

Anti-Dumping

- The most emerging issue of today

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When the word “**dumping**” is mentioned in a social or business conversation, the connotation normally made is that the product in question is of an inferior quality and is sold at a very low price. This is far from the truth. It is for the instance possible that an imported product which is “**dumped**” can be sold at a higher price than the domestically manufactured product. The quality of such a “**dumped**” product can even be superior to the domestically manufactured product.

The WTO, previously the General Agreement on Tariffs and Trade “**GATT**” considers product being dumped if:

- An imported like product is sold at a lower price than in the exporting country’s own market.
- If the like product is sold for less than its production cost.

In other words “**Dumping**” is defined as a situation in which the export price of a product is lower than its selling price in the exporting country. A bargain sale, in the sense of ordinary trade, is not dumping. Where it is demonstrated that the dumped imports are causing injury to the importing country within the meaning of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“**Anti-dumping Agreement**”), pursuant to and by investigation under that Agreement, the importing country can impose **anti-dumping measures** to provide relief to domestic industries injured by imports.

Before we move on with the subject I believe it is important for us to have idea about the following terms in light of the **Pakistan’s Anti-Dumping Ordinance 2000** to be used later in the article:

“**Country**”

Means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or separate customs territory.

“**Domestic Industry**”

Domestic Industry means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case “**domestic industry**: shall mean the rest of the domestic producers.

“**Domestic Like Product**”

Means the domestically produced product which is a like product to an investigated product.

“**Dumping Margin**”

Dumping margin in relation to a product means the amount by which its normal value exceeds its export price.

“**Injury**”

Means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when dumped imports are causing such injury.

“**Investigated Product**”

Means a product which is subject to an anti-dumping investigation as described in the notice of intimation of the investigation.

“Like Product”

Means a product which is alike in all aspects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product.

“Export Price”

An export price is a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan.

The basic rule in respect of dumping, is that the introduction of an anti-dumping duty can only be considered if:

- There has been a significant increase in the dumped goods. Either in absolute terms or relative to production or consumption.
- The prices of such imports have undercut those of the domestic products and as a result have depressed the price of the product or have prevented that price from increasing.
- As a result of the injury caused to the domestic industry, or if there is a threat of continued injury to the domestic industry of the importing country.

In short, if the export price is lower than the **normal value** i.e. the comparable price actually paid or payable in the ordinary course of trade for the product in the export country, then the difference is called the **“Dumping Margin”**

In trying to make sense of the dumping process, it is best explained by the **“DIC”** principle. Effectively there are three principles to consider when conducting an anti-dumping investigation, namely **Dumping, Injury and Casualty**. What it means is that if a dumping margin is determined, it has to be proven that the dumping is causing the domestic industry material injury, i.e. a **casual link** must exist in order for an anti-dumping duty to be imposed.

International trade agreements give countries who are members of the World Trade Organization (WTO) the right to impose anti-dumping duty/fees to abolish foreign goods suspected of illegally flooding local markets with goods at artificially low prices, and to discourage their further sales.

BACKGROUND:

Dumping was originally perceived as a motivated action—the sale of goods that were priced deliberately below the cost of production so as to maximize market shares and drive competitors out of business. These predatory tactics presumed the existence of considerable financial muscle; therefore, for much of the 1980s, anti-dumping investigations were largely targeted at Japanese firms. Today, however, as both big and small exporters around the globe face a rising tide of anti-dumping actions, dumping is being increasingly equated with cheap imports—irrespective of the motive.

THE ANTI-DUMPING AGREEMENT

The AD agreement sets forth certain substantive requirements (i.e. determination of dumping, determination of injury and their causal relationship) that must be fulfilled in order to impose an anti-dumping measure, as well as detailed procedural requirement (such as initiation and conduct of investigation, imposition of provisional measures, price undertakings, imposition and collection of duties etc.). A failure to respect either the substantive or procedural requirements can be taken to dispute settlement and may be the basis for invalidation of the measure.

A) Substantive requirements/rules

Brief explanation of the substantive requirements is as follows:

i - Determination of Dumping

According to the World Trade Organisation (WTO) Agreement on anti-dumping, a product is dumped if it is being exported at a price that is less than the price a similar product fetches during the ordinary course of trade in the exporter’s home market. In theory, the **dumping margin is the normal value minus the export price of the product in the home market.**

Establishment of dumping is the first step required for making it possible for Government Authorities (in Pakistan National Tariff Commission) to initiate investigation. Although it may appear very easy practice to determine dumping but in practice, the calculation is far from straightforward.

ii - Determination of injury

Dumping alone is not actionable unless it can be established that the dumped imports have caused

“**material injury**” to the domestic industry. Demonstrating injury is usually not a problem as there is a barrage of injury indicators to choose from. These, typically, include:

Volume effects

- production cutbacks,
- loss of sales,
- reduced profits,
- contracting marketshares,
- decline in capacity-utilization rates) etc. and

Price effects

- price undercutting or
- even suppression of a price-rise).

