



INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY

ISSN: 2454-132X

Impact factor: 4.295

(Volume 5, Issue 4)

Available online at: www.ijariit.com

Anti-dumping laws in India

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ABSTRACT

Dumping has been the biggest topic of concern amongst all the nations in the past few decades. Dumping means exporting goods at a price lower than its normal value and introducing it into the economy of another country which thereby causes injury to the domestic producers of the same goods. Dumping is not actually prohibited under GATT provisions unless it is established that it is adversely affecting the Domestic producers. When a country dumps its goods into the economy of another country, then to stop this unfair activity anti-dumping measures can be taken by the importing country after establishing that the dumping is causing injury to the domestic producers of the same goods. The first provision regarding anti-dumping in India was enacted in 1982. India has come a long way in using Anti-Dumping measures as trade remedy tool since 1995 with 26% of total world Anti-Dumping measures being taken by India in 2011 from a modest 6% in 1995. Through this, industries are availing a large number of benefits which are permissible under the law. To constitute dumping three things are needed to be satisfied- Dumping is caused. Injury is caused by the domestic producers of the same goods due to dumping. There is a causal link between injury and dumping. Anti-dumping and anti-subsidies and countervailing measures in India are assessed by Directorate General of Anti-dumping and Allied Duties (DGAD) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry. Dumping is considered as an unfair trade practice which adversely effects international trade by different means. To resolve the problems arising out of the dumping of goods and its trade distortive effect Anti-Dumping measure is used. So, the anti-dumping duty is the main measure to solve the trade distortive effect of dumping and re-establish fair trade. The main use of anti-dumping measure is to eliminate unfair competition and allow healthy competition and trade which is permitted by the WTO.

Keywords— *Anti-Dumping, Anti-dumping and Allied Duties*

1. INTRODUCTION

Dumping has been the biggest topic of concern amongst all the nations in the past few decades. Dumping means exporting goods at a price lower than its normal value and introducing it into the economy of another country which thereby causes injury to the domestic producers of the same goods. Dumping is not actually prohibited under GATT provisions unless it is established that it is adversely affecting the Domestic producers. When a country dumps its goods into the economy of another country, then to stop this unfair activity anti-dumping measures can be taken by the importing country after establishing that the dumping is causing injury to the domestic producers of the same goods.

The first provision regarding anti-dumping in India was enacted in 1982. India has come a long way in using Anti Dumping measures as trade remedy tool since 1995 with 26% of total world Anti-Dumping measures being taken by India in 2011 from modest 6% in 1995. Through this, industries are availing a large amount of benefits which are permissible under the law. To constitute dumping three things are needed to be satisfied:

- (a) Dumping is caused.
- (b) Injury is caused to the domestic producers of the same goods due to dumping.
- (c) There is causal link between injury and dumping.

Anti dumping and anti subsidies and countervailing measures in India are assessed by Directorate General of Anti dumping and Allied Duties (DGAD) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry. Dumping is considered as an unfair trade practice which adversely effects international trade by different means. To resolve the problems arising out of the dumping of goods and its trade distortive effect Anti Dumping measure is used. So, the anti-dumping duty is the main measure to solve the trade distortive effect of dumping and re-establish fair trade. The main use of anti-dumping measure is to eliminate unfair competition and allow healthy competition and trade which is permitted by the WTO.

2. HISTORY

In 1982 India enacted its first provision regarding Anti Dumping. Until WTO was created those provisions were not used at an effective rate. After WTO, an Anti Dumping agreement was formed. India is using Anti Dumping as a trade remedy since 1995 with 26% of total world Anti-dumping measures being taken by India in 2011 from a modest 6% in 1995. This increase is a result of competition, and it is helping companies to get benefit as well as protection under the law as permissible. Domestic industries are getting immense benefit from the use of Anti Dumping remedy rather than being seen as a fair investigative process, giving equal opportunity to both domestic industry and exporters. This is shown in the judgment of Hon'ble Supreme Court in case of *Reliance Industries vs. Designated Authority [2006 (10) SCC 368]*, which stated as follows:

"The Anti-dumping Law is, therefore, a salutary measure which prevents destruction of our industries which were built up after independence under the guidance of our patriotic, modern minded leaders at that time and it is the task of everyone today to see to it that there is further rapid industrialization in our country, to make India a modern, powerful, highly industrialized nation."

