

**RGICS International Economic Relations Series
No. 1, 1998**

ANTIDUMPING MEASURES - AN INDIAN PERSPECTIVE

Nilanjan Banik

**RAJIV GANDHI INSTITUTE FOR
CONTEMPORARY STUDIES**

Acknowledgements

In the course of writing this paper I have benefited in various ways from a number of individuals. I would first like to thank Prof. Bibek Debroy for introducing me to this fascinating subject; for the stimulating discussions that followed his invaluable comments; and for his enormous patience and encouragement. Without his support and guidance, the writing of this paper would not have been possible.

My special thanks to Mr Partha Sarathi, a lawyer, and Mr Ved Prakash of the Ministry of Commerce for insightful discussions on the issue. An intellectual debt to Prof. Subhashis Gangopdhay (ISI), who has inspired me a lot.

I also wish to thank Mr Abheek Burman and Mr T S Vishwanath (The Economic Times), Mr Surojit Gupta (The Statesman) and Mr Sharad Bhansali (Ministry of Commerce) for providing me with required information on the subject.

I am grateful to my roommates Achintya and Nabojit for always cheering me up and letting me use the computer for long periods of time.

Finally my deep gratitude to my parents, Mr Narayan Chandra Banik and Mrs Kalyani Banik, who were a constant source of encouragement.

Nilanjan Banik

Antidumping Measures—An Indian Perspective

Introduction

Antidumping duties are 'product' specific or 'source' specific duties, imposed on dumped imports causing harm to domestic industry. The problem is not with imposition of antidumping duties, but the rationale behind their imposition. In many instances, these are imposed with the sole objective of safeguarding the interests of domestic industry, without actually taking into account occurrence of dumping. Such instances are more prominent among developed nations, relative to their developing counterparts. With the World Trade Organisation (WTO) upholding the need for free trade, the use of antidumping measures with the sole intention of safeguarding domestic interests, may greatly undermine WTO's efforts. It is essential that individual governments understand the importance of free trade and give up the practice of using antidumping measures as a means to disrupt free trade. It is important that each country conducts a proper 'cost-benefit' analysis before imposing antidumping duties.

Antidumping in India

Antidumping proceedings in India are new. Although the principle made its first appearance along with *the Custom Tariff Act* of 1975, it was not until 2 September 1985, that the legal provision regarding its imposition was made available.

As India protected its domestic industries through practices like high tariff barriers, import licences and the like, there were no instances of antidumping cases during the initial years. For example, in the eighties, most economic activities took place under the cover of a semi-liberalised regime and high tariff protection. Most imports were on the restricted list. So with an average tariff rate of around 87%, coupled with a restrictive import regime, the antidumping authority

had little work.

But the picture changed drastically with the opening up of the economy during the nineties. Problems emerged for domestic industries in a number of ways. There were increased imports, which is natural with opening up of any economy. The opening-up process gathered momentum with more importable items being transferred from the 'restricted' list to the Open General Licence (OGL) and Special Import License (SIL) lists, and with whittling down of tariff rates. The average (import weighted) and the peak tariff rate came down from the pre-91 level of 87% and 300%, to the present level of 27% and 40% respectively. In fact, the level of tariff that is prevalent today is lower than the WTO bindings.

Objectives and the Contents of the Paper

The main objective of the paper is to describe antidumping both within and outside India. In doing that, the paper attempts to assess the positive and negative impact of antidumping practices. The paper is divided into eight sections. Section 1 outlines the historical evolution of antidumping duties. Section 2 focuses on the WTO Agreement on antidumping duties and the evolution of the code into the present form. Section 3 gives a schematic representation of antidumping investigations, while enumerating the procedure in detail. Section 4 deals with problems in interpreting the present antidumping code. Section 5 provides a global picture of antidumping cases around the world. Section 6 examines problems faced by Indian exporters and antidumping actions initiated against them. Section 7 considers the antidumping proceedings initiated in India and their assessment. Section 8 offers an economic interpretation of antidumping.

1. Evolution of Antidumping Measures

The inception of antidumping legislation is not new. Way back in the late 19th century, several European sugar industries appealed to their governments for protecting their industries. The protection they sought was against the increasing amount of sugar being dumped in their territory at an 'unfairly' low price. The governments paid heed to their appeals when a few years later, in 1902, a formal Agreement regarding setting up of antidumping legislation was reached. The first antidumping law appeared in Canada just two years later in 1904, followed by other European nations and the United States. The US antidumping law that came into vogue in 1916, and was later modified in 1921, like its Canadian counterpart, formed the basis of the original General Agreement on Tariffs and Trade (GATT) article on antidumping.

Since its establishment in 1947, GATT has legitimised the use of antidumping and countervailing duties, as a safeguard measure against dumped or subsidised imports causing harm to domestic industries. The conditions regarding this are laid down in Article VI of the GATT. The commonly known Antidumping Code (31 UST 4919, TIAS 9650), came into existence during the Kennedy Round of Multilateral Trade Negotiations (1967), with members signing the Agreement on the Implementation of Article VI of the GATT.

Antidumping Codes

However, after the Kennedy Round it took a couple of more years to pass the first 'Codes' on antidumping law and countervailing duties. This was finally passed during the Tokyo Round of GATT negotiations (1973-79); replacing the earlier agreement negotiated as part of the Kennedy Round of Multilateral Trade Negotiations (1962-67). These Codes chalked out rules regarding operation and implementation of antidumping laws and countervailing duties. They sought to impose

some global uniformity on national antidumping and countervailing procedures. Nonetheless, these Codes were binding only on those countries that were signatories and were not obligatory on all GATT members. They were plurilateral agreements, not multilateral ones.

The Antidumping Code passed during the Tokyo Round became effective from 1 January 1980. The Code picks up where Article VI leaves off, specifying the basis for imposition, collection and duration of antidumping duties and allowing for negotiated agreements, called price undertakings, between relevant parties. Both Article VI and the Antidumping Code complement each other in the sense that each involves a balance of rights and obligations for every contracting party or signatory. Neither prohibits dumping. While GATT recognises prohibition of dumping, Article VI as interpreted by the Code, allows imposition of antidumping duties when there is evidence of injury to domestic industries. Antidumping duties were permitted but were limited in their scope and consequences, and assurance was sought that any determination regarding them would be based on a realistic evaluation of evidentiary record.

2. The WTO Antidumping Agreement

In the present WTO Agreement, antidumping duty is defined as, 'measures against imports of product at an export price below its "normal value" (usually price of the product in the domestic market of the exporting country), if such dumped imports cause injury to the domestic industry in the territory of the import competing party' (Article VI of GATT).

Under the antidumping law, offsetting duties can be imposed by the concerned department, (normally the Department of Commerce), when investigating authorities determine that the merchandise is being 'dumped' at a "less than fair value" (LTFV).

Evolution of the Present Antidumping Code

The present phase of the antidumping Code started with the Uruguay Round negotiations (1986-94) and is a modified version of the Tokyo Round Code on antidumping measures. Unlike the previous Tokyo Round of Multilateral Trade Negotiations, where 'some' and not 'all' the members signed, the present Agreement forms a binding requirement for all the 132-odd GATT members. It was obligatory for members to formulate 'necessary policies' before 1 January 1995, in line with the provisions of the new code.

Modifications Made

The Uruguay Round caused a number of modifications to the earlier GATT Antidumping Agreement, the most significant being the incorporation of the sunset clause and the setting up of a dispute settlement mechanism. Other modifications were also made. They are:

1. 'Detailed' rules for determining the margin of dumping;
2. 'Detailed' procedures for the purpose of conducting and initiating

antidumping investigations;

3. Setting out 'clear' norms for the dispute settlement panel, so as to implement them judiciously; and last but not the least,
4. Consultations with 'representative' consumer bodies during the period of investigation.

The new Agreement lays down rules, so as to permit levying antidumping duties separately, for each producer or exporter. The amount of duties payable is directly proportional to the amount of dumping. In case a large number of producers or exporters are involved, exporting the same products, investigating authorities may determine duties on the basis of 'randomly' selected statistically valid samples.

"In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques."
(Anti-dumping Agreement, Article 5.4)

In making such a selection, the investigating authorities are expected to consult the concerned producers or exporters regarding the selection procedure. Any producer or exporter not included in the sample, possesses the right of requesting the authorities to determine a separate antidumping duty.

The newly introduced sunset clause spells out the period for which antidumping duties can be imposed. Under this clause, antidumping duties and countervailing measures automatically expire after five years of their imposition, unless a review of cases determines that, in the absence of such measures, dumping and injury will continue to occur. Reviews for this purpose must be initiated before the 'sunset' date and should normally be concluded within one year.

The Agreement also lays down a provision for 'retroactive' imposition of antidumping duties. The provision as laid down in Paragraph 10.1 of the Agreement, allows for imposition of antidumping duties beforehand. In such a case, after it has been confirmed that 'injury' is taking place, 'retroactive' antidumping duties can be imposed from the date provisional measures became effective.

The Agreement makes it compulsory for members to inform the Committee on antidumping practices about all preliminary and final findings in detail. Coupled with this, the members meet twice a year to let the Committee know the results of all ongoing investigations. In case of differences, members can sort those out through mutual understanding or by approaching the WTO's Dispute Settlement Body. Article 17.1 of the Agreement specifies that the Dispute Settlement Undertaking will be applicable for consultation and settlement of disputes.

Composition and Function of the Dispute Settlement Body

The Dispute Settlement Committee is composed of representatives from each signatory country and meets at least twice a year in Geneva, Switzerland. The basic function of the committee is that of oversight. It is there to resolve procedural disputes among governments concerning the operation of domestic laws and their consistency with the Code.

The first stage of the dispute settlement process calls for consultations. As per WTO regulations, 10 days are given to members for replying to a request for consultations and 30 days for entering into consultations. Requests for consultations are notified with the Dispute Settlement Body (DSB) of WTO. When this fails, that is a mutually acceptable solution cannot be reached, either party can refer it to the Committee for conciliation. The conciliation process begins within 30 days of the petition. The members of the Committee review facts of the case and also seek solutions from the disputing parties.