More fundamentally, in a developing country that is bringing down its high import walls after decades of protectionism, distinguishing between injury caused by dumping, and injury resulting from an inherent lack of competitiveness becomes virtually impossible. “Determining the causal link between dumping and injury is largely a matter of judgment.”

Also judgmental is the injury that will be caused to user-industries and consumers. By definition, the objective of an anti-dumping duty is a rise in prices. Sure, it is possible for a user-industry to be one of the “interested parties” contesting an anti-dumping petition, but there is no attempt on the part of the anti-dumping authority (in Pakistan national tariff commission, NTC) to assess the opportunity costs. These can be considerable. If, for instance, the good on which the duty is levied is a key intermediate input, price-rises could cascade. Or if the petitioner is a monopolist supplier-which has usually been the case in this country-market, growth could be adversely affected.

One of the other factors to take into account is the **magnitude of the dumping margin**. The investigating authority must determine whether any other factors might be causing material injury to the domestic industry. Anti-dumping measures should not be imposed if other factors are responsible for the difficulty that the industry is facing, such as:

- Contraction in demand or changes in consumption pattern
- Trade restrictive practices of and competition between, foreign and domestic producers.
- Developments in technology and export performance
- Productivity of the domestic industry.

iii - Determination of causality

The investigating authority can only consider the introduction of an anti-dumping duty if they can prove that the domestic industry’s injury is as a result of the occurrence of dumping. If they find that dumping is taking place, then no anti-dumping duty can be imposed. Such a duty can only be imposed if the Commission can substantiate a **casual link between the dumping that is taking place and the resultant injury**.

B) Procedural requirements/rules

A principal objective of the procedural requirements of the AD agreement is to ensure transparency of proceedings, a full opportunity for parties to defend their interest, and adequate explanations by investigating authorities of their determinations.

i - Initiation and conduct of investigation:

The AD Agreement specifies that investigation should be generally be initiated based on a written request submitted “by or on behalf of” a domestic industry. This “standing” requirement is supported by numeric limits for determining whether there is sufficient support by domestic producers to conclude that the request is made by or on behalf of the domestic industry, and thereby warrants initiation. The AD Agreement establishes requirements for evidence of dumping, injury, and causality, as well as other information regarding the product, industry, importers, exporters and other matters, in written application for anti-dumping relief, and specifies that, in special circumstances when authorities initiate without a written application from a domestic industry, they shall proceed only if they have sufficient evidence of dumping, injury, and causality.

ii - Imposition of provisional measures:

AD Agreement provides that the investigating authorities may make an affirmative preliminary determination of dumping, injury, and causality and determine that provisional measures are necessary to prevent injury being caused during the course of an investigation. It further specifies that no provisional measures may be applied sooner than 60 days after initiation of an investigation.

iii - Price Undertakings:

AD Agreement also explains the principle of price undertakings which states that “undertakings to revise

prices or cease exports at dumped prices may be entered into to settle an investigation”, but this may be done only after a preliminary affirmative determination of dumping, injury and causality has been made. It also establishes that undertakings are voluntary on the part of both exporters and investigating authorities. In addition, an exporter may request that the investigation be continued after an undertaking has been accepted, and if a final determination of no dumping, no injury, or no causality results, the undertaking shall automatically lapse.

iv - Imposition and collection of duties:

AD Agreement establishes the fact that care must be taken to ensure that anti-dumping duty may not be imposed with the rate/amount so as to exceed the dumping margin calculated during the course of investigation. To ensure that anti-dumping duties in excess of the margin of dumping are not collected, the agreement explains procedures for determination of actual amount of duty owed, or refund of excess duties paid, depending on the duty assessment system of a country, normally within 12 months of a request, and in no case more than 18 months.