Anti-dumping and anti-subsidy investigations are always conducted by Directorate General of Anti-dumping and Allied Duties (DGAD), in India. It is a separate department under Ministry of Commerce. Safeguard investigations, on the other hand, are conducted by Directorate General of Safeguards, which falls under the Ministry of Finance.

3. ESSENTIALS OF ANTI DUMPING

There are three main essentials of Anti-Dumping which are as follows:

- (a) Dumping
- (b) Injury
- (c) Causal link

As we have discussed earlier, under anti-dumping provisions remedy is available only in those situations, where injury has occurred to the domestic industry of the same goods in the importing country. Hence, AD duties can only be imposed when these three factors are examined that are Dumping, Injury and Causal Link.

4. WHAT IS DUMPING?

4.1 Rule 10 of the AD Rules

This rule states that any article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value. This means that 'dumping margin' is the difference between the 'normal' value of such product and its corresponding export price.

4.2 Injury

Section 9B, anti-dumping duties shall be imposed only when the dumped imports cause material injury or threat of material injury to the domestic industry. After DGAD examines and analyses all the parameters of injury to domestic industry, it ascertains the margin of dumping and injury caused. Margin of injury is established by the difference between export price and normal value of the goods. It ascertains that how much dumping and injury to domestic industries is caused.

4.3 Causal Link

The last essential for conducting the anti dumping investigation is determining the causal link between the amount of dumping caused and the injury caused to domestic industries by the dumping. It is important to establish that the injury caused to domestic industry is due to the dumping of the goods of like nature. Only after the examination of relevant evidences, the causal link can be established.

5. INITIATING AN ANTI DUMPING INVESTIGATION

Essentials for initiating an anti dumping investigation are as follows:

- (a) There must be sufficient evidences to prove that the dumping has occurred which causes material injury to domestic industries and there is a causal link between dumping and the injury caused to domestic producers.
- (b) At least 25% of the concerned domestic producers shall give an application that supports that injury is caused to domestic producers of the same goods due to dumping.
- (c) An application for dumping is also allowed when it is made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than 50% 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.
- (d) Sufficient evidences must be given by the domestic industry to seek relief. Only after satisfying the above mentioned parameters, the Authority can initiate an anti-dumping investigation.

6. EXISTING LEGAL FRAMEWORK

The origin of existing Anti-Dumping laws in India is from different sources. These sources are as follows:

6.1 International laws

Article 6 of GATT (General Agreement on Tariffs and Trade), It states that the principles like Anti-Dumping duties and other protections must be used by member countries to curb down dumping and providing relief to the domestic industries who has suffered injury from dumping.

6.2 Local laws

Section 9A and 9B of *Customs and Tariffs Act, 1975* (Amended 1995) and The Anti-dumping rules such as (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules of 1995, Section 9A of customs and tariffs Act 1975 lays down that if any article is exported from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may by notification in official gazette, impose an Anti Dumping Duty not exceeding the Margin of Dumping in relation to like products.

6.3 Imposition of Duty

Under Section 9A (1) of the Customs Tariff Act, 1975 Central Government is empowered to impose anti-dumping duties, not exceeding the margin of dumping. It means that anti-dumping duty imposed should be either equal to dumping margin or lesser amount, which can sufficiently, satisfies injury. India follows a 'lesser duty' rule, which means that anti dumping duty imposed on a country should be less than or equal to the margin of injury caused. Anti Dumping Duty is imposed on the country which causes dumping and injures the domestic industries of the domestic country.

7. WHO CAN SEEK REMEDY

DGAG may either suo-moto or by an application for imposition of anti dumping duty given by or on behalf of domestic industry for the like products may initiate the investigation.

