ANTI DUMPING REGULATIONS - A BOON OR BANE

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ABSTRACT

Over the past few years, antidumping duty is being increasingly used as a tool to rectify the market distortions that have resulted from liberalization of international trade. Several newly industrialised countries like Japan, Korea, Taiwan and now China have been accused of dumping their products in the international market with the main objective of ensuring better market penetration so that in the long term, they may realise better margins once their competitors exit the marketplace.

Although India hasn't been too heavily accused of dumping products in the foreign market, it has been subject to heavy dumping from other countries and is in fact the largest user of antidumping measures in the world in terms of absolute numbers of definitive measures imposed. While there can be no clear cut decision on whether antidumping duty on a product brings overall benefits to the economy as a whole, there can be no doubt that excessive use of antidumping duty is bound to be harmful to the economy in the long run.

INTRODUCTION

Dumping, is a pricing practice where a firm charges a lower price for exporting goods than it does for the same goods sold domestically. It is said to be the most common form of price discrimination in international trade. Dumping can only occur at places where imperfect competition and where the markets are segmented in a way such that domestic residents cannot easily purchase goods intended for export. It is a subtle measure of protection which comes under the non-tariff barriers and is product and source specific. Antidumping duties were initiated with the intention of nullifying the effect of the market distortions created due to unfair trade practices adopted by aggressive exports. They are meant to be remedial and not punitive in nature.

Although dumping does benefit the consumers of the importing country in the short run, it is harmful to the domestic producers as their products are unable to compete with the artificially low prices imposed by the imported goods. As a method of protection to the domestic industries, anti-dumping duties are thus levied on the exporting country which has been accused of dumping goods in another country. As the antidumping duty is only meant to provide protection to the domestic firms in the initial stages, as per the international laws, the antidumping legislations may last for a maximum period of five years.

Antidumping measures are of two kinds:

(1) **Antidumping duty**: This is imposed at the time of imports, in addition to other customs duties. The purpose of antidumping duty is to raise the price of the commodity when introduced in the market of the importing country.

(2) **Price undertaking**: If the exporter himself undertakes to raise the price of the product then the importing country can consider it and accept it instead of imposing antidumping duty.

Historical perspective of Anti- dumping:

It is commonly perceived that anti dumping legislations have been enforced only in the past twenty years, after it was internationally discussed in the Doha ministerial conference. However, research reveals that the first anti-dumping statutory provisions in any jurisdiction was received by the Royal Assent in Canada on the 10th of August 1904, with the provisions coming into force retroactively on the 8th of June 1904. The measures implemented in 1904 formed part of the amendments to the Customs Tariff Act of 1897.

The second case then followed consecutively with New Zealand filing its first anti dumping case in 1905 followed by Australia in 1906. The items for which the anti dumping legislation was applied ranged from false teeth to machinery and equipment intended for exclusive use in alluvial gold mining. The application of the duty was limited to goods which were produced in Canada; and provisions were made for the exemption of goods from the special duty if the domestic supply conditions were found to be inadequate. Further, no injury test was conducted to determine the dumping margin. Instead, special duty was set at the difference between the selling price in Canada and the "fair market value", where the latter was identified with the value of the goods for purpose of application of the ad valorem tariff.

The difference however, between pre- and post-1980 antidumping policy was that in the past, most antidumping complaints did not result in the imposition of import duties. Today's antidumping cases are much more likely to be successful. This change has been brought largely because of the formation and widespread acceptance of the WTO in the proceedings of international trade.

Why do firms dump? The economics behind it:

Dumping occurs when firms start using price discrimination as a strategy for profit maximisation. The conditions mandatory for dumping to take place are

(i) Presence of an imperfect market where price discrimination between markets is possible. (Because in imperfect market firms are price setters not price takers).

(ii) Segmented markets where there is no arbitrage easily possible between markets.

Only if the above two conditions are satisfied is it profitable for the exporting firm to engage in dumping. For any firm, price discrimination in favour of exports is more common because the share of exports is usually lesser than the domestic demand. In the export market, individual firms have lesser monopoly power and hence choose to keep prices lower in foreign markets while charging higher prices for domestic markets. This can also be explained through the price elasticity of demand for goods.

In areas where the demand is price inelastic, producers tend to charge a higher price. This is said to be the case in domestic markets. In foreign markets, price elasticity of demand is elastic and hence prices are low. Thus, if there is high elasticity on export sales than on domestic sales, firms will dump.

