However, appropriate Government authorities impose Anti Dumping Duty, which is adequate to remove the injury to the domestic industry. Under the Indian laws, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e. dumping margin and the injury margin.

The injury margin is the difference between the fair selling price and the landed cost of the product under consideration. Besides the calculation of the margin of dumping, the Designated Authority also calculates the injury margin, which is the difference between the fair selling price and the landed cost of the product under consideration. Landed cost for this purpose is taken as assessable value under the Customs Act and the-basic customs duties. However, there are countries that adopt the higher of the two figures to prescribe the Anti-Dumping duty much in violation of the spirit of the Agreement on Anti Dumping under the WTO regime.

line regarding period of investigation. However, there are indications based on precedence that the period should not be less than six months. Care must be taken to ensure that the period taken into consideration for a detailed investigation should be representative and as recent as possible.

investigation proceedings and submit related informed orally provided the same is subsequently reproduced in writing.

- (vi) **Final determination :** The final determination is normally made within 150 days from the preliminary determination. The designated authority informs all interested parties on the basis for its decision before the final finding is made.
- (vii) **Time Limit :** The normal time limit for conclusion of investigation and submission of final finding is one year from the date of initiation of investigation. The above period is extendable by six months in certain circumstances.

Termination

The designated authority may suspend or terminate the investigation in the following cases.

- If there is a request in writing from the domestic industry at whose instance the investigation are initiated.
- When there is no sufficient evidence of dumping or injury.
- If the margin is less than 2% of the export price
- The volume of dumped imports from the country is 3%
- The injury is negligible.
- The injury and the dump imports would not be co-related and the causal effects remain indeterminate.

Retrospective Measures

The agreement provided for the levy of anti dumping duties retrospectively where:

- (i) Where there is a history of dumping which caused the

than the provisional duty already imposed and collected, the difference shall not be collected. If the final Anti Dumping duty is less than the provisional duty already imposed and collected the difference shall be refunded. The provisional duty is withdrawn based on the negative final findings then the provisional duty already calculated shall be refunded.

Appeal

All the decision of the prescribed authority is subject to judicial review in the country of imports. Further there are provisions in the agreement on Anti Dumping to have a settle disputes between countries within the WTO.

Miscellaneous Provisions

Anti dumping duty is not applicable on products imported from units in "EPZ – 100 % EOUs as well as imports of products imported by licensed holders in terms of customs notification no.41/97 dt.30.04.1997. The final anti dumping duty paid on imported goods used in the manufacture of export goods which is used in the manufacture of export goods are to be refunded as duty draw back in accordance to the draw back rules.

investigations, are more often than not, are without adequate knowledge of Commerce and Trade, particularly about Antidumping Measures. The urgency with which such measures have to be responded to is often not appreciated, and delay takes place between the time the notification is given to the Embassy, and the Embassy notifies our Exporters.

- (v) Lack of Advisors and Consultants on this area is sorely felt, so much so, that Indian Exporters who have actually not indulged in dumping face duties merely because of lack of advisors to help respond to the detailed questionnaire.
- (vi) Inadequate support from Government: Though the Designated authority in the Ministry of Commerce, namely the Antidumping Directorate is found to be quick to respond to the domestic industry's needs for investigation, Indian Exporters always find themselves without adequate governmental support. The Indian Government does, not effectively use the consultative process available under the WTO framework to settle the issue amicably without investigation etc.
- (vii) Prohibitive cost of defending cases in developed countries is also a major problem for Indian Exporters. It is understood that nearly USD 1 Million was spent by Indian Exporters of Steel to the US to defend their case, which eventually led to anti-dumping duties of 72% plus a 12% Countervailing duty.

time taken for transmission there is hardly any time to respond.

Ans. Under the agreement you could immediately apply to the concerned authorities and seek extension of time. Usually authorities allow an extension of 30 days for giving reply to the notice issued. However, some countries allow 15 days extension with a further 15 days extension on making personal representation.

Qus. What are the questions that are usually contained in the Notice or the questionnaire?

