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# ANTI-DUMPING LAWS & ITS IMPLEMENTATION IN INDIA

**Ritesh Singh S[1]**

[1]Institute/Organization: Amity University

## ABSTRACT

Until the early 1990s, anti-dumping measures were only employed by Western and industrialised nations. Since 1992, the circumstances have altered significantly. As developing nations engaged more actively in the global economic system, they often faced mounting pressure from home businesses to address purportedly dumped imports. Increasingly, developing nations have initiated anti-dumping measures, with over fifty percent of all recorded anti-dumping investigations commenced by these countries since 1995. WTO members are not obligated to allow for anti-dumping measures. It is essential that Members have the option to exercise their right to undertake such actions in accordance with the intricate multilaterally established regulations outlined in the WTO Agreement on Anti-Dumping. This paper focuses on the Anti-Dumping measures outlined in the AD Agreement and provides a comparative analysis of these controls in the US, EU, and India.

Adam Smith recommended against attempting to produce at-home items that would be more expensive to manufacture than to purchase.[1]This notion is referred to as Comparative Cost Advantage. This comparative cost advantage has led to international trade and its contemporary difficulties. In contemporary society, international trade is governed by the regulations of GATT and WTO. This article aims to highlight a particularly intriguing provision in the GATT Treaty Agreement of 1994, specifically Article VI, known as the Agreement on Anti-Dumping. This article primarily focuses on Anti-Dumping Laws and aims to elucidate their necessity and significance. Prior to discussing and elaborating on this essay, I will first address the necessity of this study in this sector. In international trade, it is evident that developing countries, such as India, are progressively assuming a central role. This trend has resulted in heightened Anti-Dumping actions employed both against Indian companies and by India against foreign companies. Consequently, it is essential to comprehend the evolution, relevance, and extent of the Anti-Dumping Laws. This research paper begins by elucidating the concept of dumping, followed by a discussion of anti-dumping tactics. I have compared the anti-dumping rules of the United States, European Union, and India. I have also selected individual cases to elucidate the rules related to anti-dumping.

## 1. INTRODUCTION

### Introduction to Dumping

Dumping occurs when an exporter sells a product to India at a price lower than the Normal Value of comparable goods offered in the exporter's domestic market. Nonetheless, low-priced imports do not signify dumping. The usual value is the price at which the disputed items were sold in the ordinary course of commerce within the home market of the exporting country or territory.

This constitutes an inequitable trading practice that may adversely affect international trade. Anti- dumping is a mechanism designed to address the issues resulting from the dumping of products and its distortive impact on commerce. The objective of anti-dumping duty is to correct the trade- distorting impact of dumping and restore equitable trade. The WTO permits the employment of anti-dumping measures as a tool for ensuring fair competition. Anti-dumping is, in essence, a mechanism to promote equitable trade rather than a protective measure for the home industry.

In the Indian context, dumping occurs when an exporter offers a product to India at a price lower than that in its home market. Nonetheless, the act of dumping is not inherently reprehensible, as it is acknowledged that companies provide their products at varying prices throughout different markets. Price fluctuations are common due to variations in supply and demand situations. Price discrimination by dumping is acknowledged as a prevalent practice in international commerce. It is not unusual for export pricing to be lower than local prices. Consequently, from the perspective of anti-dumping regulations, the act of dumping is not intrinsically criminal or unethical. When dumping results in or poses a risk of significant harm to India's domestic industry, the Designated Authority undertakes requisite measures to commence investigations and impose anti-dumping duties accordingly.

### Reasons and Types of Dumping

Economists have outlined and catalogued multiple justifications for dumping. The subsequent reasons can be linked to dumping:

1. Restricted domestic market for exporters;
2. Anti-competitive practices in the exporting country's market allowing sales below cost;

3. Government subsidies;
4. Non-market conditions.

Garten himself opposed the implementation of Anti-Dumping Laws to rectify the issues. He asserted that if competition is the issue, it is preferable to implement Competition Law instead of Anti- Dumping Laws. The Administration endorses enhanced global norms in competition law and asserts that its implementation will diminish the necessity of invoking the Anti-dumping statute.

Competition Law can function successfully in conjunction with Anti-dumping Law, but they are not interchangeable. The necessity for robust enforcement of the US Anti-dumping law will persist for the foreseeable future.

