

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Trade Policy and Law with Specific Reference to ADM, Practices and Prospects in India

MADHVI RAI¹ AND TANYA SINGH²

ABSTRACT

International trade has become an integral part of the global economy. With the rise of globalization and economic liberalization, the volume of international trade has increased substantially. However, with the increase in the volume of international trade, there has been an increase in the instances of dumping. Dumping is a phenomenon where a country exports goods to another country at a price lower than its domestic price or cost of production. Dumping has a detrimental effect on the domestic industry of the importing country. To counter this, countries impose ADM.

The objective of this research paper is to study the concept of ADM and their legislative framework. The research paper aims to analyze the impact of ADM on the international trade and economic welfare of countries. The paper also aims to analyze the dispute settlement mechanism under the Anti-Dumping Agreement of the WTO and the ADM under the Customs Tariff Act, 1975 of India.

The research paper provides an overview of the concept of dumping, its economic analysis, classification, objectives, and effects, and the measures to offset dumping, the legislative framework of ADM, including the historical evolution of ADM, the role of the WTO in regulating ADM, and the ADM under the Customs Tariff Act, 1975 of India, including the DA, anti-dumping investigations, retrospective levy of ADD, appeals, and circumvention of ADD. The research paper aims to identify the shortcomings in the existing regulatory framework and proposes suggestions for reforms in the ADA and Indian anti-dumping regulations.

Keywords: Trade, Regulation, Anti-dumping, India.

I. INTRODUCTION

The "exchange of products and services between nations based "on the economic principles of supply and demand has varied through time and has been a significant feature of human history. International commerce has its roots in the emergence of civilizations that participated in barter trade as well as the development of modern trade theories that have impacted links between the world's economies. The historical background and important facets of international commerce

¹ Author is a LL.M. Student at AIALS, Amity University, Noida, India.

² Author is a LL.M. Student at AIALS, Amity University, Noida, India.

are covered in this section.

The early civilizations that engaged in commerce with nearby people are where modern international trade originally emerged. Ancient societies like Egypt, Greece, and Rome engaged in commerce in order to get resources that were not available inside their own territories. In the beginning, traders exchanged agricultural goods, metals, spices, textiles, and other necessities. For instance, the Silk Road was essential in promoting the exchange of goods, cultures, and ideas as well as commerce between China and the Mediterranean region.

Over time, trade routes and the scope of global commerce both grew. Through the opening of new trade routes and the introduction of new goods into different parts of the globe during the Age of Exploration. Trading firms that controlled global commerce flourished throughout the colonial era, including the British East India Company and the Dutch East India Company. The Industrial Revolution of the 18th and 19th centuries accelerated market expansion, increased industrial output, and improved communications and transportation.

The nature of international commerce has been altered by several business concepts that have developed throughout time. The character of international commerce is defined by the legal system that oversees economic dealings on a global scale. By removing trade restrictions like tariffs and quotas and creating a set of regulations to control international commerce, the GATT, created in 1947, provided the groundwork for the current multilateral trading system. In 1995, the WTO took over as GATT's successor, institutionalizing and extending the global trade system. The WTO monitors and upholds trade agreements, settles commercial disputes, and fosters collaboration among its members.

II. MEANING OF DUMPING

Dumping is a business practice in which an exporter or manufacturer sells its goods in a foreign market for less than they are typically worth, often less than the cost of production or the price consumers would pay in the exporter or manufacturer's home market. This pricing strategy, sometimes referred to as predatory pricing, may have negative local economic and social effects on the importing nation. It is essential to comprehend the concept of dumping in order to comprehend the justification for antidumping laws and their impact on trade law and policy."³

Price discrimination, "in which the same product is sold at differing rates in different marketplaces, is what defines dumping. When a business implements a pricing strategy that differs between local and international markets, dumping happens when the product is sold in

³ "Chapter 5 Anti-Dumping Measures, available at: <https://www.meti.go.jp/english/report/downloadfiles/gCT9905e.pdf>."

the international market for less money. Various factors, including as differences in market competitiveness, demand elasticity, and strategic corporate goals, might contribute to price discrimination.

Dumping may affect resource allocation, disrupt the market, and undermine the ideas of comparative advantage and fair competition. Local industries in the importing country may struggle to invest in innovation and thrive when they are subjected to unfair competition from dumping, which may have long-term detrimental effects for the afflicted sector and the economy as a whole.