Further it explains the general principle that both provisional and final anti-dumping duties may be applied only as of the date on which the determinations of dumping, injury, and causality have been made. However recognizing that injury may have occurred during the period of investigation, or that exporters may have taken actions to avoid the imposition of anti-dumping duty, it contains rules for the retroactive imposition of dumping duties in specified circumstances.

v - Duration, termination and review of anti-dumping measures:

AD Agreement establishes rules for the duration of anti-dumping duties, and requirements for periodic review of the continuing need, if any, for the imposition of anti-dumping duties or price undertakings. These requirements respond to the concern raised by the practice of some countries of leaving anti-dumping duties in place indefinitely. The “**sunset**” requirement establishes that dumping duties shall normally terminate no later than five years after first being applied, unless a review investigation prior to that date establishes that expiry of the duty would be likely to lead to continuation recurrence of dumping and injury. AD Agreement requires authorities to review the need for the continued imposition of a duty upon request of an interested party.

vi - Public notice

AD Agreement sets forth detailed requirements for public notice by investigating authorities of the initiation of investigation, preliminary and final determinations, and undertakings. It is also required that a public notice must disclose non-confidential information concerning the parties, the product, the margins of dumping, the facts revealed during the investigation, and the reason for the determination made by the authorities, including the reason for accepting and rejecting relevant arguments or claims made by exporters or importers.

The purpose of these public notice requirements is to increase the transparency of determination, with the hope that this will increase the extent to which determinations are based on fact and solid reasoning.

GENERAL IMPLICATIONS

Ironically, anti-dumping restrictions are directly correlated to the spread of free trade. The more open the economy, the greater is the reliance on anti-dumping measures. Indeed, the world’s most open economy, the US, ranks first on anti-dumping actions taken against imports. With the imposition of anti-dumping duties on over 20 products, India already ranks 12th despite her relatively-high tariff-walls. As these walls are lowered, and as quantitative restrictions on imports are phased out by 2002, the number of anti-dumping actions initiated by India will only rise.

Moreover, dumping only poses a serious problem if domestic industry is not efficient, and if it continues to produce unbranded, low-quality goods. So what our industry needs to do, it has to become cost-competitive to cope with cheaper imports. Ultimately, the only effective way to develop that

Competitiveness is through freer trade-not through fairer trade.

Any anti dumping investigation involves the interests of 3 parties: the producing industry, the user industry, and the exporter. And any ruling is bound to hurt one of these parties.

LEGAL FRAMEWORK

i - International Rules

The international anti-dumping rules are provided by (a) GATT Article VI and (b) the Anti-dumping Agreement under the WTO/The Tokyo Round Anti-dumping Code was revised to become the new Anti-

dumping Agreement as a result of the Uruguay Round negotiation. Amendment of the Code was called for because the procedures for investigating prices and costs in order to measure the damage to domestic industry and calculate dumping margins were extremely technical and complex, and since the Tokyo Round Anti-dumping Code lacked sufficient detail to deal with the complexities of current international transactions. The Code's lack of detail resulted in a dearth of effective disciplines and exacerbated the tendency to abuse the Anti-dumping provisions, thus requiring a revision to the Code.

The WTO holds two meetings of the Anti-dumping Committee (AD Committee) each year to provide a forum for discussion of anti-dumping measures. Among the business of the AD Committee is the review of countries' anti-dumping implementation laws for conformity to the Agreement, the hearing of reports on countries' anti-dumping measures, and the study of issues in anti-dumping policies and practice. The AD Committee is directly subordinate to the Council for Trade in Goods and reports to it each year on the implementation and administration of the AD Agreement.

Countries have been amending their domestic anti-dumping implementation Legislation to bring it into conformity with the new AD Agreement. The AD Committee is charged with reviewing national legislation, and countries are required both to notify the relevant laws to the Committee and to respond to questions from other countries about their systems. If there are any problems found, countries are obliged to bring their national laws in line with the Agreement.

ii- Major Improvements in the Anti-Dumping Agreement

(a) Fair Price Comparison

In principle, a determination of dumping is based on whether the export price of a good is less than the domestic price in the exporting country. This comparison must be conducted in a fair manner. So far, the determination of the normal value and/or export price is sometimes not sufficient to adjust the differences that affect price comparability. The Anti-dumping Agreement prescribes that comparison shall be made at the same level of trade, in respect of sales made at as nearly as possible the same time, that due allowance shall be made, on its merit, for differences which affect price comparability, and that the authority shall

make allowances for a conversion of currencies. Also, authorities shall indicate to the parties in question what information is required for a fair comparison and shall not impose an unreasonable burden of proof on those parties.

(b) Problems Involved in Determining Injury

Under the Anti-dumping Agreement, imposition of an anti-dumping duty requires that the investigating authority have evidence not only to substantiate dumping, but also to prove that the dumping has resulted in injury to a competing domestic industry in the importing country. Moreover, dumping may result in benefits to consumers in the form of lower-priced goods and is thus not an entirely deleterious practice. Under the terms of the GATT, a country can take actions against dumping only when there is a factual finding of injury to an industry in an importing country. The Tokyo Round Anti-dumping Code did not clearly set forth the conditions necessary to establish injury. Unfortunately, the prior provisions have lent themselves to different interpretations by different countries. The Anti-dumping Agreement contains more detailed rules on determinations of injury. It is difficult, however, to develop a general quantitative standard to measure the extent of injury that has occurred. We must therefore be aware of the potential problems in discretion. Specifically, we must ensure that sufficient evidence is considered when determining injuries, that there is sufficient proof of causality between dumping and injury, and that there is no potential for injury from other factors unrelated to dumping imports to be counted in with dumping injury.