Dumping covers the subsequent practices employed by a firm:

Price Discrimination

**(a) Price Discrimination**

The exporter charges different prices for the same goods in two different markets. For price discrimination to happen, two factors need to be met:

The maker needs to keep the two markets separate. If not, importers from the country of origin might buy the product from a foreign country at a lower price and then sell it for a profit in their home country. Markets can be divided by geography because of high travel costs or trade barriers. This is why allegations of dumping are often associated with countries which supposedly restrict imports by tariff and non-tariff means.

For this pricing plan to make the most profit, companies need to have the power to set different prices, especially in the market where they charge a higher price. The seller must deal with different demand situations in their home market and in other countries. If a company sells its product in a country where many competitors exist and demand is sensitive to price changes, it will likely set lower prices there. At the same time, if it sells at home where there are fewer competitors and demand is less sensitive to price changes, it can charge higher prices. This way, the company can make the most profit

**(b) Predatory Pricing**

Predatory price is one way of dumping. A leading supplier starts charging lower prices than it costs to sell, aiming to push rivals out of the foreign market. After winning the race, the price is increased above the cost, allowing for the recovery of losses from the earlier low prices. Predatory pricing includes pricing below marginal cost. Setting prices below the average cost is common when demand is low and some costs remain the same. As long as the price is higher than average fluctuating costs, the company is performing at its best. It's clear that aggressive pricing is damaging because, if it works, it will eliminate competition in the foreign market. In the long run buyers will have to suffer in having to pay prices well above marginal costs. Economists are uncertain about how much aggressive dumping occurs in international trade. They argue that it is unlikely that many recent anti-dumping cases have involved this kind of behaviour. This is because the rules for this approach to be effective are very limiting.

**(c) Existence of excess capacity**

There is extra capacity because of unpredictable demand and the costs of making quick changes. This situation can happen in competitive industries where demand changes a lot, but companies can't easily change their production levels right away due to high costs. This is true for many industries that make products like steel and chemicals. In these industries, plants usually operate all the time, which means there are high costs when switching between different products and they need to keep using their capacity consistently.

**(d) Transitional Dumping**

It occurs when an exporter needs to price below marginal cost in order to maximise sales and expand market share. In this situation, selling a product for less than its cost is seen as an investment in marketing. It's considered a good move if it can lead to gains later on. This might involve setting prices lower than costs, which could be seen as predatory pricing, but it clearly isn't. The main reason given for taking action against it is that it helps local businesses have a better opportunity than foreign companies. People often say that certain businesses help a country by allowing local workers and resources to make more money than they would in other areas or by providing benefits that help the overall economy. Even if these points are agreed upon, it still needs to be shown that the Anti-dumping strategy is the best way to reach these goals.

**Anti-Dumping**

Anti-Dumping refers to measures taken to protect local businesses from foreign companies selling products at very low prices. When a country sees that another country is selling goods at prices lower We have seen, dumping is a form of

price discrimination between national markets; i.e., the practice of selling things abroad at a lower price than on the home market. Since the early 1900s, laws have been made to address issues related to foreign trade. Anti-dumping laws were created because some countries realised that their industries were harmed by foreign companies selling goods at prices lower than what it costs to make them. Dumping is a trade practice that leaves local producers vulnerable and could eventually cause them to stop making the product entirely. [3]Early laws allowed for a special tax called 'dumping duty' on foreign goods sold for less than their fair value, but only if a local industry was harmed by these imports. In 1947, these rules created the concept of dumping and anti-dumping actions in Article IV of the GATT. Countries with developed economies, low tariffs, and few trade barriers often use anti-dumping actions.

These countries are common targets for dumping because they have open markets and strong buying power. In recent years, more and more developing and newly industrialised countries have been taking anti-dumping steps. This change usually means that these countries are moving from broadly limiting imports to a more focused way of protecting their trade. People are worried that anti-dumping measures might be misused as a way to limit imports more broadly. Some economists argue that these actions don't make sense based on free trade principles. They believe that these measures are just protectionist tools that waste resources.[4]A survey of economic studies finds that experts do not agree on whether dumping is a bad economic practice.