If DGAD is satisfied that the information received establishes sufficient evidences of existence of dumping and injury only then he may initiate an investigation suo-moto. There are certain conditions given under the Anti Dumping Rules for a domestic industry to file an application. The Definition of Domestic Industry is given under Rule 2(b) of the AD Rules it defines Domestic industry as the domestic producers, who are wholly engaged in the manufacture of the 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

Furthermore, At least 25% of the concerned domestic producers shall give an application that supports that injury is caused to domestic producers of the same goods due to dumping. 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 constitute more than 50% 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

8. INVESTIGATION PROCESS

According to Rule 17 of the Anti-Dumping Rules it is laid down that any investigation regarding Dumping shall be concluded within 12 months form the date on which the investigation was initiated. But in certain exceptional cases, after the approval of Central Government this period may be extended upto 6 months (Rule 17 of Anti Dumping Rules). Hence, 18 months is the maximum duration of an anti-dumping investigation.

8.1 A brief outline of Investigation process

FILING APPLICATION → INITIATION OF INVESTIGATION → FILING OF RESPONSES → PRELIMINARY FINDING → LEVY OF PROVISIONAL DUTY → PUBLIC HEARING → VISIT(DOMESTIC INDUSTRY/ EXPORTER) → DISCLOSURE STATEMENT → FINAL FINDINGS → LEVY OF FINAL DUTY → REVIEW/ APPEAL

9. APPELLATE MECHANISM

India has inserted certain provisions to comply its legislation with WTO by introducing Anti Dumping Agreement and Section 9C of Customs and Tariff Act 1975 which lays down the appeal mechanism. If DGAD passes any order then a statutory appeal can be filed to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) The orders of the CESTAT may be challenged before the Honourable Supreme Court of India. In certain limited circumstances such as violation of the principles of natural justice, etc. the levy of duty may be challenged before the High Courts through an appropriate writ petition.

Summary of the anti-dumping case concerning imports of certain cast iron articles originating in the People's Republic of China and in India.

The Product Concerned The concerned product which was under investigation were articles of ductile cast iron and its parts. The articles may be machined, coated, painted and/or fitted with other materials such as but not limited to paving slabs, concrete, or tiles, but exclude fire hydrants, originating in India and in the People's Republic of China.

9.1 Like product

Both the products were same and there was no difference between them. The EU produced castings and the products that were imported from India and China, they had the same use, technical and physical characteristics and these characteristics were sufficient to conclude them as like products. The same technology was being used by both Chinese and Indian producers as well as EU producers.

9.2 End Uses

Its main purpose was to give physical or visual access to a subsurface installation for the purpose of carrying out maintenance work or inspection.

9.3 Injury

Injury started occurring when the Chinese exporters increased the volumes of their exports of the like product, and gained market share. They took the lead in the market of that concerned product and started setting their own prices and became price settler for the concerned product which thereby caused Complainants to sell their products at a loss and suffer high losses, while other EU producers have closed production. Even Indian exports gained market shares. And this entire scenario caused high loss to the complainant party and they were under threat of shutting down their industry for the concerned product.

10. SUMMARY OF THE CASE

An Anti Dumping investigation was then initiated by the Commission in relation to the products which were under question. There were several complainants who have shown prima facie evidence that Chinese and Indian producers of the product concerned are selling in the EU at ever decreasing dumped prices, which are undercutting and severely depressing the prices of the EU industry, thereby causing severely reduced profitability, closures and job losses.

11. REFERENCES

- [1] Reliance Industries vs Designated Authority [2006 (10) SCC 368]
- [2] Rule 10 of Anti Dumping Rules
- [3] Article 6 of General Agreement on Trade and Tariff
- [4] Section 9A and 9B of customs and Tariff Act
- [5] Rule 5(4) of Anti Dumping Rules
- [6] Rule 2(B) of Anti Dumping Rules
- [7] Explanation to rule 5(3)