If it is found that the case has yet to be conciliated within 90 days after it has been referred, a special panel is set up for the purpose of reviewing the facts. The panel usually consists of three members, but under special circumstances when the disputing members agree, it can be a five member team. The panel includes a developing country member if any party to the dispute is a developing country. A single panel can serve the interests of more than one member provided it deals with the same matter. The panel, set up within 30 days, is in turn given a time of 90 days to present its findings before the Committee.

The role of the Dispute Settlement Panels is clearly mentioned in the new Antidumping Code. An essential part of its operation requires maintenance of strict confidentiality regarding the panel's proceedings. The panel meets in closed session and interested parties join the proceedings only when they are called.

After reviewing the facts, the panel submits a report, considering which, countermeasures are imposed. The report is considered for adoption 20 days after it has been circulated among member countries. The extent of penalty levied on offending parties depends solely on the discretion of the Committee.

3. Evaluating the Antidumping Process

Antidumping duties can be imposed if it is found, (1) 'dumping' of imports has actually taken place, (2) such imports are causing injury to domestic industries and (3) there is a causal relationship between dumping and injury.

Dumping of Goods

A product is considered to be dumped, when it is sold in the export market at a price lower than its 'normal value'. This is essentially price discrimination between purchasers in different national markets. Normal value is the price at which trade of like products takes place in the domestic market of the exporting country.

The Agreement defines normal value as, "the price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country" (Article 2.1, AD Agreement).

"Like products are products that are identical with the products 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" (Article 2.6 AD Agreement,).

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, or when because of particular market situations, or low volume of sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country.

According to the Agreement, the market of the exporting nation will be considered viable for comparison, if sales of like products there, enjoy more than 5% of the market share. Upon failing the above conditions, likely cost of exports is constructed taking into account the exporter's production cost, other expenses like advertisement cost, distribution cost, etc. and normal profit margins. Thereafter, the two costs are compared to determine the extent of dumping. Thus the extent of dumping can be ascertained by comparing export price with (a) the normal value, (b) export price to a third country, or (c) constructed price.

Calculation of Dumping Margin

Under normal circumstances, the margin of dumping is the difference between normal value and the export price of the concerned product. The Antidumping Agreement sets out guidelines to ensure a fair comparison between the home consumption price and the export price. According to this, the two should be compared, "at the same level of trade, normally at the ex-factory level, and in respect of sales made, as nearly as possible during the same time." Due allowance should be made for "differences in conditions and terms of sale, taxation, quantities, physical characteristics" and any such other factors that may affect price comparability. This is established, either on the basis of comparing weighted average 'normal value' with weighted average prices of all comparable export transactions, or comparing normal values with export prices on a transaction to transaction basis (Paragraph 2.4.2 of Article 2 of the Agreement). For example, let us say country A exports apples to country B, C and D at a per unit price of Rs 5, Rs 6 and Rs 7 respectively. The weighted average export price in this case is Rs 6, assuming country A exports apples in equal volume to each of these three countries. Assume further that, per unit price of apples hovered between Rs 5 to Rs 6 during the period between the date of exports and calculation of the dumping margin. Hence the weighted average 'normal value' in the domestic market of the exporting country turns out to be Rs 5.50. Under this circumstance, calculation of the dumping margin can be done in either of the following

ways. It can be calculated, either by comparing Rs 5.50 (weighted average normal value) with Rs 6 (weighted average export price) or by comparing Rs 5.50 with each of the export prices in countries B, C and D individually on a transaction to transaction basis.

Is this 'Significant'

The margin of dumping, will be considered 'de minimis' or not 'significant', if the price difference between export price and normal value, is less than 2% of the export price of the product. Likewise, the volume of dumped imports will be considered to be negligible or not 'significant', if it is less than 3% of total imports. However, it would be considered to be significant, if several countries each supplying less than 3% of the imports, together account for 7% or more of total imports.

Injury to Domestic Industry

The term 'injury' has been defined in a footnote to Paragraph 3.1 of the Article 3 of the Agreement as action causing, "material injury to the domestic industry, threat of material injury to the domestic industry or material retardation of the establishment of such an industry, and shall be interpreted in accordance with the provision of the Article".

Article 3.4 of the Antidumping Agreement specifies, "a determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent".

However, the Agreement does not define the term 'material injury', though it means, 'harm which is not inconsequential, immaterial or unimportant'.

Determining the Extent of Material Injury

Even though it is difficult to 'quantify' the extent of material injury, this can be ascertained from factors, such as:

1. The volume of dumped imports, including the extent to which

there has been, or there is likely to be significant 'increase' in the volume of dumped imports, either in absolute terms, or in relation to production or consumption in the country of import.

2. The effect of the dumped imports on prices in the domestic market for like products, including the existence of price undercutting, or the extent to which dumped imports are causing price depression, or preventing price increases for goods which otherwise would have occurred.
3. The consequent impact of dumped imports on the relevant domestic industry including the 'economic' impact on the industry demonstrated, *inter alia* by decline in output, loss of market share, reduced profits, decline in productivity and capacity utilisation, reduced return on investments, adverse effects on cash flow, inventories, employment, wages, growth, investments and the like.

Under conditions when the 'extent' of material injury cannot be properly ascertained, as may be the case when domestic industries are yet to be established, or are in 'nascent' stage of development, 'material retardation' is to be taken as a proxy for 'material injury'

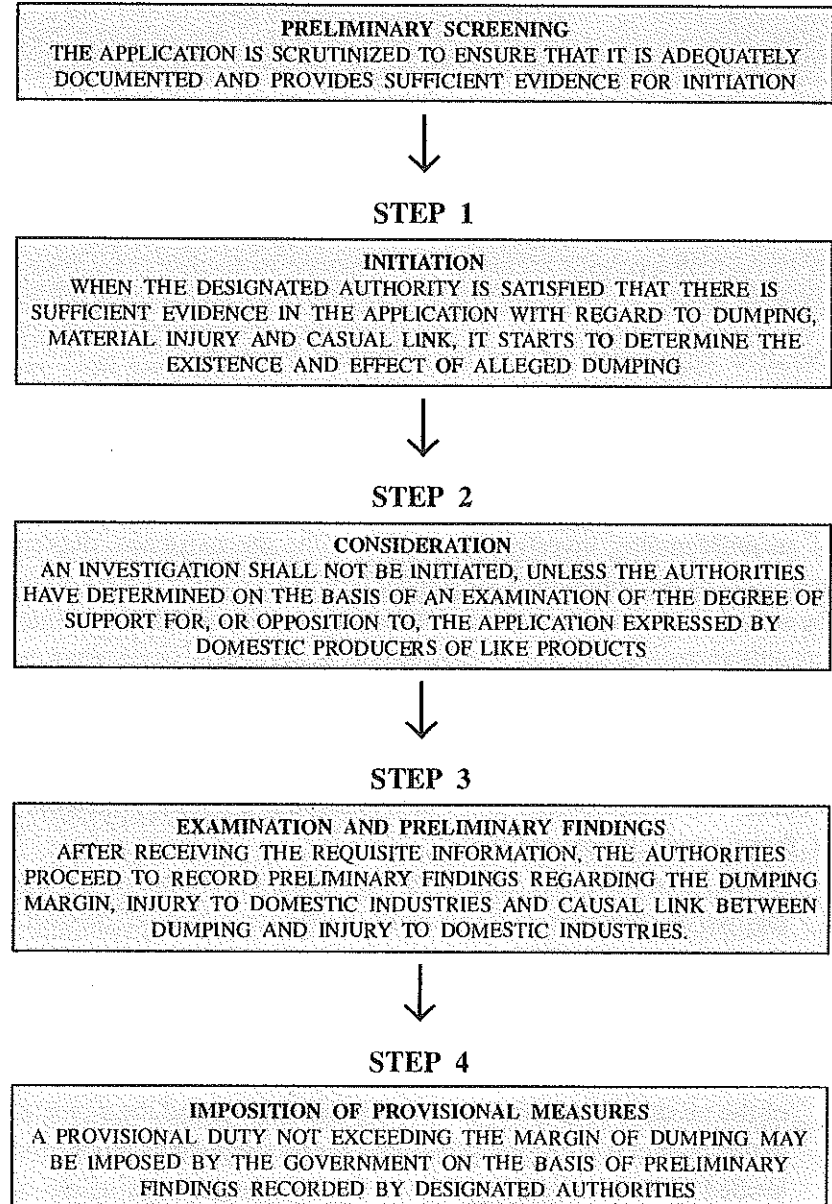
Causal Link Between Dumping and Injury

If instances of dumping and presence of material injury can be considered as 'necessary' conditions for initiation of an antidumping investigation, the 'sufficient' condition would require establishment of the above relationship. The nexus between dumping and injury needs to be established taking into account all relevant factors including, volume of dumped imports, their effect on price in the domestic market for like articles and consequent effect of such imports on domestic producers of like products. According to the Agreement, other factors relevant in this respect include *inter alia*, the volume and prices of imports not sold at 'dumping' prices, contraction in demand, trade restrictive practices, competition between domestic and local producers, developments in technology, and last but not the least, export performance and productivity of domestic industry.

Simultaneous existence of the above mentioned factors beyond the 'significant' level, empowers the investigating authority to impose Antidumping duties to 'protect' domestic industries.

Schematic Representation of The Investigation Process

GETTING STARTED



STEP 5

TERMINATION OF THE INVESTIGATION
THE INVESTIGATION PROCESS COMES TO AN END WITH AUTHORITIES
COMING OUT WITH FINAL FINDINGS REGARDING LEVY OF ANTIDUMPING
DUTIES



END

REVIEW
IT IS THE DUTY OF THE DESIGNATED AUTHORITY TO REVIEW FROM TIME
TO TIME THE NEED FOR CONTINUED IMPOSITION OF ANTIDUMPING DUTIES.