**Anti-Dumping under the WTO**

Dumping, which damages a local industry, is not allowed under Article VI of the GATT 1994. This means that anti-dumping measures can be enforced. This exception from the free trade rules of GATT 1994 are based on the idea that anti-dumping is an unfair trade practice. This explains why anti-dumping measures do not allow the selling country to retaliate or demand something of equal value. When dealing with anti-dumping cases for goods from a WTO Member country, that country must follow the rules and responsibilities set out in the WTO Agreement. The rules are outlined in Article VI of the GATT 1994. This article, called "Anti-dumping and Countervailing Duties," explains what dumping is and outlines the main rules for applying anti- dumping measures. Article VI is supported by the Anti Dumping Agreement, which is part of the General Agreement on Tariffs and Trade from 1994. The Anti-Dumping Agreement explains Article VI in more detail by giving clear rules on how WTO members can use anti-dumping measures. Article 16 of the Anti Dumping Agreement sets up the Committee on Anti-dumping Practices. This committee is responsible for carrying out tasks given to it by the Agreement or by its members. The Committee oversees the administrative and regulatory actions of the Members, and the Members are expected to report to the Committee all preliminary or final anti-dumping measures taken. On November 27, 2006, the WTO Secretariat announced that the number of new anti-dumping cases is decreasing, while the number of new final measures has gone up compared to 2005.

**The Anti-Dumping Agreement**

The Anti Dumping Agreement has clear rules about when anti-dumping steps can be applied. It provides a limited approach for anti-dumping officials and is not effective for reaching larger import policy goals.

The anti-dumping measure is usually used only when the local industry asks for it because their goods compete with foreign imports. The Anti Dumping Agreement outlines what to consider when determining if dumped imports harm local businesses. It also explains how to start and carry out anti-dumping investigations and how long anti-dumping measures will last.

The Anti Dumping Agreement has clear rules to decide if a product is sold at a dumped price. It sets guidelines for comparing the export price with a calculated normal price to determine costs. The AD Agreement sets rules to make sure that the export price and the normal value of a product are compared fairly, preventing the unfair creation or increase of dumping profits.

The Anti Dumping Agreement was signed in 1994 after the Uruguay Round of talks and came into effect in 1995. The Anti Dumping Agreement replaces the anti- dumping codes agreed upon in 1967 (Kennedy Round Anti-dumping Code) and 1979 (Tokyo Round Anti-dumping Code). The Anti Dumping Agreement does not cover anti-circumvention.[5]

**Requirements of Procedure**

The initiation and investigation of anti-dumping proceedings are governed by the provisions outlined in Article 5 of the Anti-Dumping Agreement. Any inquiry into purported dumping practices must commence via a formal written application submitted by or on behalf of the domestic industry[6]. The application must be accompanied by substantiated evidence demonstrating dumping, injury, and a causal relationship between the dumped imports and the purported injury.

[7]An application is required to include adequate information pertaining to the industry, domestic production, the

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product itself, as well as details about importers and exporters.[8]During the course of an investigation, should the authorities determine that the evidence is insufficient to substantiate claims of either dumping or injury, it is imperative that the application be rejected or the investigation be promptly concluded.[9]An investigation will likewise be concluded in instances where the authorities ascertain that the margin of dumping is de minimis, or that the volume of dumped imports, whether actual or potential, or the injury sustained is negligible.[10]

Regarding temporal constraints, Article 5.10 of the AD Agreement stipulates that investigating authorities are required to conclude their investigations within a one-year period; however, in certain circumstances, this time frame may be extended to a maximum of eighteen months following the initiation of the investigation.

Article 6 of the AD Agreement delineates the regulations pertaining to the submission of evidence. It is imperative that all relevant stakeholders receive adequate notification regarding the information requested by the authorities. Throughout the course of an investigation, it is imperative for the authorities involved to ascertain the veracity of the information provided by the parties with vested interests. To achieve this objective, investigative authorities are permitted to conduct enquiries within the jurisdiction of another WTO Member. During an anti-dumping proceeding, it is incumbent upon the investigating authorities to inform the exporting WTO Member, relevant parties, and the Committee on Anti-Dumping Practices regarding their determinations, as well as the factors considered in arriving at these conclusions.

Article 13 of the AD Agreement stipulates that every Member with national legislation encompassing anti-dumping provisions is required to uphold independent judicial, arbitral, or administrative mechanisms to facilitate the review of administrative actions and determinations. Article 13 provides interested parties with the entitlement to contest anti-dumping determinations.