ANTI DUMPING DUTY – NEED AND RELEVANCE

Trade is increasingly being seen as a means of achieving economic development. Ricardo's theory of comparative advantages clearly predicts that only trade liberalisation will ensure more efficient use of all recourses which would help underdeveloped and developing countries free themselves from the shackles of poverty. Genuine Trade Liberalisation is possible only if more and more economies participate in free trade rather than keep protecting their markets.

But free trade also implies distortion and exploitation. Free trade, which is unfair could undermine and distort competitive and well-functioning markets, leading to inefficiencies. Putting in place a system by which countries can punish such activity with duties to counteract these unfair trade practices, seems reasonable. Some of these protectionary measures available to developing countries are:

- **Tariffs**

Tariff, which is the simplest form of protection, is a tax levied on goods when they are imported. Tariffs are either specific (i.e. fixed amount per unit of the commodity) or ad valorem (which are taxes levied as a fraction of the total value of the imports). In either case, tariff results in a higher price of the commodity for consumers of the importing country. It also means higher revenue for the government. Recently, the use of tariffs has reduced significantly, as

countries now prefer to use non-tariff barriers. The effect of tariffs depends upon the price elasticities of the imported commodities.

- **Quotas**

Quotas are quantitative limits places on the importation of specified commodities for a specified period of time. An import quota is typically set below the free trade level of imports, in which case it is called a binding quota. If a quota is set at or above the free trade level of imports then it is referred to as a non-binding quota. Goods that are illegal within a country effectively have a quota set equal to zero.

- **Safeguard measures**

Safeguard measures are temporary restrictions on the imports of certain products. The purpose of safeguard measures is to protect a specific domestic industry from an increase in imports of any product which is causing, (or threatening to cause) serious injury to the industry.

- **Anti- dumping measures**

This is a form of tariff and is hence treated under the customs tariff act. Anti dumping duties are charges levied against the exporting country for selling their price lower than the normal price in another country. The main difference between anti dumping and the other measures is that anti dumping is not retaliatory.

Antidumping Measures: The Preferred option:

Anti dumping duties have been gaining more importance in recent times simply because, it has been observed to be the best form of protection. Unlike quotas or safeguard measures, anti dumping duties are not retaliatory. They are industry, time and product specific and hence are said to create lesser distorting effects as compared to other forms of protection.

Justifications for antidumping duty:

In free trade, firms are allowed to charge different rates in different markets. The result would be that firms would charge lower prices in foreign markets and higher prices in domestic markets, leading to material injury to the domestic producers. Had price discrimination taken

place by a monopoly firm within one economy, the government would have intervened to stop consumer exploitation by enforcing an act similar to the MRTP act, in India.

Hence, in the international context, it is the antidumping duty that protects the domestic producers initially and consumers in the long run. The duty is justified because in case of many industries the start up period is long and start-up costs are also high. Once these firms are forced out of the market as a result of dumping by exporters, it is very difficult for them to restart when the same exporters raise prices.

Usually, the intentions of charging such low prices to foreign consumers is to be able to wipe out the domestic industries and eventually acquiring monopoly power in the foreign market (i.e. using predatory pricing). Thus it is on this ground that the anti-dumping duties have been justified. The main intension is to protect the domestic industries.

INDIA AND ANTI DUMPING

The first Indian Anti-dumping legislation came into existence in 1985 when the Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1985 were notified. Section 9 of the Customs Tariff Act, 1975 empowers the central government to impose antidumping duty. The manner and procedure of anti- dumping investigations and the appointment of designated authority, are governed by the anti-dumping rules. These rules contain the operational provisions and confirm to the WTO agreement on antidumping.

Directorate General of Anti-Dumping and Allied Duties:

The Directorate General of Anti-Dumping and Allied Duties (DGAD) was constituted in April 1998. It is located in New Delhi. Since then, all anti dumping cases in India have been handled by DGAD.

- ORGANISATIONAL SET UP

Today, the DGAD is headed by the Designated Authority of the level of Additional Secretary to the Government of India who is assisted by a Joint Secretary and a Director. Besides, there are eleven Investigating and Costing Officers to conduct investigations. The Directorate is serviced by one Section headed by a Section Officer.