Detailed Evaluation of the Investigation Process

Initiation of Investigation

The process of investigation starts with the receipt of a written application submitted to the government, by or on behalf of 'domestic' industry. Paragraph 5.1 of Article 5 of the Agreement stipulates initiation of an antidumping investigation to determine the existence, degree and effect of any dumping. Paragraph 5.6 of the Agreement empowers the authorities to initiate an investigation process, even without receiving any written application. This is allowed only under special circumstances when there is sufficient evidence of dumping, injury and causal link.

'Domestic industry' refers to "domestic producers as a whole of like products, or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that,

1. When producers are related to exporters or importers or are themselves importers of the allegedly dumped or subsidised product, the term 'domestic industry' may be interpreted as referring to the rest of the producers;
2. In cases involving a regional industry (i.e., where the producers within the regional market sell all or almost all of their production of the product in question in that regional market and the demand in that market is not to any substantial degree supplied by producers located elsewhere), injury may be found to exist even where a

major proportion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market. (AD Agreement, Article 4.1) (Final Text of the Uruguay Round).

Consideration of Applications

An investigation shall not be initiated in pursuant to paragraph 1, unless the authorities have determined on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of like products. The condition under which the application will be considered for initiation of investigation requires, (1) domestic producers expressly supporting the application account for not less than 25% of the total produce of like products by domestic industry and (2) domestic producers expressly supporting the application account for more than 50% of total production of the like product by those expressly supporting and opposing the application. That is according to condition one, producers who are demanding imposition of antidumping duties, should produce more than 25% of total production for like products. Also when antidumping duties are imposed there are some producers who may not support the government's move to impose them. To make applications eligible for consideration, the number of supporters wanting its imposition should outweigh the number of producers who are opposing it.

The Agreement also lays down provision for fragmented industries involving large numbers of small producers. Under the above circumstance, "authorities may determine support and opposition by using statistically valid sampling techniques". (AD Agreement, Article 5.4)

The application will be considered to be 'complete', if it furnishes the following:

- Name, volume and value of domestic production of producers of like products, making the application.
- Description of alleged dumped products.

- Information regarding country of origin, names of producers and lists of importers of the dumped product.
- Information on prices at which the dumped product is sold in domestic markets of the 'originating' country, or prices at which it is exported to a 'representative' third country, or information regarding its 'constructed' value.
- Information regarding 'volume' of the dumped product, the effect of these imports on prices and volume of like products in the domestic market and the consequent 'injurious' impact these imports bear on domestic industry.

The investigating authorities have every right to reject applications that are unsubstantiated or do not meet the criteria described above. However, if they decide to carry out the investigation, they are obliged to give public notice for initiation of investigation, furnishing details regarding name of the exporting country or countries, the basis on which dumping is alleged and a summary of the allegation on which the claim for injury is based.

Beside this, Article 6.1.3 of the Agreement requires investigating authorities to notify the governments of exporting countries of the receipt of a properly documented complaint against their exports.

Examination and Preliminary Findings

After they decide to initiate the investigation, the authorities send public notices to 'interested' parties to furnish them with requisite details. The authorities seek such information in the form of questionnaires that are sent to the 'interested' parties. Paragraph 12.1 of the Agreement requires investigating authorities to carry out such activities.

With the receipt of information, authorities proceed to record preliminary findings regarding export price, normal value and margin of dumping. They shall record further findings, regarding injury to domestic industry and assessing 'causal' link between dumping and material injury to the former. The authorities then come up with a public notice, recording the findings for disclosure before 'interested' parties.

'Interested' parties include,

1. any exporter or foreign producer or the importer of an article subjected to investigation for the purpose of imposition of antidumping duties or a trade or business association, majority of the members of which are producers, importers or exporters of such an article;
2. the government of the exporting country; and
3. a producer of the like article or directly competitive article in the importing country, a majority of whom produce or trade the like article or directly competitive article in that country.

Conclusion and Imposition of Final Duties

The investigation process ends when designated authorities come out with final findings. Like the preliminary one, authorities publish details regarding their final findings through public notification. On the basis of final findings, the government takes the final decision about imposition of final antidumping duties.

Under normal circumstances, the investigation is required to be concluded within one year and under no circumstances should it take more than 18 months after initiation of investigation (Article 5.10).

Conditions Under Which Dumping Investigations Get Terminated

However, under the following circumstances, the investigation can be terminated before its normal schedule:

1. If the margin of dumped imports is 'de minimis', that is, the volume of dumped imports (actual or potential) and the extent of injury, are negligible.
2. Authorities receive a request from affected domestic industries, which have instigated the authorities for initiating investigation.
3. If there are price undertakings on part of exporters of the dumped for product. Price undertaking means a satisfactory 'voluntary' undertaking from any exporter to revise prices, or to cease exports to the area in question at 'dumped' prices, thereby satisfying authorities that negative effects of dumping no more exist. However,

no exporter can be forced to enter into such an undertaking, as mentioned in Paragraph 8.5 of the Agreement.

4. Conditions under which 'description' of the product or their source of 'origin' are changed. During the eighties, many Asian companies which had started doing this were faced with charges of dumping from the EU. The EU argued that their Asian counterparts were following this path to evade paying antidumping duties and hence had to be penalised. The action commonly known as "anti-circumvention", falls under the purview of domestic law in certain European nations.

Adoption of Protective Measures

To safeguard the interest of domestic industries, authorities may resort to protective measures, provided there is sufficient evidence of dumping. The various protective measures may come in the form of imposition of provisional measures and definitive or final duties.

The provisional measures can either take the form of provisional duties, or can also come as security by cash deposit or bond, equal to antidumping duty provisionally estimated (Article 7.3). This type of 'interim' measure cannot be applied before 60 days from the initiation of the investigation. The period of duration is not open ended. Normally such provisional measures can be imposed for four months, although under exceptional circumstances, they can be extended for a period of 6 to 9 months (Article 7.3).

The 'final' measure takes the form of definitive, or final, duties. Article 9.3 of the Agreement requires the amount of antidumping duties to be bound within the margin of dumping. A justifiable application can be made if the 'final' findings of the authorities lay credence to the existence of 'necessary' and 'sufficient' conditions for dumping. The period of applicability of the above is embodied in the 'sunset clause' of the Agreement. The antidumping duty will remain in force so long as authorities feel instances of dumping exist. Regarding this, authorities are required to examine the need for continued imposition of duties whenever warranted. When the duty is imposed for a longer time frame, 'interested' parties possess the right to question the authority

regarding duration. In any case, antidumping duties must be terminated on a date not later than five years from imposition, unless a review determines that termination would lead to continuation or recurrence of dumping and injury.

4. Problems in Interpreting the New Code

The new Code is not yet perfect in the sense that there are still many loopholes in it. The negotiations witnessed a tussle between victims and users, producers and consumers, where each group tried to shape and interpret the Code to preserve its own interest.

The Code does not take into account the problem arising out of the price comparison. In determining the 'margin' of dumping, it is essential to compare foreign prices with domestic ones. The guidelines regarding this are set out in the Agreement. However, there are some lacunae in the process of price comparison which is examined in the following section.

Problem in the Average Pricing Principle

In a situation involving a large number of small transactions, the investigating authorities often use the average pricing principle to determine the margin of dumping. Under this system, prices are compared on an 'apple to apple' basis, where comparisons are based on:

Either, by comparing the weighted average 'normal values' with the weighted average prices for all comparable export transactions;

Or, by comparing home market prices and export prices on a transaction to transaction basis.

But this rule is seldom followed. The Agreement permits an exception to this general rule when export prices differ significantly among purchasers, regions or periods. In such instances, a weighted average home consumption price may be compared with the price of an individual export transaction ('apple to orange' basis). The problem lies in this kind of comparison, where the process is often manipulated to suit imposition of antidumping duties. For example, the manner in which the US Department of Commerce compares importer's prices charged

in the United States with prices in its home country, is questionable. The Department computes average home market price by using sales data. This average price is then compared with individual sales transactions (not the average) in the United States. Any U.S. sales that are above the average home market value are disregarded. But if any sales are found to be below the average home market value, the Department concludes the imported product has been dumped, and a 'dumping margin' is calculated on the basis of price differences between the two countries. Moreover, foreign producers can be found guilty of dumping if their sale price in the United States is less than the average world wide selling price.

The process of comparing 'prices' to 'value' is not a simple exercise because the calculations are not simple. It is to be noted that 'value' is based on the producer's cost accounting data according to statutory rules, and this is the area where arbitrary, unfair results can be mandated either by law or can be administratively imposed by the government, favouring a domestic industry. Cost accounting depends far more on judgmental factors than accounting for financial reports because of different ways a producer's general fixed costs may be allocated to individual products.

Problem in the Way of Currency Conversion

Comparing the home consumption price with export price normally involves conversion into the exporting country's currency. As currencies often fluctuate, the rate used for currency conversion could greatly influence the margin of dumping. In order to ensure consistency in methods used by investigating authorities, the Agreement provides that the exchange rate prevalent on the date of sale should be used for conversion purposes. Despite this, sometimes the margin of 'dumping' may become 'significant' because of depreciation in the value of home currency on the date of transaction.

Problem in Computing 'Constructed Value'

Problems may arise in constructing prices for 'dumped' products. 'Constructed value' is used as a proxy of 'normal value' when, (1) calculation of normal value is not possible due to small size of the

exporting country's domestic market and (2) information regarding price charged by the exporting nation to a representative third country is not available.

The process involving construction of normal value is not that innocuous. Normally the construction is done by taking into account the exporter's production costs, other expenses like advertisement cost, distribution cost, marketing cost, etc. and normal profit margins. A problem may arise, as these costs may differ across countries, with the cost being generally higher in developed nations vis-a-vis their developing counterparts. The new Agreement however does not take into account any scale factors to smooth out these effects.