Ans. The notice besides asking for general details would inquire into the cost structure of the product that you manufacture. The purpose of this questionnaire is to allow you to work the cost details in order to arrive at the Normal value of the export products. This is then compared with the Export price in order to arrive at the Dumping Margin

Qus. What would happen if I ignore the notice?

Ans. It is possible that amongst the cooperating exporter who has attracted the MAXIMUM rate of Anti-Dumping duty, shall be levied on you too. In case you had cooperated you could have escaped the duty or may have attracted lesser duties.

Qus. How do I know that my product is subject to investigation?

Ans. On the perusal of the Notice issued by the Government of the country of imports along with the petition copy of the Domestic industry you would find the product identified with the Tariff Lines which is subject to investigations. Only

margin?

Ans. Suppose you sell goods in your country at Rs.100 and export at say Rs. 90, then you are supposed to dump to the extent of Rs.10. However, where the dumping margin is 2% or less than 2 % of the export price, the same is ignored. Continuing with the above example, where the export price is Rs. 98.10 or above, it shall not be deemed to be dumping.

Qus. What are LIKE ARTICLES?

Ans. Anti-Dumping investigation can be initiated by domestic industry if and only if it manufactures goods that closely manufactures goods that are imported. This is called LIKE Articles.

Qus. What is Injury Margin?

Ans. The injury margin is the difference between fair selling price and the landed cost of the product under consideration.

Qus. I propose to enter a new export market. I understand that there is already a levy of Anti Dumping Duty for export from my country to that country. When quoting to a prospective buyer do I have to take the existing Anti Dumping Duty into consideration?

Ans. Anti Dumping Duties varies with each company within a particular country. Since you have not exported to that country till date and were not subject to Anti Dumping investigation, your exports would not be subject to Anti Dumping Duty. A new comer review would be undertaken to ascertain whether your exports constitutes dumping or not.

Ans. Possibilities of constructive remedies are to be explored by developed countries before applying Anti-Dumping duties where they would affect the essential interests of the developing country members.

Qus. **I have exported only a small quantity on a trial basis. Do I have to respond to the Notice?**

Ans. Yes you may have to reply to the notice and provide all details. Nevertheless, you may explain that the consignment was a trial one and was not for commercial purpose. The quantity exported must justify your claim.

Qus. **My buyer from country X has asked me supply to his factory at country Y. Now country Y has initiated dumping investigations on me. Is it correct?**

Ans. You could write to the concerned authorities explaining the fact that your intention was never to export to country Y. You introduced the product into that country as insisted by your buyer from country X. You may request that the investigations may be directed towards your buyer.

Qus. **What should be done in a scenario where I feel that there is no prima facie case? Yet the investigating authorities on the country of import have gone ahead with the investigation and have issued notices.**

Ans. You may proceed to answer the questionnaire. Meanwhile you may also contact your Ministry of commerce through your manufacturing or export councils requesting your government to seek consultation with the government of import. This consultation is ostensibly to point out the defects in the Petition submitted by the domestic industry in the country of imports and seek termination of

to have indulged in dumping. Duties are company specific since they are measures to offset unfair pricing strategies of individual companies, and hence are neither industry nor country specific.

Qus. Does it mean that one cannot be competitive or sell cheap in the International Market?

Ans. One can be competitive in the International Market, and in-fact can price products cheaper than that of the domestic industry in the importing country. The only caveat, is that, in doing so, the export price should not be lower than those charged in other destinations or the Cost of Sales including a reasonable portion of profits. Only this is considered disruptive to International trade.

Qus. What is the scenario as far as antidumping measures instituted by India is concerned?

Ans. India needs to use Antidumping measures with more alacrity since after 1.4.2001 when Quantitative Restrictions are totally removed, there is bound to be a deluge of imports of all items, whether of consumer goods or industrial goods. India being a vast market, companies abroad will be tempted to under-price their exports and indulge in dumping in order to capture a chunk of the market.

