ANTI DUMPING: RHETORIC AND REALITY

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Abstract

"The trade certified by GATT is like the fox put in charge of the hen house. The fox is clever enough not only to eat the hens, but also to convince the farmer that it is the way things ought to be." - **Michel J. Finger**

Dumping is, in general, a situation of international price discrimination, where the price of a product when sold to the importing country is less than the price of the same product when sold in the market of the exporting country. Anti- Dumping laws basically comprise the provisions that govern such practices. In the globalize economy, dumping is one of the most controversial issues and so are the anti-dumping laws. This paper explores the evolution of anti- dumping laws and looks into the investigation procedure for establishing anti-dumping duties critically, in the process of taking a closer look at the debate that surrounds the actual need for such anti-dumping laws.

Keywords

Antidumping, domestic industry, price discrimination.

Introduction

"In a world where tariff and non-tariff barriers decrease rapidly, antidumping measures are becoming increasingly important in protecting domestic manufacturers." Anti-dumping measures, along with safeguards and countervailing measures are tools used for protecting domestic industries from surges of cheap foreign imports. Although the WTO strives to eliminate all trade barriers, it recognizes that nations require flexibility to adjust to economic shocks as multilateral agreements increasingly liberalize trade. Thus, these measures allow

nations to temporarily protect their economies against fluctuations in trading patterns. Although anti-dumping, safeguards, and countervailing measures share an often uneasy relationship with the WTO's core principles, many member nations consider them essential to fostering fair and free trade.

Almost all WTO member countries have adopted/amended their anti-dumping legislations largely in accordance with the GAIT provisions to deal with dumped imports. Some of the countries that are not members of WTO have also acquired their anti-dumping legislations. Almost 90% of total world imports are now entering countries in which dumping laws are in place. There has been a spectacular growth of anti-dumping investigations in recent times. India has emerged as one of the most frequent users of anti-dumping measures in recent years. Between 1995 and 2000 India initiated 176 cases which is 12% of the total cases initiated over the world. The anti-dumping cases per billion of goods' import are 0.69 in India as compared with 0.06 for the world. Such large scale use of anti-dumping measures has raised genuine concern among scholars, economists and corporate world of its misuse as a protectionist measure. This apprehension is caused due to the ambiguities in anti-dumping regulations and procedures, deficiency in the economic rationale behind it and harm to the consumer interests etc.

Historical Background

Anti-dumping rules started to develop in the early part of this century with the adoption of legislations firstly by Canada in 1904, New Zealand in 1905, Australia in 1906 and United States in 1916, which were later subjected to quite a few amendments. In 1921 the United Kingdom also enacted its first anti-dumping legislation.

Notwithstanding these developments anti-dumping remained a relatively infrequent instrument until well after the advent of the GATT, despite the fact that Article VI of the 1947 GATT provided the basic conditions for adopting anti-dumping measures. In the immediate post-war period only South Africa, Canada and Australia were the only countries using anti-dumping as an important trade instrument. During the Kennedy Round of trade negotiations, discussions took place for the, first time on Article VI of the GATT in order to secure more standardized

approach to anti-dumping. This in turn led to the "*Agreement on Implementation of Article VI of the GATT*" which, in turn formed the basis for the first European Community anti-dumping legislation adopted in 1968. Subsequent trade rounds have more precisely dealt with the rules and procedures that WTO members are expected to adhere to in implementing their anti-dumping legislations although even now the WTO members are allowed certain leeway in their behaviour.

Concept of Dumping

Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value. A product is being considered as being dumped if the export price of the product from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. Opinions may differ as to whether or not this practice, *per se*, constitutes unfair price competition. Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of antidumping measure as an instrument of fair competition is permitted by the WTO.