(c) Other Points

The Agreement contains many other improvements over the Tokyo Round Anti-dumping Code. Other than the **sunset clause**, I believe that at this particular point of time there is no need to explain other points.

The Agreement introduced a sunset clause:

One of the most valuable and important improvements, requiring Anti-dumping duties to be automatically terminated no later than five years from their imposition except in cases where investigating authorities have conducted reviews on their own initiative or upon a duty- substantiated request made by the domestic industry, and

determined that dumping and injury would continue or resume. The United States has rarely terminated Anti-dumping duties once it imposed them. This change is, therefore, very important, and we expect that US administration of Anti-dumping measures would comply to it.

ECONOMIC IMPLICATIONS

Anti-dumping measures are allowed under the GATT/WTO Agreement as an exception to the general disciplines. However, admitting selective imposition of duties in terms of country and supplier tends to lead to discriminatory trade policies. In addition, since anti-dumping measures directly affect pricing, which is the most fundamental element of business strategy, their abuse will have a tremendous negative impact on the pattern of trade and on the overall economy. Following are some of the serious economic implications of anti-dumping measures in cases where they are abused.

i - The Influence of the Initiation of Investigation

The mere initiation of an anti-dumping investigation will have a vast impact on exporters. When an anti-dumping investigation is initiated, the potential surfaces for anti-dumping duties to be imposed at some point in the future. This results in products becoming far less attractive to importers. Initiation of an anti-dumping investigation also places significant burdens on the companies being investigated. They must answer numerous questions from the authorities in a short period of time, spending enormous amounts of labour, time and money to defend themselves. The legal costs involved are particularly high.

For example, in one case involving high-volume exports to the United States, the legal fees alone were \$1 million a year. Such burdens obviously have the potential to impair ordinary business activities. Thus, regardless of their findings, the mere initiation of an anti-dumping investigation is in itself a large threat to companies.

This reasoning supports the contention that investigations should only be initiated after having considered sufficient amount of evidence. Utmost care is required before taking final decision as to either go for investigation or not. If a company decides to go for an antidumping investigation it must make it very clear that it has put reasonable time and money to carry on with it. We would also note that there are many cases in which companies simply relinquish all or part of their right to answer questions from the

authorities because of the enormous burdens involved. In such cases, the rule of "facts available" (sometimes called "best information available") applies. In "facts available" proceedings, the authorities make calculations from whatever information they have been able to gather if the company investigated has not furnished answers as required by the investigating authority or is unable to prove its contentions.

ii - Distortion of Normal Commercial Practices

Anti-dumping measures also harm companies attempting to apply normal commercial strategies and practices. This effect is illustrated in situation of "forward pricing" in advanced technology products.

Forward pricing is a strategy designed to reduce costs by increasing sales volumes early in a product's life cycle. At the start-up phase of high-tech products, prices are set at a level below the per unit cost on the assumption that there will be a sharp reduction in such costs in the near future as production volumes increase. This practice not only enables rapid market acceptance of a product, it also allows companies to secure stable profits in a short period of time.

When an anti-dumping investigation of a forward-priced product takes place early in the product cycle, short-term average costs will still exceed domestic prices. Domestic sales will accordingly be deemed to be "below cost" and unusable for purposes of calculating anti-dumping duties. When domestic sales are unusable, the Anti-dumping Agreement allows the use of a "constructed value" of the exported good in the dumping margin calculation. The theoretical "constructed value" in such cases will be composed of the unusually high short-term average costs plus amounts for administrative costs and profits. This "constructed value" is then compared to the actual export price, resulting in a high dumping margin.

This forward-pricing problem has been partially addressed in the Anti-dumping Agreement. The Agreement incorporates a provision calling for adjustments to properly allocate costs during the start-up period for new products.

iii - Effects on Technology Transfers (Unnecessary Expansion of the Product Scope Subject to Anti-Dumping Duties)

Anti-dumping duties are imposed on "like products" found by investigators to be dumped on domestic markets (GATT Article VI). However, depending on

how the scope of "like products" is defined, there could be cases in which anti-dumping duties are imposed on products that are in fact different from the product subject to investigation. We are particularly concerned about vague wording in the definition of the range of products subject to dumping Investigations. Care must be taken with regard to products that could or will be developed in the future so that the definition cannot be expanded beyond those products "currently" causing injury.