Already India has initiated several investigations, and is understood as the largest user of Anti-dumping measure, with 68 cases initiated in 1999 alone.

strength individually or through the collective efforts of the Domestic industry or through associations file petitions.

Lack of coordinated efforts especially by SSI : SSIs are the backbone of Indian Industry. Nevertheless, being distributed right across the length and breadth of this country, the SSIs are not in a position to channelise their collective strength do the heedful. On the contrary, these units are bogged down by their day to day operational difficulties that they are not in a position to identify Dumping of goods.

Lack of consultants : Being a new branch of Law that is related to International Trade Indian Industry suffers from paucity of consultants.

Lawyers and Trade Specialists must be inducted and a panel created. We must use the expertise of this panel and differentiate Chalk and Cheese; identify between genuine allegation of dumping and mere apprehensions. Further, many propositions laid out in the Anti Dumping agreement are not yet case hardened, both in India and abroad. In consultations with the persons in the know of the subject, this cell could also prepare guidelines for those gray areas.

Assistance to Exporters : Indian Trade accounts for less than 1% of the World Trade, are perhaps too negligible. Despite this, repeated investigations have been launched on Indian Exporters especially in the EU and the USA. Not only are the self-proclaimed champions of free trade worried about competition but also are equally ruthless in quelling the same. The costs of hiring consultants abroad are prohibitive, especially for small time exporters. Under these circumstances, Indian Exporters are ill equipped to meet the challenge. With the anticipated increase in India's Exports, the scenario is bound to worsen. Indian exporters are to be given the assistance in countering this. Trade associations all over the country must set up a cell for providing assistance to these exporters. They must be well equipped and must consist of professionals from diverse fields. All Rules concerning the Anti Dumping proceedings as paid out in major countries must be tabulated. The Indian Embassies must be educated on the intensity of the problem and must be instructed to provide all necessary assistance to the exporters. It may not be out of place to mention that the entire investigations are based on the availability of Normal Value, based on which the comparison with Export Price is done. In case the exporter is not ready with a Normal Value or constructed, Normal Value the exporter is left the mercy of the investigators for the construction of the Normal Value.

13. INDIA'S PLEAS : VOICE OF THE DEVELOPING COUNTRIES

The following are some of India's proposal to modify the Agreement on Anti Dumping:

- Developed countries initiate repeated investigations on exporters from developing countries. India demands that a minimum of 365 days must elapse from the date of finalisation of a previous investigation resulting in non- imposition of duties. Currently there is no restriction for such repeated investigations.
- Article 15 of the Agreement on Implementation of Article VI provides for constructive remedies before Anti Dumping Duty is applied. However, in practice members have bypassed this requirement in the levy of the Anti-Dumping Duty, as this is currently a best endeavor clause. Hence, the provisions of Article 15 need to be made mandatory.
- The existing de minimis-dumping margin of 2 per cent of export price below which no antidumping duty can be imposed, needs to be raised to 5 per cent for developing countries.
- The threshold volume of dumped imports, which shall normally be regarded as negligible, should be increased from the existing 3 per cent to 5 per cent for imports from developing countries. Further the clause providing for the levy of the Anti Dumping Duty for aggregation of Imports from countries less than 3% individually but aggregate to over 7% or more needs to be deleted.
- The lesser duty rule should be made mandatory-while imposing an anti-dumping duty, as currently this is quite

Thus anti-dumping measures can have the effect of extinguishing the comparative advantage of developing countries. According to Article 2.1 a product is to be considered as being dumped, i.e introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country”.

Article VI lays down more transparent and detailed norms with regard to all the three stages of anti-dumping procedures, i.e the establishment of the existence of dumping, demonstration of injury caused by dumping and the causal relationship between the two. The text also has diminishing provisions. The text also provides for the possibility of one country asking another to start anti-dumping procedures on imports from a third country, on the ground that these are damaging its own exports.