Anti-dumping, in common parlance is understood as a measure of protection for domestic industry. However, anti-dumping measures do not provide protection *per se* to the domestic industry. It only serves the purpose of providing remedy to the domestic industry against the injury caused by the unfair trade practice of dumping. Often, dumping is mistaken and simplified to mean cheap or low priced imports. However, it is a misunderstanding of the term. Dumping implies low priced imports only in the relative sense (relative to the normal value), and not in absolute sense. Import of cheap products through illegal trade channels like smuggling does not fall within the purview of anti-dumping measures. Ironically, the use and importance of anti-dumping law is inversely related to the prevalence and efficacy of free trade agreements. As free trade agreements have reduced tariffs and outlawed most import quotas, anti-dumping cases have increased dramatically. This powerful inverse relationship between free trade agreements and antidumping actions is easy to explain. As domestic market participants around the world lose access to their traditional protectionist weapons — tariffs

and import quotas — they find that they have only one protectionist weapon left — an anti-dumping action. That weapon is at least as potent as the traditional weapons. As a result, market participants use it liberally and with great success.

WTO and Anti-Dumping

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "*the Agreement*") governs the application of antidumping measures by Members of the WTO. The provisions of the Agreement were first negotiated during the Kennedy Round (1967) and later substantially revised during the Tokyo Round (1979) of GATT negotiations. Anti-dumping measures are unilateral remedies which may be applied by a Member after an investigation and determination by that Member; in accordance with the provisions of the Agreement, that an imported product is dumped and that the dumped imports are causing material injury to a domestic industry producing the like product.

The Agreement sets out rules for the conduct of anti-dumping investigations, including initiation of cases, calculation of dumping margins, the application of remedial measures, injury determinations, enforcement, reviews, duration of the measure and dispute settlement. The Agreement applies to trade in goods only. Trade in services is not covered by this agreement.

The Agreement provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "*normal value*" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. In particular, the Agreement provides for greater clarity and more detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the Agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

On the methodology for determining that a product is exported at a dumped price, the Agreement adds specific provisions on such issues as criteria for allocating costs when the export price is compared with a "*constructed normal value*" and rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The Agreement strengthens the requirement for the importing country to establish a clear causal relationship between dumped imports and injury to the "*domestic industry*." The examination of the dumped imports on the industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned. The Agreement confirms the existing interpretation of the term "*domestic industry*". Subject to a few exceptions, "*domestic industry*" refers to the domestic producers as a whole of the 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.

The Agreement establishes procedures on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened. The Agreement lays the "sunset provision" under which anti-dumping measures shall expire five years after the date of imposition (or the most recent review), unless a determination is made by the authorities that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is *de minimis* or that the volume of dumped imports is negligible. The Agreement calls for prompt and detailed notification of all preliminary or final antidumping actions to a Committee on Anti-dumping Practices. The Agreement will afford parties the opportunity of consulting on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes. From many perspectives, the most significant feature of the

WTO anti-dumping framework is its dispute settlement procedure, which greatly strengthens the ability of national governments to challenge anti-dumping actions by other member nations. One controversial omission in the Agreement is the "*public interest*" requirement. There can be a situation where dumping and injury have been proved, but the gains to the consumers from lower prices more than outweigh the losses suffered by the producers. The public interest standard stipulates that the imposition of duties should be made only if it is in the interest of the community. For a public interest clause to be effective the term public interest should be given a clear operational definition and the factors that might form a test for public interest should be clearly stated. Further, it is important that this clause is looked into at the same time when injury to producers is established. Incidentally, In the EU Basic Regulation on Anti-dumping, "*community interest clause*" has been given a mandatory status, while there is no such requirement under the Indian law.

India and Anti-Dumping

Section 9A of the Customs Tariff Act, 1975 (hereinafter referred to as "*the Act*") as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as "*the Rules*") framed thereunder form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These are in consonance with the WTO Agreement on anti-dumping measures. These rules form the legislative framework for all matters relating to dumping of products, which include the substantive rules, rules relating to practice, procedure, regulatory mechanism and administration.

Substantive Rules

"*Dumping*" means export of goods by one country/territory to the market of another country/territory at a price lower than the normal value. If the export price is lower than the normal value, it constitutes dumping. Thus, there are two fundamental parameters used for determination of dumping, namely, the normal value and the export price. Both these elements have to be compared at the same level of trade, generally at ex-factory level, for assessment of dumping.