There are cases where the definition has even been expanded to apply to future generation products not even existing at the time of the original investigation. Given the nature of the products in the cases mentioned above and the wide differences between the original and current versions of the products, authorities ought to investigate whether or not the new products, in view of the differences in technology used and markets targeted, are having a detrimental impact on the domestic markets initially investigated.

There are also other examples in which the scope of what are recognized to be "like products" has had an influence on new product development and, ultimately, technological advancement. This is particularly the case in high-tech industries, like electronics. Suffice it to note here that all such cases demonstrate the potential impediment to technological progress that comes from facile expansions of the coverage of "like products" in Anti-dumping proceedings.

iv - Retarding Globalization of Production

As the economy becomes more global in scope, companies are transferring their production overseas to their export markets or to developing countries where costs are lower. However, when such transfers take place for products that are subject to anti-dumping levies, they are often assumed to be attempts at circumvention. Anti-circumvention measures that inadequately distinguish between production shifting for legitimate commercial reasons and for circumvention purposes, risk not only distorting trade but also shrinking investment.

One point has been made very clear from above discussion that once a charge is made against any country, preliminary duties are levied on the products in question until investigation proves whether permanent duties are justified or not. In light of this, importers automatically refrain from concluding any contracts with a country facing charges, which causes that country to lose a **niche of the targeted market**.

RECENT TRENDS

Anti-dumping investigations have been used primarily by the United States, the European Union, Canada, and Australia, because domestic anti-dumping laws have been enacted mostly in developed countries. However, the increase in actions brought by Brazil, South Korea, and South Africa is a recent development worthy of note. In addition, many other developing countries have recently introduced new anti-dumping laws, Pakistan is among one of them. Figures below shows the increasing number of investigations by each country.

Country	1969-1974	1975-1979	1980-1984	1985-1989	1990-1994	1995-1998	Total
US	125	140	146	219	249	75	954
EU	19	55	138	101	147	110	570
Canada	42	74	176	115	90	31	528
Australia	-	120	242	180	252	71	865
Japan	0	0	0	0	4	0	4
Others	39	64	10	74	227	395	809
Total	225	453	712	689	969	682	3730

Number of Anti-Dumping Investigations since 1993 till 1998 for few selected countries:

Country	1993	1994	1995	1996	1997	1998
US	33	45	14	21	16	24
EU	21	43	32	23	43	12
Canada	24	2	12	5	13	1
Australia	58	13	5	17	42	7
Brazil	34	2	5	17	10	6
Korea	6	4	4	13	17	0
India	24	7	5	21	14	-
South Africa	-	15	17	31	23	15
Indonesia	-	-	11	9	4	8
Japan	0	1	0	0	0	0

Further Explanation of Rising trend of Anti-Dumping Measures:

WTO members notified 360 initiations of anti-dumping investigations in 1999, up 42% over 1998 as shown in chart below. In 1999, the European Union and India each reported the highest number of initiations, at 68, followed by the United States with 45 initiations. Counted together, the European Union and its Member States were the WTO Members most affected by initiations of anti-dumping investigations (47), followed by the Republic Of Korea (34) and Japan (23), although many other exporters were also affected, notably China. (See Table 1)

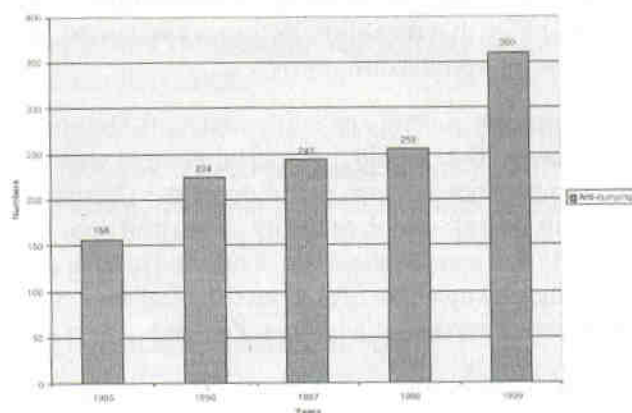
Available data for the first half of Year 2000, however, indicate that the trend is sharply down. Between mid-1999 and mid-2000, reports have been received of 235 investigations initiated, compared to 323 in the same year-earlier period. Most WTO Members are reporting fewer initiations of investigations. The European Union continues to lead, with 49 initiations, followed by India and the United States, each reporting 27 initiations, and Argentina, with 23 initiations.