An important criticism against the anti-dumping mechanism stipulated under GATT is that at the very initiation of the anti-dumping action, damage is inflicted on exports, irrespective of the outcome of the investigation. Provisional duties can be introduced quickly. When there is negative finding, all that happens is duties levied provisionally are refunded. The Dispute Settlement Undertaking will be applicable to consultations and settlement of disputes under the anti-dumping agreement vide Article 17.1. The Common dispute settlement procedure will not apply. A member dissatisfied with the levy of an anti-dumping duty, can refer the matter to Dispute Settlement Body (DSB) and DSB will establish a panel to examine the issue, the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. The new regulation will also remain subject to discretionary

14. AGREEMENTS ON SAFEGUARDS

The agreements on safeguards vide its Article 2, permits a member to apply a safeguard measure to a product only if that member has determined, pursuant to the provisions that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. Safeguards provisions are against serious injury being caused to domestic industry due to a sudden spurt in the imports of a particular product, its objective is to strengthen the international trading system based on GATT 1994 and for enhancing rather than limiting competition in international markets. Under this agreement, a contracting party is allowed to impose restrictions or withdraw concessions in order to remedy the situation. Such safeguard measures must be applied on a non-discriminatory basis and only after it has been demonstrated that a serious injury has been or is threatened to be caused to the domestic industry. The Agreement also carries provisions for international surveillance of such measures and for the affected contracting party, after due process of consultation, to demand compensation or failing that, to take retaliatory action by withdrawing, suspending or altering concessions.

A comprehensive safeguards agreement became necessary since in the past major trading powers resorted to many restrictive measures outside GATT, on the basis of voluntary agreements, often imposed because of its superior trading position. Such "grey area measures" included voluntary export restrictions, orderly marketing arrangements, price monitoring system, etc. They are bilateral and do not permit compensation or retaliation. Such restrictive arrangements mostly covered automobiles, transport

15. CASE STUDY - NORMAL VALUE

Anti-dumping duty is resorted to, when the goods are exported below the normal price. Thus, this duty negates the adverse impact that is caused to the domestic producers on account of under valuation of imports.

Nevertheless, the mechanism for imposing anti-dumping duty is not as discretionary as the flexibility available to increase the normal import duty. Anti-dumping duty has the implication both for the indigenous producers as also for the exporters abroad looking for taking advantage of the process of globalisation.

Result: Quite often imposition of anti-dumping duty is a bone of contention between the rival interests. What is incentive for one is disincentive for the other : The duty is also significant in that it is not to be taken into account for the purposes of bound rate under the WTO negotiations. The designated authority goes into the complaint of anti-dumping and gives its finding after detailed investigation of the evidence produced. The authority acts as a juridical authority and follows the principles of natural justice. The findings of the designated authority are appealable to the tribunal.

Acting on the recommendation of the designated authority, the government may impose anti-dumping duty. The rate of anti dumping duty cannot exceed the margin of dumping determined by the designated authority. While recommending imposition of antidumping, the designated authority has to ensure that dumping has caused injury to the domestic producers. Quite simply, one of the most important jobs of the designated authority is to determine the normal value at which the exporters sells the goods in his own country. Normal value is defined in section 9A (1)(c) of the Customs Tariff Act. It means the comparable price,

production basis. The authority rejected this. The designated authority, instead, proceeded to rely upon the price of like catalyst sold by a German manufacturer.

On this basis, the designated authority gave its finding and recommended imposition of antidumping duty. It recommended two rates, depending upon the end-use of the catalysts in India. The exporter challenged the finding in appeal to the tribunal. It was argued that the anti-dumping duty is country-specific and exporter-specific and, therefore, the price of the German exporter cannot be relied upon.

The tribunal accepted the argument of the appellant. The tribunal concluded that the action of the designated authority is clearly in violation of the specific provisions contained in Section 9 A of the Act. Eventhough the appellant did not cooperate to provide the information, the tribunal refused to be persuaded to recognize the price of another exporter for like article.