**Substantive Rules**

Article 1 of the AD Agreement explores the fundamental principle permitting a Member to implement an anti-dumping measure, contingent upon the determination made through an investigation that adheres to the stipulations of the AD Agreement. This determination must establish that the products in question are: dumped; cause material injury or threat thereof to a domestic industry; and a causal link exists between the dumped imports and the injury or threat thereof.

**Determination of Dumping**

As laid out in Article VI of the GATT 1994 and Article 2.1 of the Anti-Dumping Agreement, the concept of dumping arises when a product is introduced into the domestic market of a foreign nation at a price that is lower than its normal value, which is defined as the price of the imported product in the ordinary course of trade within the country of origin or export. Dumping is typically assessed through a fair comparison between the normal value and the export price, which refers to the price of the product in the importing country. The determination of normal value and export price, along with the components necessary for a fair comparison, must be conducted in accordance with Article 2 of the Anti-Dumping Agreement. Nonetheless, certain sales may preclude an accurate comparison; in such instances, the normal value may be derived from a 'third country price' or may be established through the enquiries of the relevant authorities.[11]Instances of such transactions include: (i) scenarios where there are no sales of the product in question occurring in the regular course of trade within the domestic market of the exporting Member, or (ii) situations where sales of the product do take place in the ordinary course of trade in the domestic market of the exporting country, yet the specific market conditions or the limited volume of sales hinder an appropriate comparison.

The term “in the ordinary course of trade” lacks a specific definition within the Anti Dumping Agreement; however, Article 2.2.1 delineates a framework for assessing whether sales transpired in the ordinary course of trade. Sales of similar products in the domestic market of the exporting WTO Member at prices that fall below the costs of production may be considered as not occurring in the ordinary course of trade, and thus can be excluded when assessing normal value. In instances where domestic sales within the exporting WTO Member do not facilitate an adequate price comparison, the investigating authorities are permitted to utilise a 'constructed' normal value. The constructed normal value comprises the cost of production in the country of origin, augmented by a reasonable allocation for selling, general, and administrative expenses (SGA), as well as an appropriate profit margin. Article 2.2.2 of the Anti-Dumping Agreement delineates the parameters within which reasonable selling, general, and administrative expenses, as well as profit, may be ascertained. In instances where the export price is considered unreliable due to the relationship between the exporter and the importer, the investigating authorities are permitted to establish a reasonable export price in accordance with Article 2.4 of the Anti-Dumping Agreement. The methodology articulated in Article 2.4 of the Anti-Dumping Agreement stipulates that the constructed export value must encompass the costs incurred from the point of importation to resale, as well as the profits generated during this process. In every

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instance, Article 2.4 of the Anti-Dumping Agreement stipulates that a fair comparison must be conducted between the export price and the normal value. For a valid comparison, it is essential that the prices under consideration pertain to transactions conducted at the same level of trade and within the same temporal context. It is imperative that the investigating authorities take appropriate action.

**The Margin of Dumping**

The margin of dumping is typically established through a comparison of the following elements:

- the weighted average normal value against the weighted average of all comparable export prices; or
- a transaction-to-transaction analysis of normal and export prices.[12]

The margin of dumping refers to the quantity of dumping articulated as a percentage of the export price. The identical methodology should be employed for both the normal value and the export price, ensuring that all transactions are considered in the calculation of the dumping margin. A distinct framework for comparison may be employed when 'targeted dumping' is recognised. An instance of targeted dumping occurs when there is a discernible pattern of export prices that vary markedly among distinct purchasers, geographical regions, or temporal intervals.[13]Generally, it is imperative to ascertain an individual dumping margin for each identified exporter or producer. Sampling methods may be employed when the number of exporters or producers is excessively large to ascertain margins on an individual basis.

**Determination of Injury**

Article 3 of the Anti-Dumping Agreement establishes the criteria for assessing material injury resulting from dumped imports. Material injury can be categorised into three distinct types:

a) direct material injury to a domestic industry;

b) the threat of material injury to a domestic industry; or

c) material retardation in the establishment of a domestic industry.[14] A crucial element in the assessment of injury is the delineation of the 'like product'. The definition of a like product delineates the parameters of the investigation and is intricately connected to the concept of 'domestic industry'. Article 2.6 of the AD Agreement delineates 'like product' as "a product which is identical, i.e., alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."