Summary of Anti-Dumping Actions, for the period July 01, 1999 till June 30, 2000, is as follows:

Country 2000'	Initiations of Anti-dumping Investigations	Provisional Measures	Definitive Duties	Price Undertakings	Measures in force on June 30
Argentina	23	7	10	10	45
Australia	18	4	4	0	48
Brazil	17	6	12	0	42
Canada	11	12	18	0	88
Chile	1	0	0	0	0
Colombia	3	0	2	0	12
Czech Rep.	1	0	0	0	n.a
Ecuador	0	1	0	0	n.a
Egypt	4	0	10	0	10
EC	49	31	15	13	190
India	27	44	32	0	91
Indonesia	13	4	0	0	n.a
Israel	1	1	3	0	3
Japan	0	0	0	0	1
Rep. of Korea	4	4	0	2	27
Malaysia	1	1	2	0	9
Mexico	7	6	5	0	80
New Zealand	6	0	0	0	13
Peru	4	3	6	0	14
Philippines	4	5	1	0	n.a
Poland	0	0	0	0	1
Singapore	0	0	0	0	2
South Africa	11	9	16	0	104
Thailand	0	0	0	0	4
Trinidad	0	5	1	0	5
Tobago	0	5	1	0	5
Turkey	2	0	8	0	13
United States	29	38	37	4	300
Venezuela	0	5	3	0	19
Total	236	189	185	20	1121

The above table indicates that 236 investigations were initiated during the period. The most active Members during this period, in terms of initiations of Anti-Dumping investigations, were the European Community (49), the United States (29), India (27), Argentina (23), Australia (18), Brazil (17), Indonesia (13), and Canada and South Africa (11) each. As of June 30, 1999, 23 Members reported anti-dumping measures (including undertakings) in force. Of the 1121 measures in force reported, 27% were maintained by the United States, 17% by the European Community, 9% by South Africa, 8 % each by India and Canada, and 7% by Mexico. Other Members reporting measures in force each accounted for 5% or less of the total number of measures in force. Products exported from the European Community or its member States were the subject of the most anti-dumping investigations initiated during the year (32), followed by products exported from China (30), the Republic of Korea (23), Indonesia (15), Chinese Taipei (13), Thailand (12), India, Japan, and Russia (11) each, and the United States (10).

Table-1
Initiations of Anti-dumping Investigations 1995-99



THE DUMPING INVESTIGATION

An Anti-Dumping investigation is usually carried out by the investigating authorities keeping in view the following points:

1. Preliminary screening of the application is made to ensure it is adequately documented.
2. Initiation of investigation is made if there is prima facie evidence of dumping and injury.
3. Obtain reasonable assurance that domestic producers supporting the application account for at least 25% of total production.

4. Send public notice to the concerned parties, including exporters and importers of the dumped goods.
5. Publish preliminary findings regarding dumping margin and the injury to domestic producers.
6. Can impose a provisional duty for 4 months to limit damage to domestic industry. Provided that the investigating authority may, upon request by exporters, which the investigating authority considers to be representing a significant percentage of the trade involved, extend the period of application of provisional measures to a period not exceeding 6 months.
7. Conclude investigation and, if necessary, levy anti-dumping duty for a period of 5 years.
8. Periodically review the need for the continued imposition of anti-dumping duties.

Concerns with the Existing Process

It is relatively easy to prove 'prima facie' that a company or country is exporting at dumped prices to Pakistan. However, to prove material injury is more complicated and could be biased, as to whether the Pakistani industry is suffering material injury. The reason being that the injury indicators and causality could be interpreted differently.

In my opinion recently promulgated Anti-Dumping Ordinance 2000 would upto certain extent remove such ambiguities as mentioned above as this Ordinance explains the regulation of the investigation process, ensuring that investigations are conducted in a fair and transparent way and within a set time frame such as the practice in Australia or New Zealand.

Where Applicable

Anti-Dumping risk is exposed to all Pakistani importers and overseas exporters of products to Pakistan and Pakistani exporters.

Anti-Dumping assistance is required to Pakistani manufacturers having to contend with product inputs and end products that are being exported to Pakistan at very low prices.

Why to take initiative now

The reduction in Customs duties in Pakistan has resulted in an increase of product inputs and end products being exported to Pakistan. In a number of instances it may be possible that the products exported

to Pakistan were at price lower than the domestic price of the similar product in the exporter's market.

While custom duties are being phased down, as said earlier, anti-dumping and countervailing duties are the only measures that our Government can use to protect there manufacturing industry against unfair competition.

What it means to Importers/exporters

As the world moves towards free trade, anti-dumping measures are expected to increase. Exporters and Importers should be aware of these measures and the possible consequences for their business; it is expensive and time consuming to get involved in defending an anti-dumping action.

Today more and more companies are being affected by dumping, by either being accused of dumping their goods on overseas markets, or by importing and/or distributing dumped goods.