"*Normal value*" is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country. If the normal value can not be determined by means of the domestic sales, the following two alternative methods may be employed to determine the normal value: Comparable representative export price to an appropriate third country. Constructed normal value, i.e. the cost of production in the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.

The "*export price*" of the goods allegedly dumped into India means the price at which it is exported to India. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level. The "*margin of dumping*" is the difference between the normal value and the export price of the goods under complaint. It is generally expressed as a percentage of the export price.

"*Domestic industry*" means the domestic producers as a whole engaged in the manufacture of die like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry.

In regard to injury to the domestic industry, the industry must be able to show that dumped imports are causing or are threatening to cause "*material injury*" to the domestic industry. Material retardation to the establishment of an industry is also regarded as injury. The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support die contention of material injury.

An anti-dumping measure may not be imposed unless it is determined, pursuant to an investigation conducted in conformity with the procedural requirements, that:

- there is existence of *dumped imports;*
- there is *material injury* to a domestic industry; and

- there is a *causal link* between the dumped imports and the injury.

The basic requirement for determination of injury is that there is an objective examination, based on positive evidence of the volume and price effects of dumped imports and the consequent impact of dumped imports on the domestic industry such as decline in sales, selling price, market shares, profits, production etc. The establishment of the causal link between the dumping and injury to the domestic industry is a *sine qua non* for imposition of anti-dumping duty. The causal link is generally explained in terms of volume and price effects of dumping. The volume effect of dumping relates to the market share of the domestic industry vis-à-vis the dumped imports from the subject country while with regard to the price effect, it has to be considered whether there has been a significant price under cutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

The relief to the domestic industry against dumping of goods from a particular country is in the form of anti-dumping duty imposed against that country, which could go up to the dumping margin. Such duties are exporter specific and country specific. Under the WTO arrangement, the national authorities can impose duties up to the margin of dumping i.e. the difference between the normal value and the export price. The Indian law also provides that the anti-dumping duty to be recommended/levied shall not exceed the dumping margin. An anti-dumping duty imposed under the Act unless revoked earlier remains in force for 5 years from the date of imposition. The Designated Authority is empowered to review the need for the continued imposition of the anti-dumping duty, from time to time. Such a review can be done *suo motu* or on the basis of request received from an interested party in view of the changed circumstances.

Anti-dumping duty is a source-specific duty i.e. imposed only against dumped imports Anti-dumping duty is imposed on a non-discriminatory basis, applicable to all imports of such articles from whatever sources found dumped and causing injury to domestic industry except in the cases from those sources from which price undertaking has been accepted.

The WTO Agreement as well as the Indian law provides that the injured domestic industry is permitted to file for relief under the anti-dumping as well as countervailing duties. However, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

Practice and Procedure

One objective of the procedural requirements is to ensure transparency of proceedings, a full opportunity for parties to defend their interests, and adequate explanations by investigating authorities of their determinations. The extensive and detailed procedural requirements relating to investigations focus on the sufficiency of petitions to ensure that merit less investigations are not initiated, on the establishment of time periods for the completion of investigations, and on the provision of access to information to all interested parties, along with reasonable opportunities to present their views and arguments. Additional procedural requirements relate to the offering, acceptance, and administration of price undertakings by exporters in lieu of the imposition of anti-dumping measures. The Rules also provide for the timing of the imposition of anti-dumping duties, the duration of such duties, and obliges Designated Authority to periodically review the continuing need for anti-dumping duties and price undertakings. It is also provided that India may, at its discretion, take anti-dumping actions on behalf of and at the request of a third country, which is a member of the World Trade Organization.

The anti-dumping proceedings are initiated based on an application made by or on behalf of the concerned domestic industry to die Designated Authority in the Department of Commerce for an investigation into alleged dumping of a product into India. Under the Rules a valid application can be made only by those petitioners/domestic producers who expressly support the application, and account for more than 25% of total domestic production of the like article in question. The application is deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than fifty- percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.