“The price list of the German exporter in relation to similar catalysts manufactured by them in Germany has no relevance for deciding the present case. This, we say, because antidumping is country specific. “On certain other aspects also, the tribunal dismissed the finding of the authority. According to the tribunal, it was wrong for the Central Government to extend the time of one year for completing the investigation, without providing an opportunity to the appellant.

Yet another question was agitated in appeal. Was it legal to recommend two rates of anti-dumping duty for the same product? The tribunal answered the question in the negative, saying, “We are not able to up hold the action of the designated authority.

The designated authority decided to contest the order of the

The tribunal did not given any specific reason why the two different margins cannot be made applicable based on different import duties applicable to the concerned catalyst, observed the Supreme Court. On the question whether it was necessary to follow the principles of natural justice before time limit of one year for investigation was extended, the Supreme Court observed that this decision is an administrative decision based on exigencies of the case.

Anti-dumping law is a relatively new law in India. The judgment of the Supreme Court in this case has corrected the interpretation of the tribunal on some of the fundamental issues.

What is heartening is that the judgment has come much sooner and avoided the uncertainty that would have otherwise continued for quite sometime.

legal instruments, but in applying it one should “make sure it is being done in a legal way”. The WTO report, in a section under the title ‘Rising trend of anti-dumping and countervailing measures’, said the members had notified 360 initiations of AD investigations in 1999, up 42 percent over 1998.

In 1999, the EU and India each reported the highest number of initiations at 68, followed by the US with 45. An annex table said among others, Argentina accounted for 24, Australia 23, Canada 18, Brazil and South Africa 16 each, Indonesia 10, Turkey 8 and Korea 6. The report said the EU and its members were the most effected by the initiation of AD actions (47), followed by Korea 34, Japan 23. The report also said that the available data for the first half of 2000 indicated a sharply downward trend. Between mid-1999 and mid-2000, reports had been received of 235 investigations, compared to 313 during the earlier period.

Most members reported fewer initiations. The EU continued to be in the lead with 49 initiations, followed by India and the US with 27 each, and Argentina with 23. On average, half the initiations were terminated without measures being applied, and the rest ended with anti-dumping duty or price undertakings by the exporter. Despite a sunset clause in the agreement, the accumulated stock of antidumping measures was rising steadily. At mid-2000, there were an estimated final 1,119 measures in place of which the US, with 28 percent, had the most followed by the EU, 18 percent, South Africa, nine percent, India, eight percent and Canada, eight percent.

However, an UNCTAD secretariat background note for an expert meeting this week (where the U.S and EC in effect appear to have blocked any conclusions) put the issue in better perspective. The report said that the AD/CV actions were legitimate measures permitted under the GATT/WTO and were

69 percent and developing countries, including transition economies, for 387 cases or 31 percent. During the first five years of the WTO (1995-99), there were 1220 AD initiations of which 651 or 53 percent were by developed countries and 578 or 47 percent by developing and transition economies. The AD actions initiated by developing countries increased by 16 percent in this five year period. However, developing countries are the main targets of the AD measures. During 1990-94, 469 or 37.4 percent of the 1,254 cases were targeted at imports from developed countries, compared with 785 cases or 62.6 percent targeted at developing and transition economies.

During the first five years of the WTO, 411 cases or 33.4 percent of the 1,229 cases were targeted at developed country imports and 818 or 66.6 percent against imports from developing and transition economies. Also, the major victims were China (159 cases), Korea 98, the US 79, Taiwan 60, Japan 58, Germany 50, India 48, Indonesia 47 and Russia 47. The UNCTAD report brings out that the U.S. has also become one of the major targets of AD actions by its trading partners, including many nontraditional users. As of June 1998, U.S products were subject to 163 foreign AD and CV measures initiated by 20 trading partners including China and Taiwan. Another trend is the increase in AD investigations by third countries against the EU as a whole – even where the complaint contains allegations of dumping by companies in one or two EU member states only. In the past, trading partners used to impose AD measures on one or several EU members, but not the EU as a whole. The report also brings out that there has been a rise in antidumping actions initiated by developing countries against other developing countries.