SALIENT FEATURES OF ANTI-DUMPING ORDINANCE 2000

This Ordinance has been promulgated to impose anti-dumping duties on products, which are imported into Pakistan at a price, which is less than their normal value in the country of origin and is causing injury to the domestic industry.

Determination of Injury:

Determination of injury shall be based on an objective examination of all relevant factors by the National Tariff Commission (NTC), which may include but not limited to:

- (a) volume of dumped imports;
- (b) effect of dumped imports on prices in domestic market for like products; and
- (c) consequent impact of dumped imports on domestic producers of such products.

Examination of Impact of dumped imports on domestic industry:

An examination of impact of dumped imports on domestic industry concerned is to include an investigation by the Commission of all relevant factors and indices having a bearing on the state of the domestic industry, including but not limited to:

- (a) Actual and potential decline in sales, profits, output, market share, productivity, return-on investment, or utilization of capacity.

- (b) Factors affecting domestic prices.
- (c) Magnitude of dumping margin and;
- (d) Actual and potential negative effects on cash flows, inventories, employment, wages, growth, ability to raise capital or investment.

Application Procedure

Anti-dumping Ordinance 2000 provides /explains the procedure for making an application regarding imposition of anti-dumping duties on the imported products before the Commission.

Application by or on behalf of domestic industry:

Certain important factors are required to be considered before any such application for imposition of anti-dumping duties is initiated, which are as follows:

- (a) An application shall be considered to have been made by or on behalf of domestic industry only if it is supported by those domestic producers whose **collective output constitutes more than fifty percent of the total production of a domestic like product** produced by that portion of the domestic industry expressing either support for or opposition to the application.
- (b) No investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty-five percent of the total production of a domestic like product produced by domestic industry.

An investigation by the Commission shall only be initiated upon a written application by or on behalf of domestic industry and such application shall:

- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed.
- (b) include evidence of dumping and injury within the meaning of this Ordinance as is reasonably available to the applicant.
- (c) Contain such further information as may be prescribed.

An application as mentioned above shall be rejected as soon as the Commission is satisfied that that there is not sufficient evidence of either dumping or of any injury to justify initiation of an investigation.

If the Commission is satisfied that:

- (a) an application has been made by or on behalf of domestic industry, in the prescribed manner, and

- (b) there is sufficient evidence of dumping and injury within the meaning of this Ordinance,
the Commission shall initiate an investigation.

Where the Commission does not consider it appropriate to initiate an investigation, it shall inform all the applicants of the reasons for not initiating the investigation and shall inform the exporting country of its decision.

I may want to add here that NTC has prepared an application form to be used by the applicant who has to file an anti-dumping case against any other party. Anti-Dumping application form requires detailed information to be entered in it so that an anti-dumping investigation can be initiated without any doubt. This application form is available at the NTC office in Islamabad.

Self-initiation:

The Commission may, initiate an investigation without having received a written application by or on behalf of domestic industry if it has sufficient evidence of dumping and injury, to justify initiation of an investigation.

Notice of decision to initiate investigation:

When the Commission has decided to initiate an investigation it shall:

- (a) give notice to all exporters, importers and any representative association of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein; and
- (b) publish a copy of such notice in the Official Gazette and in atleast one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

Duration of Investigation:

The Commission shall, except in special circumstances, conclude an investigation **within twelve months**, and in no case more than **eighteen months**, after its intimation.

Custom Clearance:

Any proceedings or investigation under this Ordinance shall not hinder the procedure of customs clearance.

Preliminary Determination:

The Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. However such preliminary determination is subject to information available with the Commission.

Provisional Measures:

On the basis of Preliminary Determination provisional measures may be imposed which shall not be applied by the Commission **sooner than sixty days** from the date of initiation of the investigation.

Provisional measures shall be applied for a **period not exceeding four months**. Provided that upon request of exporters to the Commission representing significant percentage of the trade involve, may result in extension of period of application of provisional measures to a period not exceeding **six months**.

Termination of Investigation:

The Commission shall immediately terminate an investigation if it determines that dumping margin is negligible or that volume of dumped imports, actual or potential, or injury, is negligible.

Important points to consider:

- (a) dumping margin shall be considered to be negligible if it is **less than two per cent**, expressed as a percentage of the export price, and
- (b) volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for **less than three per cent** of total imports of a like product unless imports of the investigated product from all countries under investigation which individually account for **less than three percent** of the total imports of a like product collectively account for **more than seven percent** of imports of a like product.

Acceptance of Price Undertaking:

Where the Commission has made a preliminary affirmative determination of dumping and injury, it may suspend or terminate an investigation without imposition of anti-dumping duties, upon receipt of satisfactory price undertaking from an exporter to revise its prices or to cease export to the area in question at dumped prices so that the Commission is satisfied that injurious effect of dumping in question is eliminated.