Problem With Charging Low Prices Even Though It Is Rational

The Agreement does not take into account factors like effect of cross subsidization and existence of perishable products. A producer can be alleged to dump his products, even if he does so by making use of sales from other products to cross subsidize.

Producers of 'perishable' commodities sometimes may be forced to sell their products at a low price because of the perishable nature of their products. The fresh flower market is a perfect example. These imports arrive fresh, but after some time they start to wilt. When that happens, flower sellers sell them for whatever they can get. It is rational to sell a wilting flower for something rather than getting nothing. The new Antidumping Agreement does not take these factors into consideration.

Hence it is debatable whether the pricing methodology is a proper one.

There is no special clause to restrict arbitrary and biased construction of 'normal value'. This has sometime resulted in imposition of duties that are based on a 'tainted' version of normal price.

The newly introduced Sunset Clause, mentioning the termination period for antidumping duties, is not that meaningful. The clause does nothing to bind a time limit for cases under review. As a result, imposition of antidumping duties can continue for more than five years. Moreover, there is no time limit regarding the number of times

an antidumping duty can be reviewed and extended.

The Committee on antidumping formed with the objective of overseeing the activities of member nations, in practice possesses very little power. The committee, in case it wants to discuss any issue, has to obtain permission from the concerned member or a company from the member country. The committee can only look at matters of procedure and evaluation, but possesses no powers to overturn dumping findings. Coupled with this, the panel established by the Dispute Settlement Body, at times, functions in a biased manner. Normally the panel interprets the relevant provision of the agreement in line with interpreting public international law. But Article 17.6 of the Agreement specifies, "where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measures to be in conformity with the Agreement if it rests upon one of those permissible interpretations." Therefore, the panel cannot operate wholly independently.

Finally, the interests of consumers have always been ignored. The new agreement for the first time necessitates consultation with representative consumer bodies during the time of investigation. The objective is to involve both industrial users and private consumers in investigation of the dumping process. But unfortunately in most cases, consultations are not sought from these representative consumer bodies. Even when they are consulted, they are supposed to comment only on issues related to dumping, the injury element and the causal relation between the two. The wider implications of the dumping action for consumers, or the effects of an antidumping duty on general economic welfare are not addressed.

Thus to make the system more efficient and transparent, future trade negotiations should focus on these problems.

5. Global Perspective on Antidumping

Over the first 30 years of GATT, antidumping measures did not create many problems. Few national actions were taken, and only one was challenged at GATT, as illegal. The complaint, raised by Italy against Sweden in 1954, was resolved quickly by Sweden changing regulations that had been questioned.

Through the early sixties, the GATT member countries, in total undertook fewer than a dozen antidumping investigation actions per year. However, in the latter half of the seventies, the US alone averaged 35 cases per year, and the frequency across all GATT member countries is now more than 200 cases per year. The following two tables give more details.

Exporters subject to two or more initiations of antidumping investigations, 1996

TABLE 1

Countries	Total	Countries	Total
CHINA	39	MALAYSIA	3
E.C.	35	MEXICO	3
USA	21	POLAND	3
BRAZIL	10	UKRAINE	3
INDIA	10	CHILE	2
KOREA	8	EGYPT	2
THAILAND	8	HONG KONG	2
CHINESE TAIPEI	8	PAKISTAN	2

INDONESIA	7	ROMANIA	2
JAPAN	7	SWITZERLAND	2
RUSSIA	6	TURKEY	2
SOUTH AFRICA	6	BULGARIA	3

TOTAL : 194

1. For the given table, the reporting period covers 1 January 1996 - 31 December, 1996. The table is based on information from members that have submitted semi-annual reports and is incomplete due to a significant number of missing notifications.
2. Does not include exporters subject to only one initiation. The total number of initiations was 206.
3. Source: *WTO Annual Report, 1997*

SUMMARY OF ANTIDUMPING ACTIONS, 1996

TABLE 2

Countries	Initiation	Provisional Measures	Definitive Duties	Price Undertakings	Measures in Force on 31, Dec.1996
ARGENTINA	23	4	18	2	30
AUSTRALIA	17	5	0	1	47
BRAZIL	17	1	6	0	24
CANADA	5	8	0	0	96
CHILE	3	2	0	0	0
COLOMBIA	1	1	1	0	7
EC	23	11	26	6	153
GUATEMALA	1	0	0	0	n.a.
INDIA	20	5	0	0	15
INDONESIA	8	0	0	0	n.a.
ISRAEL	6	1	0	0	n.a.
JAPAN	0	0	0	0	3

KOREA	13	9	5	1	14
MALAYSIA	2	2	2	0	n.a.
MEXICO	3	3	5	0	95
NEW ZEALAND	4	2	4	0	27
PERU	5	3	1	0	4
SINGAPORE	0	0	0	0	2
SOUTH AFRICA	30	9	8	0	31
THAILAND	1	1	0	0	1
TURKEY	0	0	0	0	37
UNITED STATES	21	14	12	1	311
VENEZUELA	3	2	0	0	3
TOTAL	206	83	88	11	900

n.a. = not available

1. For table 2, the reporting period covers 1 January 1996 - 31 December 1996. The Table is based upon information from members that have submitted semi-annual reports and is incomplete due to a significant number of missing notifications.
2. Includes definitive price undertakings.
3. Did not submit a separate list of measures in force.
4. Source: *WTO Annual Report, 1997*.

The above tables indicate the use of antidumping measures around the world. The use of antidumping and countervailing duties has increased in recent years, specially after the General Agreement on Tariffs And Trade made it compulsory for member trading nations to reduce tariff barriers.

It is to be noted that most developed countries like the US, Canada, etc., imposed antidumping duties equivalent to the margin of dumping.

Lesser Duty Rule is a rule that calls for imposition of antidumping duties good enough to remove injury to domestic industries.

Under GATT provisions, national authorities cannot impose duties higher than the margin of dumping. However, it is expected that member nations will charge an amount of duty sufficient to remove the extent of domestic injury. Unfortunately most developed nations seldom follow the lesser duty rule and instead impose antidumping duties equivalent to the dumping margin.

Increased adoption of antidumping measures led to concerns about its misuse, although arguments vary. For example, such regulations are 'biased' towards finding dumping and towards 'overstating' margins (Bierwagen, 1991; Litan and Boltuck, 1991), or that antidumping is ordinary protection with a good public relations program (Finger, 1993). Besides this, 'the investigation process tends to curb imports, as exporters bear significant legal and administrative costs, importers face the uncertainty of having to pay antidumping duties once the investigation gets completed' (Finger, 1981; Staiger and Wolak, 1994). 'As a consequence of these traits, almost half of antidumping actions are superseded by negotiated export restrictions before they come to a formal legal ending' (Finger and Murray, 1990).

The allegations are not totally baseless as there is evidence to back them. For example, the U.S. Department of Commerce assisted tomato growers in Florida by way of imposing antidumping duties against their Mexican counterparts (Stuart Anderson, 1997).

J. Michael Finger, a prominent critic of antidumping, writes in his book, *'Antidumping, How it Works and Who Gets Hurt'*,

"Antidumping, as practised today, is a witches brew of the worst of policy making: power politics, bad economics, and shameful public administration. Antidumping law is an oxymoron. Expansion of the power of the state to act against imports in the name of antidumping has been built on the meanest of violations against the principles of rule of law. Antidumping is a particularly insidious threat in that it appears to bring systemic justification to the trade restrictions it creates: it is as if the GATT system were programmed to destroy itself'.

Hence it would be beneficial if global bodies like the WTO formulate policies that prevent the use of 'unfair' trade practices, paving the way for a 'efficiency driven' free trade regime.

6. Actions Initiated Against Indian Exporters And Problems Faced By Them

Just as India imposes antidumping duties on 'dumped' imports, in the same way, Indian exports are also susceptible to antidumping duties when they are sold at Less Than Fair Value Price in foreign markets. Table 3 provides a list of antidumping cases initiated against India.

Status Report For Antidumping Cases Against India

TABLE 3

Serial No.	File No.	Product	Investigating Country	Date Initiation	Present Status
1	10/6/97-TPD	STAINLESS STEEL BRIGHT BARS	EC	30.8.97	QUESTIONNAIRES SENT TO MANUFACTURER, OR EXPORTERS BY EC
2	10/3/97-TPD	AMOXYCILIN ANO AMPICILLIN	SOUTH AFRICA	4.10.96	ANTIDUMPING DUTY RANGING FROM 8.3% TO 12.5% IMPOSED WITH EFFECT FROM 11.4.97
3	10/1/97-TPO	POTASSIUM PERMANGANATE	EC	26.4.97	EU IMPOSED A CONDITION OF MINIMUM IMPORT PRICE, OF ECU 1475 PER TONNE, ON IMPORTS FROM INDIA
4	10/13/94-TPO	POLYLEFIN SACKS ANO BAGS	EC	APRIL '95	DEFINITIVE DUTY RANGING FROM 0% TO 3.6% IMPOSED ON INDIAN

					EXPORTERS WITH EFFECT FROM 10.10.97
5	10/5/95-TPO	STAINLESS STEEL FASTENERS	EC	3.12.96	DEFINITIVE DUTY RANGING FROM 47.9% TO 133.5% IMPOSED ON INDIAN EXPORTERS WITH EFFECT FROM 4.9.1997
6	14/100/93-TPO	COTTON TYPE BED LINEN	EC	13.9.96	AFTER TERMINATING THE EARLIER CASE ON 9.7.96, A FRESH CASE WAS INITIATED. DEFINITIVE ANTIDUMPING DUTY RANGING FROM 2.7% TO 24.7% IMPOSED ON INDIAN EXPORTERS WITH EFFECT FROM 16.6.97.
7	10/8/95-TPD	UNBLEACHED COTTON FABRICS	EC	11.7.97	PROVISIONAL ANTIDUMPING DUTY RANGING FROM 2.9% TO 16.9% IMPOSED AGAINST VARIOUS EXPORTERS FROM INDIA.
8	10/4/96	SYNTHETIC FIBRE ROPES	EC	1.7.97	PROVISIONAL ANTIDUMPING DUTY AT THE RATE OF 53% IMPOSED AGAINST EXPORTS FROM GARWARE WALL ROPES AND 82% AGAINST OTHER EXPORTERS
9	10/2/97-TPO	HOT ROLLED COIL AND PLATE	INDONESIA	19.12.96	PROVISIONAL DUTY RANGING FROM 26% TO 38% IMPOSED ON INDIAN EXPORTERS WITH EFFECT FROM 22.4.97.