However, such producers may exclude those who are related to die exporters or importers of the alleged dumped article or are themselves importers thereof. In other words, a domestic producer who is related to the exporter or importer of die dumped article or is himself an importer thereof may not be treated as part of the domestic industry even if he files or supports an anti-dumping petition. The interested parties to an anti-dumping investigation include:

- The domestic industry' on whose complaint the proceedings are initiated;
- The exporters or the foreign producers of the like articles subject to investigation;
- The importers of the same article allegedly dumped into India;
- The Government of the exporting country/countries.
- The trade or business associations of the domestic producers/importers/user industries of the dumped product.

As a rule, the Designated Authority initiates the proceedings for anti-dumping action on the basis of a petition received from the domestic industry alleging dumping of certain goods and the injury caused to it by such dumping. However, Rule 5(4) provides for *suo motu* initiation of anti-dumping proceedings by the Designated Authority on the basis of information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source. In such circumstances, the Authority initiates the antidumping investigation on its own without any complaint/petition filed in this regard provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury. After initiation of the *suo motu* investigation the same procedure, as the one based on a petition as mentioned in the Rules, is followed.

The remedy against dumping is not always in the form of anti-dumping duty. The investigation may be terminated or suspended after the preliminary findings if the exporter concerned furnishes an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No anti-dumping duty is recommended on such exporters from whom price undertaking has been accepted.

An interim relief in the form of a provisional anti-dumping duty, pending the finalization of investigation proceedings, can also be provided to the affected domestic industry. Such

provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the Designated Authority. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation and will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

If the final duty levied is less than the provisional duty which has already been levied and collected, the differential amount already collected as provisional duty shall be refunded. If the final duty imposed is more than the provisional duty already imposed and collected, the difference shall not be collected. If the provisional duty is withdrawn, based on the final findings of the Designated Authority, than the provisional duty already collected shall be refunded.

Regulatory Framework

Anti-dumping, anti-subsidies & countervailing measures in India are administered by the Directorate General of Anti-dumping and Allied Duties ("DGAD") functioning in the Department of Commerce in the Ministry of Commerce and Industry and the same is headed by the "*Designated Authority*". The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the Designated Authority. In India, there is a single authority — DGAD designated to initiate necessary action for investigations and subsequent imposition of anti-dumping duties.

The Designated Authority is a quasi-judicial authority notified under the Customs Act, 1962. A senior level Joint Secretary and Director, four investigating officers and four costing officers assist the DGAD. Besides, there is a section under the DGAD headed by the Section-Officer to deal with the monitoring and coordination of die functioning of the DGAD.

The Designated Authority's function, however, is only to conduct die anti-dumping/anti subsidy & countervailing duty investigation and make recommendation to the Government for imposition of anti-dumping or anti subsidy measures. Such duty is finally imposed/levied by a

Notification of the Ministry of Finance. Thus, while the Department of Commerce recommends the Anti-dumping duty, it is the Ministry of Finance, which levies such duty.

The law provides that an order of determination of existence, degree and effect of dumping is appealable before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) — a judicial tribunal. It reviews final measures and is independent of administrative authorities. This is consistent with the WTO provision of independent tribunals for appeal against final determination and reviews. No appeal will lie against the preliminary findings of the Authority and the provisional duty imposed on the basis thereof. The appeal to the CEGAT should be filed within 90 days.

Debate over the Use of Anti-dumping Measures

Although protective measures like anti-dumping can be considered a good pressure valve for countries undergoing rapid trade liberalization, they can also create political and economic tension. Political tension stems from debate over the recent rise in anti-dumping suits. The WTO saw a record high of 328 suits in 2001, sparking concern that while negotiations are on to establish transparent and stable tariff barriers, members are substituting discriminatory, unpredictable anti-dumping suits as domestic protection. Developing countries object to the proliferation of anti-dumping and safeguards because they are particularly vulnerable to unpredictable shifts in market access. However, industrialized countries insist that conditional domestic protection is key to gradually liberalizing international trade.