The term 'material injury' is not explicitly defined within the provisions of the Anti Dumping Agreement. The fundamental criterion for assessing injury involves an objective analysis, grounded in concrete evidence regarding the volume and price ramifications of dumped imports, as well as the resultant effects on the domestic industry.

[1] The factors listed and any relevant factors in Article 3 of the AD Agreement regarding the volume and price effects of dumped imports must be jointly considered. One or several of these factors cannot necessarily give decisive guidance in the determination of injury. Article 3.4 of the

Anti Dumping Agreement governs the examination of the impact of the dumped imports on a domestic industry. Article 3.4 provides that all relevant economic factors and indices having a bearing on the state of the industry must be examined. The list provided in Article 3.4 is not exhaustive.

**Dispute Settlement under the WTO**

The primary aim of the WTO dispute settlement mechanism is to ensure security and predictability within the multilateral trading framework. [16]Should a WTO Member ascertain that another Member has not adhered to the obligations set forth by the AD Agreement, it is entitled to seek consultations with that Member.[17]In the absence of any contrary stipulations within the AD Agreement, the stipulations outlined in the WTO Dispute Settlement Understanding shall govern the consultations and any subsequent disputes that may arise.[18]In the event that consultations do not yield a mutually satisfactory agreement, it is permissible to request the establishment of a panel to contest the definitive or provisional anti-dumping measure or the relevant price undertaking.[19]The report issued by the panel is subject to appeal before the Appellate Body. The Member States are restricted to appealing solely those legal issues addressed in the panel report, as well as the legal interpretations formulated by the panel.[20]

The AD Agreement delineates a distinct standard of review in Article 17.6. This particular provision aims to afford a broader scope of discretion to the Member's anti-dumping determination compared to Article 11 of the DSU. [21]In evaluating the circumstances surrounding an anti-dumping dispute, a panel is tasked with ascertaining the propriety of the fact-finding conducted by the anti-dumping authorities, as well as ensuring that their assessment of these facts was conducted in an impartial and objective manner. In such circumstances, the panel is obliged to uphold the anti-dumping determination, notwithstanding the possibility that it may have arrived at an alternative conclusion regarding

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the underlying facts. Since the inception of the WTO in 1995, there have been roughly 60 disputes within the Dispute Settlement Body concerning anti-dumping measures.

**Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico**

This case (WT/DS60/AB/R) represents the first-ever decision by the Appellate Body concerning the Anti-Dumping Agreement. The matter primarily concerns procedural aspects and jurisdictional issues. Mexico has formally requested the establishment of a panel following unsuccessful consultations with Guatemala concerning an anti-dumping investigation initiated by Guatemala into the imports of Portland cement from Mexico. Mexico contended that the investigation contravened Guatemala's commitments as outlined in Articles 2, 3, 5, and 7.1 of the AD Agreement. The Panel determined that Guatemala did not meet the stipulations of Article 5.3 of the AD Agreement by commencing the investigation based on evidence of dumping, injury, and a causal link, as this evidence was deemed insufficient to warrant initiation. Guatemala has raised appeals concerning specific issues and legal interpretations that have been established by the panel.

The Appellate Body disagreed with the Panel's decision that the case was valid. They stated that Mexico did not follow Article 6.2 of the DSU when it asked for a panel because Mexico did not specify the issue it was unhappy about that,

the Appellate Body noted that the AD Agreement and the DSU should be understood together. Article 17 of the AD Agreement doesn't replace the DSU system; it just restricts the kinds of actions that can be brought up in a 'case' to the DSB. When combined with Article 6.2 of the DSU, this rule says that in a dispute related to the AD Agreement, the panel request must clearly state which specific problem is being addressed. This can be a final anti-dumping duty, an accepted price agreement, or a temporary measure.

**Anti-Dumping under US Laws**

The antidumping law in the United States serves as a formidable instrument for domestic industries to safeguard their interests against foreign imports. The statute offers a legal recourse to address the issue of low-priced competition within the U.S. market stemming from foreign manufacturers accused of "dumping." This practice involves selling products at prices that are lower than those in their domestic market (price discrimination) or below the total cost of production (sales below cost), with the intent to inflict harm on a U.S. industry. A multitude of antidumping cases has been initiated concerning a diverse array of products, encompassing natural goods like cut flowers, honey, and garlic, essential commodities such as steel, as well as advanced technological items including supercomputers and semiconductor chips.