10	10/4/97-TPD	CYCLE TYRES	BRAZIL	APRIL '96	FINAL DUTY RANGING FROM 38.6% TO 145.56% IMPOSED ON INDIAN EXPORTERS WITH EFFECT FROM 29.9.97.
11	1/2/0/94-TPO	SINGLE SPEED FREE WHEEL	BRAZIL	17.01.94	FINAL DUTY VARYING FROM 7% TO 93% IMPOSED WITH EFFECT FROM 1.1.95. AS DOMESTIC PRODUCTION OF THIS ITEM IN BRAZIL HAS INCREASED SIGNIFICANTLY ON REQUEST FROM INDIA, GOVERNMENT OF BRAZIL HAS WAIVED ANTIDUMPING DUTY ON INDIAN EXPORTS BUT HAS ANNOUNCED MINIMUM PRICE FOR EACH SUPPLIER SEPARATELY FROM INDIA.
12	10/1/94-TPO	STAINLESS STEEL BARS	USA	30.12.93	FINAL DUTY RANGING FROM 3.87% TO 21.02% LEVIED ON INDIAN EXPORTERS ON 30.12.94. THE CASE IS UNDER ADMINISTRATIVE REVIEW OF DEPARTMENT OF COMMERCE, USA
13	14/3/93-TPO	STAINLESS STEEL FLANGES	USA	31.12.92	FINAL DUTY RANGING FROM 18.56% TO 210% IMPOSED ON 28.12.93. SUBSEQUENTLY DURING THE REVIEW IN 1996, DUTY ON M/S AKAI IMPEX, INDIA WAS REDUCED TO 2.56%

14	N.A	SYNTHETIC FIBRE OF POLYSIER	EC	NOVEMBER, 90	ANTIDUMPING DUTY OF 7.2% IMPOSED IN JANUARY 1993. DUTY DUE TO EXPIRE IN JANUARY 1998 UNLESS REVIEWED BEFORE THAT DATE. THE PRESENT STATUS IS BEING ASCERTAINED FROM EOI, BRUSSELS.
----	-----	-----------------------------	----	--------------	--

Source: *Ministry of Commerce*

What is clearly evident from the above table is that in most cases EC has initiated antidumping proceedings against India. The matter is of great concern considering the fact EC is India's second largest trading partner, after the USA. In this situation, it is essential that the government comes up with a proper conciliatory programme, so as to protect small exporters. The first useful step in this direction is to formulate policies with special reference to problems presently faced by Indian exporters.

Problems and Remedies

Asymmetric Flow of Information

The basic problem seems to be lack of adequate information among Indian exporters. Some chambers of industry have confirmed this. A recent study undertaken by FICCI observed that "the domestic industry does not have adequate information to satisfy the designated authority for a prima facie decision of initiating investigations. The industry is also not aware as to what information or data will be collected by the authority on its own during investigations. The affected industries find it difficult to collect data, particularly those relating to determination of normal value. Their efforts to collect information or data from Indian Diplomatic missions abroad are often not successful".

As a way out of the problem, to make more information available for domestic producers as well as other interested parties, the Ministry of Commerce recently established a facilitation cell. The cell will advise all interested parties on procedural information and time frames involved. It will also be able to assist industry with regard to technical

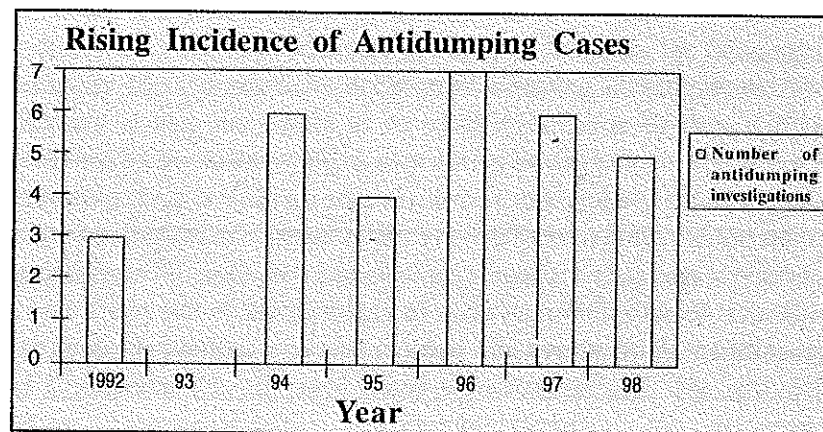
issues relating to the concept of like products, construction of normal value, determination of material injury and the like. Therefore it is advisable that concerned parties first interact with the facilitation cell before filing an application.

7. Antidumping Proceedings in India

Instances of Antidumping : Where Does India Stand?

A Study undertaken by the WTO during 1996 places India in the twelfth position, with reference to the question of usage of antidumping measures by any country. The first antidumping case was registered during the fiscal year 1992-93, when actions were initiated against imports of Poly Vinyl Chloride Resin (PVC) from Brazil, Mexico, the Republic of Korea and the USA. The duties came into effect from 2 February 1993, after the designated authority confirmed instances of dumping and injury taking place. Thereafter the process gathered momentum, with instances of antidumping cases rising from two during the year 1992-93 to 20 till the last fiscal year. Presently antidumping duties are in force for 16 products, whereas provisional duties have been recommended for five more products. Figure 1 portrays the recent spurt in antidumping cases in India.

FIGURE 1



*1998 figure refers only to the months of January and February

Although India tops the chart, in the Asian region, in terms of imposition of antidumping duties, globally it ranks far behind many other developing and developed nations, like Brazil, New Zealand, Canada, the EC, etc.

It is to be noted that in the levying of antidumping duties, the Indian government follows the 'lesser duty rule and imposes antidumping duties that are equivalent to lower of the two margins, i.e., the dumping margin or the injury margin'.

Cataloguing of the Indian Antidumping Cases

CASE 1

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs. per Unit)	DATE OF IMPOSITION
PVC RESIN*	BRAZIL, MEXICO, KOREA RP, USA	2036/MT, 1619/MT, 1253/MT, 504/MT	18. 01.94

*Duties recommended to be discontinued on 23.12.1997 after review

This was the first instance of antidumping action to be initiated in India. It was registered during the fiscal year 1992-93, when actions were initiated against imports of Poly Vinyl Chloride Resin (PVC) from Brazil, Mexico, the Republic of Korea and the USA. After final findings, the designated authority confirmed the existence of dumping, and recommended imposition of antidumping duty through Notification No. 14/9/92.

CASE 2

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs PER UNIT)	DATE OF IMPOSITION
BISPHENOL-A**	JAPAN	7477/MT	11.03.1994

**Increased to 8434/MT after review. Notification by the Ministry of Finance not yet issued.

The second case relates to imposition of antidumping duties on an organic chemical named Bisphenol-A, originating from Japan. The

chemical, falling under Sub-heading No.2907.23 of the first schedule of the Custom Tariff Act, was found to be dumped by Mitsui and Co. Ltd., of Japan. Consequently the concerned authority recommended imposition of antidumping duty, vide Notification No. 102, dated 11.03.94.

CASE 3

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs PER UNIT)	DATE OF IMPOSITION
ISOBUTYL BENZENE	CHINA PR	10634/MT	31.08.95

On August 1993, a written application was given by the Indian IBB Manufacturers' Association of Bombay alleging that Isobutyl Benzene had been dumped unfairly. Consequently, the concerned authority imposed antidumping duty vide Notification No.134/95, dated 31.08.95. Antidumping duty was imposed at the rate of Rs 10634/MT. However, after review, the duty was further increased to Rs12465/MT.

CASE 4

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs PER UNIT)	DATE OF IMPOSITION
POTASSIUM PERMANGANATE	CHINA PR	5992/MT	05.09.95

On 25 November 1994, a petition was filed by Universal Chemicals and Private Ltd. Mumbai, alleging dumping of Potassium Permanganate from China. The chemical falling under heading 2841.60 of the Schedule 1 of the Custom and Tariff Act, 1975, was found to be dumped by China National Import and Export Corporation and Gunga Dong Chemicals, of China. Consequently the authority imposed antidumping duty vide Notification Number 137/95, dated 05.09.1995. Antidumping rate was imposed at the rate of Rs 5992/MT, at par with the dumping margin.

CASE 5

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/UNIT)	DATE OF IMPOSITION	CUSTOMS NOTIFICATION NUMBER
TMBA	CHINA	237/KG	20.10.95	151/95
THEOPHY-LINE, CAFFEINE	CHINA	108/KG, 101/KG	20.10.95 20.10.95	152/95 152/95

Soon after, antidumping duties were again slapped on three more chemicals imported from the People's Republic of China. These products are, Theophylline, Caffeine and 3,4,5 Trimethoxy Benzaldehyde (TMBA).

CASE 6

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/Unit)	DATE OF IMPOSITION	CUSTOM NOTIFICATION NO.
NBR	JAPAN, GERMANY, KOREA RP	Rs 19306/MT, Rs 13255/MT, Rs8316/MT	14.11.95, 30.07.97, 30.07.97	159/95, 62/97, 62/97

This instance relates to imposition of antidumping duties on Acrylonitrile Butadiene Rubber (NBR), imported from Japan, Germany and Korea RP. The designated authority first initiated the investigation against the Japanese firms, upon a complaint launched by Gujarat Apar Polymer Limited of Mumbai. The product falling under heading 4002.59 of schedule 1 of the Custom Tariff Act, 1975, was found to be dumped by Japan Synthetic Rubber Co., and Nippon Zeon Co. Ltd. of Japan. Upon confirmation of dumping and existence of injury the concerned authority imposed antidumping duty at the rate of Rs19306/MT.