Imposition and Collection of Anti-Dumping duties:

Imposition and collection of Anti-dumping duties shall be in following ways:

- (a) take the form of *ad valorem* or specific duties:
- (b) be imposed in addition to other import duties levied on an investigated product:
- (c) be collected in the same manner as customs-duties under the Customs Act, 1969.
- (d) be levied and collected on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings have been accepted by the Commission.

Refund of anti-dumping duties paid in excess of dumping margin:

An exporter shall be granted a refund of the actual amount of anti-dumping duties collected if the Commission determines that dumping margins, on the basis of which such anti-dumping duties were paid, has been eliminated or reduced to a level which is below the level of the anti-dumping duty in force.

For the same purpose refund of anti-dumping duties shall normally take place **within twelve months, and in no case later than eighteen months**, after the date on which application for refund complaint is received by the Commission.

Duration of anti-dumping duty:

Subject to the provisions of this Ordinance, any anti-dumping duty imposed under this Ordinance shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury.

Review of anti-dumping duty:

Any definitive anti-dumping duty imposed under this Ordinance shall be terminated on a date **not later than five years from the date of its imposition** or from the date of most recent review in which the Commission determines that continued imposition of anti-dumping duty is no longer warranted.

Appeal to the Appellate Tribunal:

Any interested party may prefer an appeal to the appellate Tribunal against:

- (a) an affirmative or a negative final determination to the Appellate Tribunal.
- (b) any final determination pursuant to a review.

When the Commission establishes the fact that dumping and injury to the domestic industry exists, it shall by a notification in the Official Gazette **impose an anti-dumping duty with an amount equal to the dumping margin.**

SOME MARKET INFORMATION

EPB urged to challenge anti-dumping move:

The All Pakistan Textile Mills Association (APTMA) has asked the Export Promotion Bureau (EPB) to take legal action against South Korea's anti-dumping duties on Pakistani yarn. The association further urged the EPB to use export development fund to meet the legal expenses.

APTMA'S spokesman said the yearly yarn exports of \$150 million to South Korea account for almost 18 per cent of the total yarn exports from Pakistan. "Combed yarn exports amount to \$75 million." The combed yarn exports have now been threatened by the Korean move.

The EPB, annually collects around Rs300 million as export development fund from textile exporters. This fund must be utilized to fight anti-dumping cases. According to the APTMA'S spokesman, their delegation recently visited South Korea to appraise itself of the situation. He said the team found that the factual position "**strongly favours Pakistan**".

Pakistan opposes EU norms on anti-dumping:

Pakistan textile manufacturers have launched an attack on the European Union for imposing a 32.5 per cent anti-dumping duty on fabrics, branding it "ill-treatment" of Pakistan. The anti-dumping duty imposed by the EU on other countries, including India, Egypt, Indonesia and Turkey, was only 15 per cent, they said, branding the decision an arbitrary one against Pakistani products.

APTMA, an apex body representing the spinners, weavers and garment and apparel manufacturers pointed out that an ongoing anti-dumping investigation

by the EU into exports of cotton fabrics from Pakistan was a matter of "grave concern" for the industry as well as for the country. According to Convener of APTMA's anti-dumping committee, "it is unfair and unjust, even the European trade and commerce association have accepted the Pakistan's view". The EC in November imposed the anti-dumping duty on the import of grey cloth fabric, resulting in a decline of around \$ 180 million in export earnings.

"Anti-dumping" Use for harassment purposes:

According to the WTO database, over 2200 Anti-Dumping cases were initiated during the period 1987-1999. Among these cases more than 60% were initiated by four major users namely the US, Australia, the EU and Canada. Such an excessive use of this instrument has naturally led to the abuse of AAD (Agreement on Anti-Dumping) provisions and created instability and uncertainty in the market, affecting both production and employment. In some cases, the impact is much greater than the active trade involved; even the initiation of Anti-Dumping actions can disrupt the trade flows as well as distort investment priorities. The most recent examples of the "abuse" of this instrument are the repeated use of Anti-Dumping actions and investigations initiated by the EU on grey cotton fabric and bed linen from a number of developing countries including some IDB member countries such as Egypt, Indonesia and Pakistan.

By concluding I must say that a stronger Anti-Dumping Directorate (in Pakistan National Tariff Commission) will, no doubt, help strengthen industry, but both government and industry must be careful to ensure that the precedents set for establishing dumping and injury do not usher in a fresh form of administered protectionism.

About the Author:

Mr. Saifullah Khan is an Associate member of the ICMAP. He is doing articleship with Khalid Majid Rahman, Chartered Accountants for the last two years.

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