➢ PROCEDURAL FORMALITIES FOR APPLYING FOR ANTI -DUMPING DUTIES

Applications for anti- dumping protection can be made by or on behalf of the concerned domestic industry to the Designated Authority (officer of level of Additional Secretary to the Government of India who heads the DGAD) in the Department of Commerce for an investigation into alleged dumping of a product into India. As per the regulations set by the DGAD, an application for protection can be made either by an individual petitioner (domestic producer) commanding 25% of the production capacity of the entire market or by a group of producers who collectively hold 50% of the total market capacity.

However, a domestic producer who is related to the exporter or importer of the 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. Any industry is subject to protection if and only if there is sufficient evidence furnished by the petitioners regarding-

(a) Dumping of goods in question;

(b) Injury to the domestic industry; and

(c) A causal link between the dumped imports and alleged injury to the domestic industry.

Broadly, injury may be analysed in terms of the volume effect and price effect of the dumped imports. The parameters by which injury to the domestic industry is to be assessed in the anti dumping proceedings are such economic indicators having a bearing upon the state of industry as the magnitude of dumping, and the decline in sales, selling price, profits, market share, production, utilisation of capacity etc.

Existence of dumping can be estimated by calculating the dumping margin which is the difference between the Normal Value of the like article and the export Price of the product under consideration.

Dumping margin = Normal value - Export price

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

Various stages of the investigation process:

(1) Preliminary Screening
(2) Initiation
(3) Access to Information
(4) Preliminary Findings
(5) Provisional Duty
(6) Oral Evidence and Public Hearing
(7) Disclosure of information

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. Within 5 days from the date of receipt DA examines accuracy and adequacy provided in the application. If it is sufficient, a public notice is issued initiating an investigation. The Authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection to all interested parties on request after receipt of the responses.

Within 60-70 days from the date of initiation, DA makes a preliminary finding if appropriate. After 60 days from the date of initiation, 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 DA. Interested parties who participate in the investigations can request the Designated Authority for an opportunity to present the relevant information orally.

Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final findings.

The interested parties submit their response to the disclosure and the final position of the Authority taken therein. The Authority examines these final submissions of the parties and comes out with final findings.

ANTI DUMPING CASES IN INDIA

The first anti-dumping investigation in India was initiated in 1992. During the period from 1992 to 2005, the DGAD received large number of applications for initiating antidumping

investigations. After examination of these applications, anti-dumping investigations were initiated in 188 cases involving 35 countries/territories (considering 25 EC countries as single territory). The countries prominently figuring in anti-dumping investigations are China PR, EU, Chinese Taipei, Korea RP, Japan, USA, Singapore, Indonesia, Thailand and Russia.

COSTS OF ANTI DUMPING DUTY

It is evident that although the anti dumping duty was formulated as a means of putting an end to exploitation of domestic industries, it may create its own set of problems for the economy. Thus, it is important to realise that the implementation of the anti dumping duty does have positive as well as negative implications for society. The positive implications are evident in the rationale of justification for anti dumping duties. The negative implications may be studied in terms of the economic, political and social cost of the duty.

- **Economic cost**: The economic cost of anti dumping duties can be measured through the rise in the price of the commodity in question as a result of the implementation of the duty. This cost, would however be compensated by the gains received in the form of increased government tariffs which would then be distributed amongst the population.

- **Political cost**: Although, strictly speaking, anti dumping duties are not retaliatory, in the long run, they do leave the country imposing the protectionary measures in a weak bargaining position. As members of the WTO, all countries ostensibly promote free trade and pledge to reduce tariff as well as non- tariff barriers. Excessive implementation of anti dumping duties only emphasises that the country in question is play spoilt sport. Secondly, big firms which constitute a vast majority of the market share for a given product and which also have a strong lobbying power in the government; often misuse the anti dumping legislations. This may add to the political costs in the long run as the political process of formulating antidumping policies is influenced not just by notions of economic efficiency but probably to a greater extent by concepts of economic fairness.

- **Social costs**: Social costs of anti dumping duty are only visible or felt several years after the duty has been enforced. For instance, forward and backward industries that could have been set up by exploiting the cheap imports wouldn't be possible with the implementation of the anti dumping duty. As a result, in the long run, the economy will loose out on the additional trade that could have resulted through the cheap imports. Also as anti dumping duties are sector specific (for example in India, maximum of the anti dumping cases have been filed by chemical industries), the social cost in terms of lost employment would be more visible in these areas if any, where there is a concentration of chemical industries. The welfare cost of anti dumping duty can be assessed by comparing the loss of consumer welfare resulting from higher prices (i.e. decline in consumer surplus) with the gains in producer surplus. When considered over a period of time (not at a point of time as effects would be deferred) if the overall welfare loss through consumer surplus is greater it would be considered as a social cost to the society.