Sometime later, antidumping duties were again imposed on the same product, but this time it originated from Germany and Korea RP. Investigation confirmed that Bayer AG of Germany and Korea

Kumbo Petrochemical Company Limited of Korea, are dumping this product into India. Consequently, antidumping duties were imposed by the designated authority.

CASE 7

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/Unit)	DATE OF IMPOSITION	CUSTOMS NOTIFICATION NO.
BISPHENOL-A	BRAZIL, RUSSIA, USA	10263/MT, 12559/MT, 10000/MT	26.12.1995, 26.12.1995, 29.04.1997	169/95, 169/95, 40/97

Antidumping duties earlier imposed on Bisphenol-A were again imposed, but this time it originated from Brazil, Russia and USA.

CASE 8

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/Unit)	DATE OF IMPOSITION
SODIUM FERROCYANIDE	CHINA PR	16358/MT - 20287/MT	20.12.96

In exercise of the powers conferred by sub-section (2) of section 9A of the Custom Tariff Act, 1975, the authority imposed antidumping duty on Sodium Ferrocyanide imported from China. The chemical falling under subheading 2837.20 of the first schedule of the Act, was found to be dumped by Advance Chemical Ltd., China National Chemical Construction Ahui Co., Guandong Chemicals Import and Export Corporation and Sinochen Liaoning, all from China. Consequently, the designated authority imposed antidumping duties ranging between Rs. 16358/MT to Rs 20287/MT, vide Notification No. 27/97 dated 20.12.96.

During the same year i.e. in 1996, antidumping duty was again imposed on exports from China and Germany. This time it was Dead Burnt Magnesite (DBM) having MgO content ranging from 85% to

CASE 9

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/Unit)	DATE OF IMPOSITION
DEAD BURNT MAGNESITE	CHINA PR, GERMANY	1335/MT - 1925/MT	20.12.96

92%. DBM falling under subheading 2519.90 of the first schedule of the said Act, was found to be dumped by the Chinese and the German companies like, China Metallurgical Import-Export Corporation, China Soungang International Trade and Engineering Corporation and Sima Resources GmbH. Consequently the authority imposed antidumping duties, ranging between Rs1335/MT to Rs 1925/MT, vide Notification No.98/96 dated 20.12.96.

CASE 10

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/Unit)	DATE OF IMPOSITION
8-HYDROXY QUINOLINE	CHINA PR	183/Kg - 206/Kg	01.04.97

Another pharmaceutical product on which antidumping duty was imposed, also originated from China. The chemical named 8-Hydroxyquinoline (8-Ha), falls under subheading 2933.40 of the first schedule of the Custom and Tariff Act, 1975. Some Chinese companies like Sinochem Jiangsu Import and Export Corporation, China Jiangsu Medicines and Health products Import Export Group Corporation, were allegedly dumping this product. In line with its earlier trends, the designated authority imposed antidumping duties ranging between Rs 183/Kg to Rs 206/Kg so to mitigate the effect of dumping.

Antidumping duties were imposed on Low Carbon Ferro Chrome (LCFC), (chemical specification, 0.03% to 20% Carbon content and 65%-70% Chromium content), when evidence confirmed dumping.

CASE 11

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/UNIT)	DATE OF IMPOSITION	CUSTOMS NOTIFICATION NO.
LCFC	RUSSIA, KAZAKHISTAN	10900 TO 18600/ MT, 18500/MT.	20.12.1996, 20.12.1996.	7/97,DATED 24.01.1997, 8/97,DATED 24.01.1997.

The product falling under Sub-heading No. 7202.49 of the First Schedule to the Custom Tariff Act, 1975, originated from Russia and Kazakhstan.

CASE 12

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/UNIT)	DATE OF IMPOSITION	CUSTOMS NOTIFICATION NO.
ACRYLIC FIBRE	USA, THAILAND, KOREA RP.	6.30-42.93/Kg, 9.73/Kg, 22.27/Kg.	24.10.1997.	81/97 DATED 24.10.1997.

The Designated Authority imposed antidumping duties on Man made staple fibre - the Acrylic Fibre, when evidence of dumping was confirmed. The product falling under Chapter 55 of the First schedule of the said Custom Tariff Act, originated from the USA, Thailand and the Republic of Korea.

CASE 13

PRODUCT	COUNTRY	RANGE OF DUTY IMPOSED (Rs/UNIT)		DATE OF IMPOSITION
		(A)	(B)	
CATALYSTS HYDRODESULPHARISATION CATALYST (HDS); COBALT-MOLYBDENUM/ NICKEL-MOLYBDENUM	DENMARK	36.11/LITRE	123.17/LITRE	02.02.1998.

ZINC OXIDE DESULPHERISATION CATALYST (ZnODS);	NIL	21.24/LITRE	02.02.1998
HIGH TEMPERATURE SHIFT CATALYST (HTS);	30.99/LITRE	92.99LITRE	"
LOW TEMPERATURE SHIFT CATALYST (LTS);	NIL	106.44/LITRE	"
SECONDARY REFORMING CATALYST;	NIL	192.01/LITRE	"
METHANATION CATALYST.	138.61	138.61/LITRE	"

NOTE: Column 3 (A) of the given table refers to duties, when catalysts fall under Chapter 38 of the First Schedule of the said Act.

Column 3 (B) of the table refers to duties, when catalysts fall under Chapter 98 of the First Schedule of the said Act.

Source: Ministry of Commerce and BDP'S Custom Tariff 1997-98.

On the basis of the preliminary findings, the designated authority confirmed, evidence regarding dumping of catalysts from Denmark. Consequently, in exercise of the power conferred by sub-section (2) of section 9A of the said Custom Tariff Act, the authority imposed the above antidumping duties, vide Notification No. 2/98, dated 02.02.98.

All the above cases relate to imposition of final antidumping duties. However, final duties cannot be levied on cases under investigation. Under such circumstances, antidumping duties can be levied only on a provisional basis. The following table relates to cases on which provisional duties were imposed.

CASES RECOMENDED FOR PROVISIONAL DUTIES

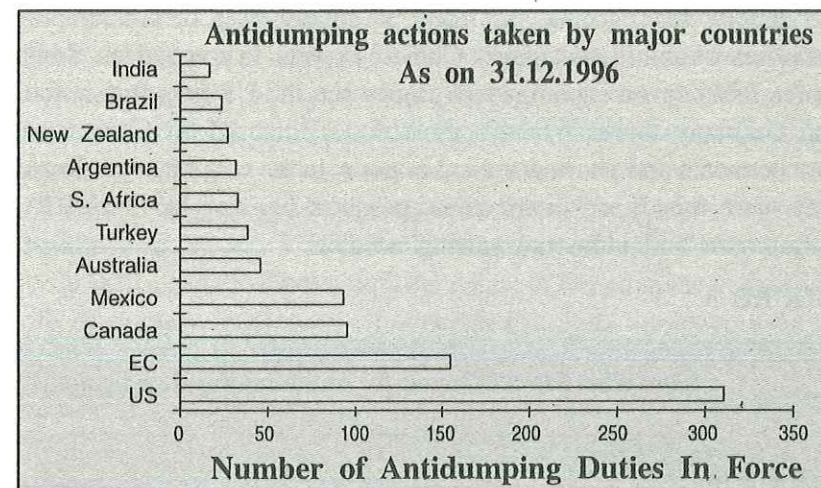
PRODUCT	COUNTRY	DATE OF INITIATION	RECOMMEN- DATION	QUANTUM OF DUTY RECOMMEN- DED (Rs/Unit)
MAGNESIUM,	CHINA PR,	31.07.97,	06.02.98,	27509/MT,
VITAMIN- C,	JAPAN, CHINA PR,	26.05.97,	11.03.98,	27.59-61.69/Kg.
METALLURGI- CAL COKE,	CHINA PR,	28.08.97.	20.03.98,	1800/MT
PURIFIED TEREPHTHALIC ACID (PTA),	KOREA, THAILAND INDONESIA	*	21,11,97	463-1355/MT, 1769/MT, 3375/MT.
NORMAL POWER GRADE GRAPHITE ELECTRODES,	CHINA PR	*	21.10.97	11955-16884/MT
ULTRA HIGH POWER GRADE GRAPHITE ELECTRODES	USA, GERMANY, FRANCE, ITALY, AUSTRIA, SPAIN, BELGIUM	*	21.10.97	19410/MT, 9021-20933/MT. 29695/MT, 21645/MT, 27347/MT, 17125/MT, 16918/MT.

* Not Available

Source: Ministry of Commerce

Instances of levying antidumping and countervailing duties in India have increased significantly in recent years. Figure 2, indicates where India stands globally, viewed in terms of imposing antidumping duties.