Aside from the debate surrounding the ubiquity of anti-dumping suits, WTO members disagree on the specific conditions and procedures that should be allowed. Recently, the EU, India and Australia along with 7 other nations brought a case against the US for antidumping legislation that they claim is unfair. The Appellate Body of the World Trade Organization held "*The United States Continued Dumping and Subsidy Offset Act of 2000*" as violative of the global trade rules This legislation allows the anti-dumping duties collected on imports to be given to competing American firms. The concern is that this procedure acts as an incentive for domestic industries to lobby harder for inappropriate anti-dumping suits. The WTO ruled that the law must be abolished and refused the US request for an appeal. In another widely rated "landmark"

decision, the Appellate Body of the WTO ruled in favour of India over a trade dispute with the EU relating to "*cotton-type bed linen*". The Appellate Body upheld the Indian methodology used for calculation of administrative and selling costs and profits and discarded the EU's practice of "zeroing" when establishing the existence of the margin of dumping.

Although the most common argument in favour of strong and effective anti-dumping measures is that it relieves the competitive tension of free trade, many nations uphold that the measures protect the safety of their citizens. Recently, anti-dumping cases and issues of food safety have overlapped. The EU has had to raise import duties on certain foods that it must inspect for certain antibiotics and hormones it has banned for food safety reasons. For example, shrimp imports from ASEAN countries now take longer and are more expensive to ship to EU nations. The ASEAN countries claim that this is a discriminatory barrier to trade that takes a grave toll on their developing economies.

Overall, the Agreement on Anti-dumping stands to be purged of its vague wording and revamped to include specific restrictions and procedures agreed to by WTO members. Whether anti-dumping becomes a weaker and limited option or a strong and oft-used tool for protection depends greatly on the negotiations leading up the Fifth Ministerial Meeting in September 2003 at Cancun in Mexico.

Dump the Anti-Dumping Law

Despite the growing popularity of anti-dumping actions, the theoretical underpinning for anti-dumping actions has been criticized almost universally by economists and scholars. Anti-dumping theory holds that price discrimination is an undesirable practice whereby predatory exporters attack markets by shipping at unfairly low prices, driving local competitors out of business, and accumulating monopoly or oligopoly power. Anti-dumping duties, under this theory, are necessary to counteract predatory price discrimination by exporters. Economists, academics and government organizations roundly criticize this justification for anti-dumping duties, for a variety of reasons, discussed below.

From the point of view of economics, there is no reason to support any anti-dumping law, since price differentiation across markets is a legitimate and a perfectly rational, sensible and

legitimate profit-maximization action. Under this line of argument, there is no justification for condemning certain export prices simply because they happen to be lower than prices in other markets. Domestic price discrimination i.e., differences in pricing between one country's domestic regional markets, normally is not penalized. There arguably is no economic reason for treating "international" price discrimination any more harshly by imposing dumping duties. Of the different categories of dumping, only *predatory pricing dumping* and most instances of *strategic dumping* raise overall welfare concerns. Yet, these two forms of dumping pertain largely to the theoretical realm, as most anti-dumping cases in the real world do not involve dumping as defined by these two categories. Indeed, in today's trade environment, characterized by increasing competition among a variety of export suppliers from different countries, predatory pricing practices arguably are futile because market domination and monopolistic pricing are not attainable. Economists, therefore, generally take the view that frequent use of anti-dumping action cannot be justified as necessary to prevent predatory pricing.

It is proposed to substitute anti-dumping law through competition law, which erases the problem by its roots and does not distort the production through protection of non-competitive domestic producers. The tension between competition and trade policy can be described as a conflict between two ideologically similar concepts with differing views as to the means of achieving the same goal. The enforcement of competition law in trade cases is of particular importance since it limits the risk that domestic producers may use the threat of initiating action under domestic trade remedies law or otherwise lobbying protection in order to induce foreign exporters to enter into unlawful restrictive agreements. Efforts should be directed at integrating anti-dumping policy with the competition law. The competitive merits of anti-dumping initiatives in that case will be evaluated by the Competition authorities, in India's case the Competition Commission of India, with the competition policies. This will result in the adoption of stricter criteria for determining predation in such cases and will prevent its misuse. Another common criticism of anti-dumping measures is that they do not afford effective assistance to the domestic industry they are intended to protect. Because of the expansion of international suppliers, a complainant's failure to target all possible suppliers could mean that anti-dumping duties against only some suppliers, even if significant, would merely divert the source of exports to non-targeted countries, without an appreciable price effect in the import

market. Moreover, uncompetitive industries are more likely than others to receive protection, and are not likely to benefit from it in the long term.