The efficacy of antidumping law is underscored by the potential for dumping duties imposed by the

U.S. government to surpass 400 percent. In numerous cases, the imposition of duties can be sufficiently burdensome to compel a foreign entity to exit the U.S. market. Furthermore, a dumping order may endure for a duration of 10 to 20 years, effectively establishing a substantial and enduring impediment to the importation of a specific product from a designated country. The United States stands out as one of the rare nations that enacted Anti-Dumping Laws as early as 1916. The Anti-Dumping Act of 1916 represents one of the earliest legislative frameworks addressing dumping practices in the United States. Despite the challenges posed by the European Community and Japan, a three-member panel of the WTO ruled against the legislation on April 2, 2000, determining that it contravened the United States' commitments under the GATT 1994 and the Anti-Dumping Agreement.

The United States possesses additional legislation pertinent to this domain:

- The Anti-dumping Act of 1921 grants the US Treasury Secretary the authority to impose duties on goods that have been dumped, irrespective of the intent of the dumper. The law was subsequently repealed; however, the 1930 Tariff Act (as amended) is fundamentally based on the 1921 legislation and is executed through processes regulated by the US Commerce Department and the US International Trade Commission. The repealed Anti-dumping Act of 1921, along with the 1930 Tariff Act, is codified in Title 19 of the United States Code, specifically under the designation "Customs Duties". The United States has formally notified the WTO Committee on Anti-dumping Practices regarding Title VII of the Tariff Act of 1930, along with its subsequent amendments and implementing regulations.

- The Clayton Act, which serves as a cornerstone of US antitrust law, was amended by the Robinson-Patman Act in 1936. This legislation extends its principles to the actions of buyers, rendering it unlawful for a buyer to "knowingly induce or receive discrimination in price," as prohibited by other provisions of the Act. A breach of this provision incurs criminal penalties and is also subject to a private right of action, allowing for the possibility of treble damages or injunctive relief.The United States has enacted the Continued Dumping and Subsidy Offset Act of 2000, which is accompanied by the contentious Byrd Amendment pertaining to US anti-dumping legislation.

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**Anti-Dumping under the EC Law**

The European Union stands as the sole regional trade bloc that holds membership in the World Trade Organisation independently. The European Union did not hold formal membership in the original General Agreement on Tariffs and Trade (GATT); however, it is now a member of the World Trade Organisation (WTO) and acts on behalf of all EU Member States in trade negotiations. It is noteworthy that every Member State of the European Union concurrently holds membership in the World Trade Organisation. There are three distinct levels of hierarchy of norms pertaining to EC anti-dumping law. The initial provision is Article 133 of the EC Treaty, which delineates the competence of the EC in matters pertaining to anti-dumping. Article 133, Paragraph 1 of the EC Treaty delineates that safeguarding against dumping constitutes an integral aspect of the EC's common commercial policy. Given that the European Community possesses exclusive competence in matters of commercial policy, it follows that Member States are precluded from undertaking any anti-dumping measures.

The subsequent tier consists of secondary legislation, exemplified by the AD Regulation. The third tier consists of the legal acts issued by institutions in specific instances, enacted in accordance with the AD Regulation. In the context of the common commercial policy, it is pertinent to note that anti- dumping legislation is applicable solely in relation to third countries. Trade practices characterised as 'dumping' among EC Member States are not amenable to anti-dumping measures due to the existence of a common market that operates without duties; however, such practices may be addressed under the framework of EC competition law.[22] This logically derives from the notion of the EC functioning as a customs union alongside an integrated internal market. The imposition of duties at intra-Community frontiers has been rendered impossible due to the establishment of the internal market on 1 January 1993, which resulted in the removal of internal customs borders. In accordance with the principle of the unitary nature of the EC market, it is generally understood that anti-dumping protection may only be implemented on a collective basis across the entirety of the EC. The imposition of anti-dumping measures by the European Community on imports from a WTO Member country necessitates adherence to all relevant procedural and substantive criteria delineated in both Article VI and the Anti-Dumping Agreement. Furthermore, the European Commission is obligated to guarantee that its fundamental anti-dumping regulation aligns with Article VI and the Anti-Dumping Agreement.[23] The Council Regulation 384/96 concerning the protection against dumped imports from non-EU countries (hereafter referred to as the AD Regulation) implements the obligations of the European Community under WTO law, while also addressing supplementary matters such as the circumvention of anti-dumping measures and the consideration of Community interest. In addition to WTO law, only the circumvention and the Community interest are addressed.