CRITICAL IMPLICATIONS OF THE ANTI DUMPING

All the affirmative cases of anti dumping duty lead to ad valorem duties received by the government of the importing country and thus it is easy to assume that the economic welfare consequences of AD duties are identical to those of an import tariff. When either an anti dumping duty or tariff is imposed, it leads to a rise in the price of the commodity in question for the consumers of the importing country. Thus, the domestic producer (through protection) gains at the cost of the consumer. The government gets revenue which it then distributes over its population. So overall, the tariff or AD duty would be beneficial to the economy if evidence suggests that foreign firms often respond to antidumping duties by raising their prices to the importing country because of the administrative review process. This reduces the calculated dumping margin and leads to lower future anti dumping duties for the firm. Thus, although the anti dumping duty was formed with the intension of removing market distortions, it may end up creating more.

As per its intended function, anti dumping duty can actually help stimulate economic growth is an economy. Factors that determine whether or not the antidumping duty is actually

beneficial relate to whether the product is a final or intermediate good and whether importing industry is capable of producing the good efficiently in the first place.

If the exporting country does have a strong comparative advantage in producing a particular commodity as compared to the domestic industry, it is the domestic industry which loose out if an antidumping duty is applied. However, as in most cases, the cost structure may not be substantially different for the domestic and overseas producer.

This is where antidumping duty will make a substantial difference. In such a case, ADD must be applied selectively. Again, if the nature of the industry is such that importing the product may cause permanent injury to the domestic producer, ADD should be applied liberally. If however the industry is such that the dumping margin is very high but the industry itself is very nimble footed, it may be better to take full advantage of the cheaper input as a result of dumping.

It is also important to see if the product is an intermediate or a final product. In case of an industrial intermediate product which is an input to downstream industry antidumping duty will mean immediate additional cost. More care is needed in such a case in weighing advantages of protecting the particular industry against loading extra cost to the downstream industry.

In case of a consumer good however, the extra cost as a result of ADD may not have any negative economic implication but this will have social costs. Cost of living will go up and so will cost of doing business. This will have indirect negative effect on the economy but it is likely that the advantages of protecting the industry may outweigh the costs. Application of the antidumping duty may be justified in such a case. Often, in countries which have recently freed their economies from trade barriers, being suddenly exposed to intense competition from the rest of the world can instantly drive a domestic firm out of business. Alternatively, for industries which have a long gestation period, initial protection is not only necessary, but also fair as per the WTO regulations.

Thus, the solution lies in applying stricter criteria for the enforcement of the antidumping duty either on behalf of the WTO or the Government of India. Another solution may be to apply a

sliding scale of antidumping duties. i.e. in the initial year, antidumping duty will be applied as per the dumping margin calculated for the product. In the forthcoming years, the value of the duty can be gradually decreased so that at the end of five years, when the duty is no longer valid, the consumers don't feel the pinch.

CONCLUSION

The Antidumping Agreement was codified during the Tokyo Round of GATT negotiation (1973-79) to stop "predatory" pricing. It was thought that if such a protective tool is made available to a country, it may feel encouraged to trade freely. The underdeveloped economies have every reason to feel scared that the large scale manufacturers of the developed world will be able to flood the domestic markets with aggressive pricing. This is a very valid point and there can be no objection to antidumping duty applied on this basis.

However in reality, as has been observed through past cases that more often than not, anti dumping legislations are filed by firms who have strong power in the domestic country and hence are able to lobby the governments. Well organised industries, are able to manoeuvre their way and get the decision in their favour. This is even easier, if money can buy political influence as big firms have the financial muscle to bulldoze their way through the bureaucracy. These firms apply for antidumping protection merely because they feel threatened by foreign firms and in the process breed inefficiency. The negative effects of the anti dumping legislation can be visibly seen by studying the change in prices in the goods for which anti dumping protection has been approved. Indian exporters as well as the general consumers suffer. Hence it can be said that the Indian economy has had to pay a very high price for the protection that received in the form of antidumping duties.