FIGURE 2



Source: FICCI

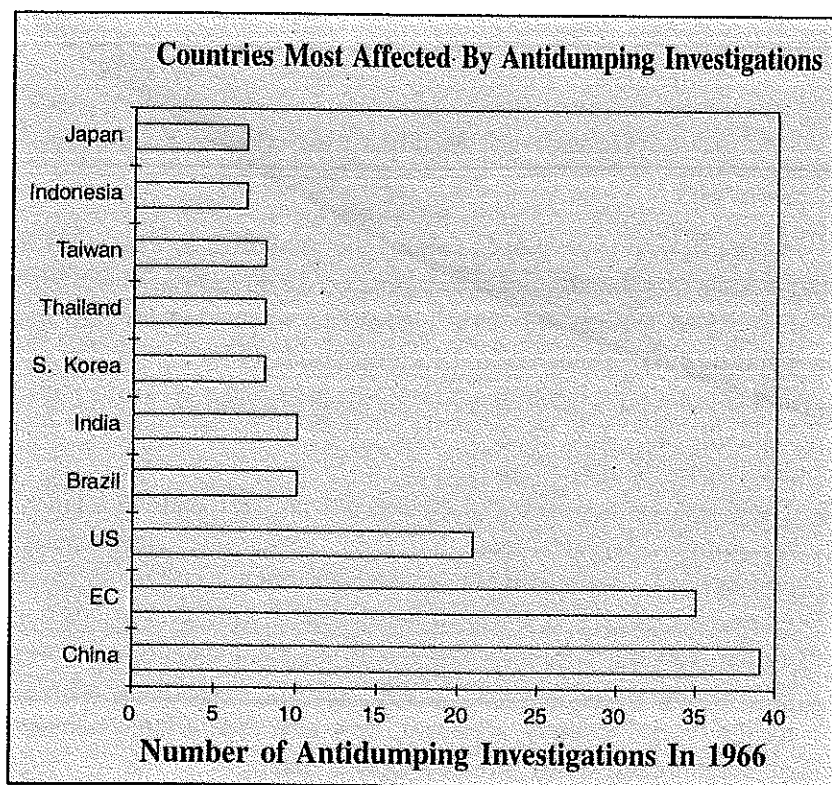
Interestingly, it is developed nations that rank high in the list. This may be due to the following reasons:

1. Developed nations are "large" countries when viewed from the point of international trade, i.e., proportions of both their imports and exports are high if quantified as a percentage of world trade. Naturally they are likely to be exposed more to dumping vis-a-vis their "smaller" counterparts.
2. These nations are also well equipped with overheads like larger antidumping divisions relative to their 'developing' counterparts. For example, staff strength in the antidumping cell in India is 13 (even though it is likely to be increased with the recently set up antidumping cell) which is much less than the USA and the EC, having a staff strength of 300 and 125 respectively. Going by the "large" country argument, they also face a large number of antidumping cases initiated against them.

Figure 3 illustrates that China tops the list, closely followed by the EC and the US. Commodity wise, the incidence of antidumping cases are more on chemicals and China possesses a competitive advantage in manufacture of chemicals.

Evidently, most antidumping actions in India were initiated against the exports from China. As many as 16 instances of antidumping measures were initiated against Chinese exports. In comparison, South Korea faces seven investigations, Japan six, the US five, Russia four and Germany three. Whereas most duties imposed on China were for chemicals and pharmaceutical imports, in the case of South Korea they were mostly on intermediate products like acrylic fibre, PTA, polystyrene and industrial sewing needles.

FIGURE 3



Source: FICCI

Assessing Imposition

The problem is not with the imposition of antidumping duties,

but the rationale behind their imposition. Prior to its imposition, it is imperative for a government to do a proper cost-benefit analysis. We need to keep in mind its negative impact on the domestic front, where importers of dumped products—using them either as an intermediate input or as a good for final consumption—will be hit adversely. Likewise, it is obvious that the gainer would be the domestic producers of products being imported. Therefore, before imposing antidumping duties, it is essential to gauge its opportunity cost.

In such a situation, prices and the nature of the products in question are of primary importance. If concerned imports are to be used as essential inputs for life-saving drugs, then levying antidumping duty cannot be justified. Such an action by raising prices of life-saving drugs will go against government's policy to function as a 'welfare state'. Again the opportunity cost can be very high for the government of an export driven economy if antidumping duties are imposed on 'cheaper' imports to be used for export oriented units.

In the Indian context, the government will have to bear higher opportunity costs, if it is imposed on inputs for the 'priority' sector. After 1991, 'infrastructure' became the buzzword for development.

In most of the antidumping cases initiated here, the petitioner is a monopolist. Antidumping actions initiated against citric acid, lovastatin and magnesium exports from China, were taken up following complaints made by individual firms who accounted for bulk of the domestic production. Again, considering the case of Acrylonitrile Butadiene Rubber imported from Japan, the petition came in from Gujarat Apar Polymers Limited who have a monopoly over the given product. In fact, the petitioner with a production capability of 5000 MT, cannot even cater to the whole market, with an estimated demand of 10,000 MT. (Data Source: R.K.Gupta, *Antidumping and Countervailing Measures*). Levying antidumping duty is not justified under such circumstances, especially if imports cater to the unsaturated portion of the market.

Therefore, before imposing antidumping duties it is important to do a proper assessment.

Antidumping Proceedings in India

In India, the proceedings related to antidumping and countervailing duties are in compliance with the rules laid down by the WTO. Section 9A, 9B and 9C of the Custom and Tariff Act of 1975 empower the designated authority to levy antidumping duties against any dumped imports. The rules regarding antidumping proceedings are codified in the Custom Tariff Rules, 1995. Indian laws were amended with effect from 01.01.95 to bring them in line with provisions of the GATT Agreement.

The Designated Authority (an additional secretary in the Ministry of Commerce), normally initiates investigations so as to determine the existence, degree and effect of any alleged dumping. Rule 5(1) of the Custom Tariff Rules, requires the designated authority to initiate investigation upon receipt of a written application on or behalf of the domestic industry. In line with the WTO Agreement, Rule 6(1) requires the designated authority to issue a public notice notifying its decision to undertake investigation. Such public notice shall, inter-alia, contain adequate information on the following:

1. The name of the exporting country or countries and the article involved;
2. The date of initiation of the investigation;
3. The basis on which dumping is alleged in the application;
4. A summary of factors on which the allegation of injury is based;
5. The address to which representations by interested parties should be directed; and
6. The time limits allowed to interested parties for making their views known.

Likewise, the complaint launched by any interested agent should come up with the following information so to assist the authority in carrying out the investigation.

1. Information on imported product;
2. Information on domestic market and domestic industries;
3. Evidence of dumping and injury; and
4. Existence of causal relation between the two.

Rule 7 (1) requires interested parties to provide information on a confidential basis. As per the rule, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Director General and shall not be disclosed without special authorisation of the party providing such information. Evidence relating to normal value, export price, cost structure and profitability of the interested party are considered to be confidential.

All documents, arguments, submissions or correspondence made on a confidential basis should necessarily be accompanied by a non-confidential summary, failing which such communication is liable to be ignored without making any further reference to the supplier of such information, in view of the time limits as laid down in Rule 6 (1). However, the designated authority may provide information submitted by the applicant or any other party on non-confidential basis to other interested parties.

Rule 5(5) requires the designated authority to examine the accuracy and adequacy of the information provided in the application and satisfy itself that there is sufficient evidence regarding dumping, injury, where applicable, and a causal link between such dumped imports and alleged injury to justify the initiation of an investigation. In case of imports from 'specified countries', Rule 11(1) requires the designated authority to record a further finding that import of such products into India causes or threatens material injury to any established industry in India or materially retards the establishment of an industry in India.

Specified Country means a country or territory which is a member of the World Trade Organisation and includes country or territory with which the Government of India has an agreement to give it the most favoured nation (MFN) treatment. Under MFN treatment, each of the WTO member treats all the other members equally as "most-favoured"

In the event of imports taking place from any country or territory which is neither a member of the WTO nor has entered into MFN

Agreement with India, the designated authority can impose antidumping duty even without ascertaining the dumping margin and extent of injury. It is essential to carry out injury test only in cases of imports originating, either from any member state, or from any other country which although not a member of the WTO, has a MFN agreements with India. For example, China which is not a member of the WTO, has a MFN agreement with India. As a result, before levying antidumping duties on Chinese products, it is essential to establish occurrence of dumping.

After completion of preliminary findings, the designated authority issues a public notice, notifying the findings.

Levy of Provisional Duty

Rule 13 of the Custom Tariff Act empowers the investigating authority to impose provisional duty, provided, "no such duty shall be imposed before the expiry of sixty days from the date of issue of the public notice by the designated authority regarding its decision to initiate investigations". (Custom Tariff Rule, 1995).

Termination of Investigation

Provision regarding this is laid down in Rule 14 of the Act. It says, "the designated authority shall, by issue of public notice, terminate an investigation if:

1. it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;
2. it is satisfied in the course of investigation, that there is not sufficient evidence of dumping;
3. it determines the margin is less than 2% of the export price;
4. it determines that the volume of dumped imports, actual or potential from a particular country accounts less than 3% of imports of the like product;
5. it determines that the injury where applicable, is negligible".

Final Findings

Within one year from the date of initiating the investigation, the

investigating authority has to submit its final findings, to the central government, stating whether dumping has taken place or not. Rule 17 (4) of the Act requires the designated authority to issue a public notice recording its final findings.

Levy of Duty

Rule 18(1) of the Act lay down necessary provision for the imposition of antidumping duties. It states that "the central government may, within three months of the date of publication of the final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, antidumping duty not exceeding the margin of dumping as determined under rule 17".

Rule 19 of the Act further specifies, "any provisional duty imposed under rule 13 or an antidumping duty imposed under rule 18 shall be on a 'non-discriminatory' basis and applicable to all imports of such articles", irrespective of the source or country of origin.

Refund of Duty

If the amount of antidumping duty imposed is higher than the provisional duty already imposed and collected, the difference is not collected from the importer. On the other hand, if the amount of duty fixed after conclusion of the investigation, is found to be lower than the provisional duty already imposed, the difference is returned to importers.

Review

Finally, in line with the newly introduced 'sunset clause' of the WTO Agreement, the designated authority in India, from time to time review the need for continued imposition of antidumping duty. Whenever the harmful impacts of dumping cease to exist, Rule 23 of the Act requires that the designated authority recommends to the central government for its withdrawal.

Any disgruntled party can appeal against the order of the designated authority, to the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT).

It is to be noted, that certain imports, like imports made by 100% Export Oriented Unit (EOU) or a unit working in Export Processing Zone (EPZ) are kept outside the purview of antidumping duties vide Custom Notification Number 5/94 dated 18.01.1994.