**Laws of Anti Dumping In India**

Having understood the general structure of the WTO code and the Anti-Dumping Agreement, we shall now delve into the legal framework in India pertaining to anti-dumping measures. The inaugural Indian Anti-dumping legislation was established in 1985 with the notification of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985. Nevertheless, the legal framework governing anti-dumping in India is outlined as follows:

- In accordance with Article VI of the General Agreement on Tariffs and Trade 1994, which is widely recognised as the Agreement on Anti-Dumping
- Customs Tariff Act, 1975 - Sections 9A and 9B (as amended in 1995)
- Anti-Dumping Regulations [Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995]
- Investigations and Recommendations conducted by the Designated Authority within the Ministry of Commerce
- Imposition and Collection executed by the Ministry of Finance

**Anti Dumping and the Customs Duty**

While the imposition and collection of anti-dumping duties fall under the purview of Customs Authorities, it is crucial to recognise that these duties differ fundamentally from traditional Customs duties in terms of their concept, substance, purpose, and operational mechanisms. The subsequent delineations highlight the primary distinctions between the two entities: -

• Conceptually, anti-dumping measures and similar regulations fundamentally relate to the principle of fair trade. The purpose of these responsibilities is to protect against the emergence of circumstances stemming from unfair trade practices, while customs duties serve as a mechanism for generating revenue and contributing to the overall advancement of the economy.

• Customs duties are situated within the framework of governmental trade and fiscal policies, whereas anti-dumping

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and anti-subsidy measures serve as remedial instruments in the realm of trade.

•The purpose of anti-dumping and related duties is to mitigate the detrimental impact of international price discrimination, whereas customs duties play a role in government revenue and the broader economic development. It is important to note that anti-dumping duties do not inherently function as a tax measure, as the Authority possesses the discretion to suspend these duties if an exporter provides a price undertaking. Consequently, these measures are not exclusively manifested as duties or taxes.

• Anti-dumping and anti-subsidy duties are imposed on specific exporters or countries, distinguishing them from customs duties, which are broadly applicable to all imports regardless of their country of origin or the exporter involved.

**Anti Dumping Duty**

In instances where an article is exported from any country or territory (hereinafter referred to as the exporting country or territory) to India at a price lower than its normal value, the Central Government may, upon the importation of such article into India, take appropriate action.

The notification published in the Official Gazette establishes an anti-dumping duty that shall not surpass the margin of dumping pertinent to the specified article.

The margin of dumping concerning an article refers to the disparity between its export price and its normal value.

• Export Price refers to the monetary value assigned to an article that is exported from a specific country or territory. This definition applies particularly in instances where an export price is absent or deemed unreliable due to associations or compensatory arrangements involving the exporter, the importer, or a third party.

• Normal Value refers to the price that is comparable, in the usual course of trade, for a similar Article intended for consumption within the exporting country or territory. In instances where there are no sales of comparable articles in the ordinary course of trade within the domestic market of the exporting country or territory, and such sales do not facilitate an appropriate comparison, the normal value shall be determined as follows-

1. A comparable representative of the similar article when exported from the exporting country or territory, or from an appropriate third country; or

2. The cost of production of the said article in the country of origin, inclusive of a reasonable addition for administrative, selling, and general costs, as well as for profits.

**Authorities for Anti Dumping**

The administration of anti-dumping and anti-subsidy measures, as well as countervailing measures in India, is overseen by the Directorate General of Anti-Dumping and Allied Duties (DGAD). This body operates within the Department of Commerce under the Ministry of Commerce and Industry, and is led by the "Designated Authority."

The role of the Designated Authority is limited to conducting investigations related to anti-dumping, anti-subsidy, and countervailing duties, subsequently providing recommendations to the Government regarding the imposition of such measures.

The imposition of such duty is ultimately enacted through a Notification issued by the Ministry of Finance. Consequently, although the Department of Commerce advocates for the imposition of the Anti-dumping duty, it is ultimately the Ministry of Finance that enforces this duty. Safeguard measures, conversely, are overseen by a distinct authority, specifically the Director General (Safeguard), operating under the Department of Revenue within the Ministry of Finance.