The anti-dumping protections often come at a substantial cost to consumers. They protect producers at the expense of consumers, which results in higher prices, lower quality products, less consumer choice and a general lowering of the standard of living for the vast majority of people. Anti-dumping measures also destroy more jobs than they create. The costs to the economy of anti-dumping measures are significantly higher than the benefit to the protected domestic industry. Overbroad anti-dumping duties may curtail importation of products not even produced by domestic companies. The burden and damage to consumer industries dependent on the imported product can be significant and can outweigh any benefits to the upstream complainant industry.

The anti-dumping laws are ambiguous and vague. Producers never know by which standard they will be held accountable because there are so many standards. Anti-dumping rules have been implemented and applied by national authorities in an unfair manner, both procedurally and substantively. For example, an OECD study concluded that anti-dumping measures "can be abused for protectionist purposes". Despite the liberalizing changes agreed upon during the Uruguay Round negotiations and adopted in the WTO Anti-dumping Agreement, the study found that "anti-dumping procedures can still serve as a protectionist tool". The way anti-dumping laws are structured, domestic producers can enlist the help of government to prevent foreign competition even when there has been no dumping. The law allows producers to unethically use anti-dumping measures as weapons to batter the competition.

From the point of jurisprudence also, anti-dumping is not justified. From a rights standpoint, anti-dumping laws prevent consenting adults from entering into- contracts at a mutually agreed upon price. Anti-dumping laws cannot be justified by any theory of liberal democracy. They are not utilitarian because they do not result in providing the greatest good for the greatest number. Indeed, they provide good for the minority i.e. producers at the expense of the greatest number i.e. consumers. They reduce rather than enhance social cooperation and harmony. They violate rights. Even redistributionists would argue against them because they redistribute income in the wrong direction — from the poor and middle classes to the rich.[52]

Thus, there is no rational reason why dumping laws should exist. It follows that we should either abolish anti-dumping law, or if such a dramatic step is not politically feasible, we should place a high priority on vigorous competition investigation of firms that seek antidumping measures.

Conclusion

The controversy surrounding anti-dumping measures is certain to grow. On the one hand, anti-dumping measures have strong political support in WTO Member countries as the most effective import protection for struggling domestic industries. On the other hand, there is established opposition to anti-dumping measures, which is gaining gradual' support from exporting interests concerned about global proliferation of anti-dumping measures. This controversy, and the expected increase in anti-dumping actions, will lead to calls for reform of the anti-dumping regime in the future.

Though, the best option would be to abolish anti-dumping laws altogether and merge the anti-dumping mechanism with the competition laws, it might not be possible to pursue this course unilaterally. If consensus is not reached at the international level, then the use of antidumping laws could be minimized through mutual bilateral or plurilateral agreements on reciprocal "*cease-fire*" arrangements. Simultaneously, it would do good to follow a strict predation standard in investigating anti-dumping cases and limit the scope of anti-dumping to predatory cases alone.

Regardless of how the anti-dumping issue is raised and addressed in future rounds of multinational negotiations, it is clear that it will be with us for the foreseeable future, posing a risk and challenge to exporting industries. In the era of the ascendancy of anti-dumping laws, exporting companies must familiarize themselves with the WTO Anti-dumping Agreement and applicable national anti-dumping laws, so that they may assess their vulnerability to anti-dumping action and decide upon a strategy to survive and prosper. Within the country there have been views that India should push for tightening up of the anti-dumping provisions in the WTO. It is in our own domestic interest to be proactive in the coming negotiations and break away from the protectionist mould.

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