Procedural Delay

A problem that has become a cause of concern for domestic industry relates to procedural delay regarding initiation and completion of antidumping investigations. In India, the period between filing of petition and initiation of investigation, is usually very long. While in the USA, EC and Australia, the process gets started within 20, 45 and 25 days respectively, in India there is no specific period as such. Although the Ministry of Commerce tries to start the process within 45 days after complaints have been filed, it has always failed in its efforts. For example, the domestic producers of catalysts filed a petition with the Ministry of Commerce on 28.10.1995, only to find the government initiating the investigation almost 11 months later on 06.09.1996. Worse still, it took 557 days to come out with preliminary findings. Almost the same thing happened with respect to Acrylic Fibre and Purified Terephthalic Acid, where it took 5 months and 3 months respectively to start the investigation process and almost a year to come out with preliminary findings. Such procedural delays perpetuate the problem further for domestic industries.

The most significant reason behind such procedural delays is the absence of an adequate infrastructure sufficient to handle this ever-increasing important issue. As a solution to the problem, the government decided to set up a new antidumping directorate—the Directorate General (DG) of Antidumping And Allied Duties. The new directorate, better equipped both in terms of man power and judicial power, is expected to hasten the overall process.

The directorate will be headed by an additional secretary in the Ministry of Commerce and will be assisted by two deputy secretaries or directors and adequate numbers of deputy directors. It will have a total staff strength of 15-20 officials and would function from the office of the Ministry of Commerce.

In contrast to the previous structure whereby antidumping matters were handled by a division under the commerce ministry, the new DG will be responsible for investigations of dumping as well as subsidy cases. In the event of injury to domestic industry, caused on account of subsidisation by the exporting country, the DG will have the authority to investigate for possible imposition of countervailing duties.

Hence, with a better infrastructure and more importantly with a larger number of officials for resolving cases of dumping and subsidisation, domestic industries will stand to gain the most. However, there are still some problems left to be addressed, and these relate to combating antidumping actions initiated against Indian exports. Indian exporters have a weak presence abroad and do not have effective representation to counter the charges initiated against them. Also, initiation of antidumping kind of action against Indian exporters is certain to go against their image, especially when they are trying to venture into new areas. Moreover, most of the Indian exporters are small concerns, lacking enough resources to defend themselves against dumping allegations and fight the cases abroad. In this regard it is essential that the government built necessary infrastructure in places where most of the Indian exports go.

8. Antidumping Measures: An Economic Interpretation

The theory behind antidumping law is a simple one. A foreign producer who sells his product in a domestic market at a price lower than his cost of production, is said to be guilty of dumping. Likewise, he can also be penalised for dumping, if he sells the product in any other foreign market at a price much lower than the price that he charges in the given domestic market. The rationale behind imposition of antidumping duties is to prevent "predatory" pricing. Such pricing refers to the practice of selling a product far below its cost of production, with the intention of driving competitors out of market. However, once the low price charged by the incumbents start to serve as an entry barrier, in the long run they raise the prices to make up for some of their earlier losses. As long term losses outweigh short term gains, allowing predatory pricing is not a sound policy from the perspective of welfare economics, and hurts consumer interests.

Imposition of Antidumping Duties: Is it desirable?

Imposing antidumping duties is desirable when it helps in bringing fair competition. However, it is not desirable if seen from the point of free trade and importers of these products. Although this is true, 'unfair' trade practices, like 'beauty', may be a thing very much in the eye of the beholder, but there are also social costs, associated with them, when practised. Unfair trade practices like antidumping, nurtures protectionism. Costs of protectionism not only include direct costs, such as higher prices, but many indirect costs as well.

Direct Costs of Protection

These are costs that are both perceptible and quantifiable. They come in the form of higher prices, more unemployment and lower

capital formation. Imprudent imposition of antidumping duties with the sole objective of nurturing protectionism, eventually allow protected domestic industries to charge higher prices from consumers, who suffer as a result. Likewise, protection for a longer period, by constraining competition, innovation and technological inflow, may go against development of domestic industries.

Indirect Costs of Protection

These costs, although perceptible, are not quantifiable. They usually take the following forms:

Economic Cost: It does not permit a profit maximising firm to charge differential prices in segmented markets and may thereby disrupt trading activities. (Debroy, *Beyond The Uruguay Round*). For example, a firm (monopolist) in country A may find it profitable to act as a price discriminating monopolist, at the time of selling its product in different markets. But this may not happen if a government from any such market imposes antidumping duties on its product.

Welfare Cost: If 'quality' and 'freedom to enter into contracts', figure prominently in the utility function of an individual agent, then protection certainly entails welfare loss. There are losses of individual rights, since consumers and producers, buyers and sellers, are less free to enter into contracts. Likewise consumers' choice gets constrained due to 'limited' availability of products range.

Administrative Cost: There is a substantial amount of cost involved in administering various protectionist schemes, the incidence of which falls on consumers and tax payers.

Social Harmony Cost: Under a protectionist regime, domestic producers gain at the cost of consumers.

Employment Cost: It is often found that protectionism destroys more jobs than it creates.

To gauge 'direct' and 'indirect' costs of unfair trade practices, the International Trade Commission (ITC), carried out a study of eight representative US industries. These are industries in favour of which antidumping and countervailing duties were imposed between 1980-1993. The study made the following observations:

1. Antidumping and countervailing duties caused a net loss of \$1.59 billion in US gross domestic product in 1991;
2. While domestic companies and their workers receiving antidumping and countervailing duty protection worth \$658 million more in profits and wages, terminating this protection would have increased overall American business profits and wages by \$1.85 billion in industries that were not receiving such protection;
3. When these duties were applied to items examined in the study, the US prices for those goods rose. For example, solid urea fertilizer prices increased by 19%, lamb meat prices went up by 10%, and domestic steel pipe and tube prices rose by 10%.
4. While protected firms and their workers may benefit from antidumping and countervailing duties, their benefits come at the expense of consumers, other American firms, and their workers. In 1987, for example, US consumers paid \$138 million more for ball bearings because of antidumping laws. The overall cost to the economy was \$70 million. In 1985, US consumers paid \$23 million more for brass sheets and strips, with a net cost to the economy of \$19 million. In the 1984-1985 crop year, US consumers paid \$11 million in higher prices for frozen orange juice concentrate, while the net cost to the economy was \$8 million.

It will be pertinent to emphasise that hence, before the imposition of antidumping duties, a proper and transparent calibration of its positive and negative effects, should be undertaken. It is preferable to impose antidumping duties under conditions, when positive gains outweigh the negative losses.

CONCLUSION

The paper attempts to provide a brief overview of antidumping duties, which are 'product' specific or 'source' specific duties, imposed on dumped imports causing harm to domestic industry. The rationale behind its implementation is to protect domestic industries from the brunt of predatory pricing, thereby nurturing a milieu for healthy competition. It is primarily for this reason that (despite it being 'unfair' to levy taxes on imports), the WTO allows imposition of antidumping duties, if conditions for its imposition are there.

When foreign goods are dumped 'unfairly' at a low price, antidumping duties act as a tool against externally created distortions. This is justified because it is the foreign producers who are causing distortions. But when they are practised with the objective of nurturing protectionism, both the trading partners lose. Protectionism results in a deadweight loss, with losers outnumbering the number of gainers. The opportunity cost of protection is always high and hence not warranted.

Unfortunately, many countries at present are taking undue advantage of the antidumping and countervailing clause. Instances of antidumping and countervailing duties have increased significantly in recent years. With the WTO endeavouring to do away with the distortionary impact of unfair trade, persistence of such duties under the veneer of antidumping and countervailing duties will greatly undermine the WTO's efforts. Future multilateral trade negotiations should focus attention on these crucial issues.

References

- Anderson, Stuart, (1997), *Commerce Department's Power Invites Corruption*.
- Baldwin, Robert, (1971) *Non Tariff Trade Distortion*. Washington, Brookings Institution.
- Bhagwati, J.N.*(1987), 'Trade And Services And Multilateral Trade Negotiations', *The World Bank Economic Review*, Vol.1.
- Business Guide To The Uruguay Round* (1996).
- Cobb, Joe (1994), *How The Special Interests Want to Amend Antidumping Laws*.
- Clark Peter, (1996), *A Comparison of the Antidumping Systems of Canada and USA*.
- Debroy, B. (1996), *Beyond the Uruguay Round: The Indian Perspective on GATT*, Sage Publication.
- Evans, Phillip (1991), *Unpacking The GATT: A Step by Step to the Uruguay Round*, Consumers International.
- Finger, J.M. (Ed.), (1993), *Antidumping : How its Works and Who Gets Hurt*, The University of Michigan Press, Ann Arbor.
- Finger, J.M. (1981), *The Industry Country Incidence of 'Less Than Fair Value' Cases in US Trade*.
- Finger, J.M. and Murray, J. (1990), *Policing Unfair Imports: The US Experience*.
- Gupta, R.K. (1996), *Antidumping And Countervailing Measures: The Complete Reference*, Sage Publication.
- Import Administration Antidumping Manual: General Agreement on Tariffs and Trade and the Antidumping Code*.
- Johnson, Brian T. and O'Quinn, Robert (1995), *Abolish America's Costly Antidumping Laws*. The Heritage Foundation.

- Litan and Boltak (1991), *Down in the Dump*.
- Mabile P, Michael (1995), *Issues of Legal Trend for the Corporate Leaders*.
- McGee, W. Robert, *Should The Law Favour the Consumers or the Producers? A look at the Effect of Protectionist Trade Policies*, Seton Hall University.
- McGee, W. Robert, (1996) *Protectionist Morality*. World Trade Organisation Annual Report. (1997). Dumont Institute.

■
राजीव गांधी संस्थापन

RAJIV GANDHI FOUNDATION

Jawahar Bhawan, Dr. Rajendra Prasad Road, New Delhi-110 001.
Tel : 091-011-3755117 / 3312456 Fax: 091-011-3755119

E Mail: rgf@giasl01.vsnl.net.in

Internet: <http://www.rgfindia.com>
■