The Standing Board of Safeguards, under the chairmanship of the Commerce Secretary, evaluates the recommendations put forth by the Director General of Safeguards. Subsequently, it advises the Ministry of Finance on the imposition of the Safeguard Duty, as it finds appropriate, which is then responsible for levying the duty.

**Appeal**

An order regarding the determination of the existence degree and effect of dumping is subject to appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). Nonetheless, according to judicial interpretation, appeals can only be made against the conclusive findings or orders issued by the Designated Authority or the Ministry of Finance before the CEGAT.

An appeal cannot be made against the preliminary findings of the Authority, nor against the provisional duty imposed as a result of those findings. An appeal to the CEGAT must be submitted within a period of 90 days.

## 2. CONCLUSION

The above debate shows how the Anti Dumping rules have developed and their importance in WTO. We have also observed the relative positions of anti-dumping rules in India, US, and Europe. My little effort is to grasp the Anti Dumping Laws from a comparative standpoint. To sum up, I believe the following line from the apex court's ruling to be really fitting:

"We would want to say that our national goal has to be to establish India as a modern, highly industrialised, strong nation. The actual reality of today is nasty and demanding. It honours power from a high degree of industrialisation, not poverty or weakness. Therefore, we have to make India a modern, strong, very industrialised state if we want respect in the comity of countries.

The truth is that India is impoverished nowadays. As Rajni Palme Dutt penned in his book "India," "India is a rich country with poor people." We have exceptional scientists, engineers, technicians, managers, and industrial expertise; we are wealthy in raw materials. We remain a poor country notwithstanding all this. Therefore, we have to fast industrialise and turn India into a strong, modern, highly industrialised country if we desire respect in the comity of countries.

The wealth we need for the welfare of our people and for development comes from industrialisation alone. Therefore, our national goal should be fast industrialisation since that is the way our nation's issues would be resolved. Large-scale employment for our people will also come from industrialisation; it will also support the expansion of research and technology, which is vitally vital for our development.

Therefore, the Anti Dumping Law is a vital measure which prevents destruction of our industries built up under the direction of our patriotic, modern minded leaders at that time and it is the responsibility of everyone today to see to it that there is further rapid industrialisation in our country, to make India a modern, powerful, highly industrialised nation.

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[3] Müller, Khan & Neuman, EC Anti-Dumping Law – A Commentary on Regulation 384/96 (hereafter Müller, Khan & Neuman), page 3. 9 Müller, Khan & Neuman, page 4.

[4] Van Bael & Bellis, Anti-Dumping and Other Trade Protection Laws of the EC, (hereafter Van Bael & Bellis), page 34, and Müller, Khan & Neuman, page 6

[5] Compare with the EC regulation, which addresses anti-circumvention

[6] Article 5.4 of the AD Agreement. In United States – Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment) (WT/DS217/AB/R, WT/DS234/AB/R), the Appellate Body reversed the Panel's conclusion and noted that Article 5.4 does not require investigating authorities to "examine the motives of producers that elect to support an application".

[7] 14 Articles 5.2 and 5.6 of the AD Agreement.

[8] Article 5.2 of the AD Agreement.

[9] Article 5.8 of the AD Agreement.

[10] Article 5.8 of the AD Agreement

[11] Article 2.2 of the Anti Dumping Agreement

[12] Article 2.4.2 of the Anti Dumping Agreement

[13] Van Bael & Bellis, page 521.

[14] Unlike material injury or threat thereof, the Anti Dumping Agreement is silent on the evaluation of material retardation of the establishment of a domestic industry.

[15] In the US-Lamb Safeguard case (WT/DS177/AB/, WT/DS178/AB/R), the Appellate Body found that, under the anti-dumping regime, the term material injury connotes a lower standard than the term serious injury under the regime for safeguard measures.

[16] Article 3.2 of the DSU.

[17] Article 17.2 and 17.3 of the AD Agreement.

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[18] Article 17.1 of the AD Agreement.

[19] Article 17.4 of the AD Agreement.

[20] Article 17.6 of the DSU.

[21] WTO, A Handbook on the WTO Dispute Settlement System, Cambridge University Press, page 104.

[22] Article 82 of the EC Treaty

[23] United States – Antidumping Act of 1916 (WT/DS136/AB/R, WT/DS/162/AB/R) and Van Beal & Bellis, page 511

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