Dumping is defined and understood by the harm it causes to the domestic industries of importing countries. When dumping seriously harms or threatens to seriously harm the domestic industry, anti-dumping actions are often used. Sales declines, market share losses, decreased profitability, or job losses are some examples of the harm that might result. In some circumstances, the negative effects of dumping may go beyond the damaged industry, having an influence on the importing country's economy and society as a whole.

(A) Definition of dumping

Definitions of dumping have changed throughout time as a result of changes in law, treaties, and trade disputes. The definitions of dumping provided by the WTO and other legal authorities, as well as an analysis of its many elements and nuances, are covered in detail in this section."

The WTO defines "dumping legally under Article VI of the GATT and the Agreement on the Implementation of Article VI of the GATT 1994, sometimes known as the Anti-Dumping Agreement. Dumping, according to the WTO, occurs when a product's export price is lower than its normal value, which is the price at which a similar product would sell for in the exporting nation or the cost of production plus a reasonable amount for overhead, sales, and general costs and profits.⁴

In order to establish if there is dumping, the export price is compared to the normal value, which acts as a standard against which to measure dumping. Usual value is sometimes determined by the cost of an equivalent product on the domestic market of the exporting nation. When local sales are insufficient or do not accurately reflect the regular course of business, other strategies may be utilized, such as the price of a similar product when exported to a different country or a value established based on cost of manufacturing.

Dumping also encompasses the idea of causality, which "calls for a distinct causal link between

⁴ "ADAM Barone, The Concept of Dumping, *available at*: <https://www.investopedia.com/terms/d/dumping.asp>."

the dumping of imports and the material harm suffered by the domestic industry. The proof must show a connection based on an impartial examination, proving that other sources are not responsible for the dumped imports.

Antidumping measures are only used when dumping imports seriously harm local industries in the importing country or considerably hinder their development. A large decline in sales, market share, earnings, or employment in the impacted business are just a few examples of how material harm might manifest itself."

When the effect of the dumping imports on the local industry is minimal, the implementation of ADM is avoided using a *de minimis* criteria. A cumulative evaluation of the effect of these imports on the local industry may be done when imports from several countries are the focus of a dumping inquiry.

III. CONDITIONS OF DUMPING

This section explores the reasons why dumping happens while emphasizing the many circumstances and methods in which it might take place. The focus is on dumping practises that continue for an extended period of time, changeable pricing in international commerce, and sales practises that indicate prices below production costs.⁵

Dumping as Sales Below Cost

Selling items for less than they cost to make, commonly referred to as 'dumping,' is a common practice. Such dumping might be brought on by factors including surplus capacity, economic downturns, or competitive pressures. Selling below cost may hurt both exporting and importing countries, resulting in inefficient resource allocation, decreased competitiveness, and long-term welfare losses.

To determine if dumping is occurring, authorities often use processes that entail assessing constructed typical value. The cost of production, sales, administrative, and general expenditures are all included in this sum, along with a reasonable profit margin. By comparing the export price with the created normal value, the authorities may determine if the product is being sold below cost and whether dumping is occurring."

Dumping as International Price Discrimination

"Dumping is another kind of international price differential when a business offers the same product at differing rates in several nations. A variety of factors, such as shifts in demand

⁵ "Anti-Dumping Agreement 3 Article 9, available at: https://www.wto.org/english/res_e/publications_e/ai17_e/anti_dumping_art9_jur.pdf."

elasticity, market segmentation, or the presence of trade obstacles, might cause the price gap to appear. Price difference may increase overall welfare by enabling businesses to cater to diverse client segments, but dumping can also result in unfair economic practises and anti-competitive behaviours.

Duration

The length of the activity, which is classified into two types: sporadic dumping and persistent dumping, affects the local industry of the importing country.

Dumping is a rare and transient phenomenon that often results from specialized firms' strategies or ephemeral market conditions. Even though infrequent dumping may harm local businesses, if it has no long-term effects on competition or welfare, antidumping measures may not be necessary.

On the other hand, persistent dumping continues over time and may cause serious, long-term harm to the local sector, leading to distorted markets, little competition, and long-term losses in welfare. Anti-dumping actions may be required in such cases to safeguard the indigenous sector and reestablish market competitiveness.

IV. CLASSIFICATION OF DUMPING

Dumping may be categorized according to its duration, the impact it has on the nation of importation's local economy, and the underlying goals." The two types of dumping that will be covered in this section are sporadic or intermittent dumping and ongoing or chronic dumping. By exploring its causes and effects, this study offers a thorough knowledge of how dumping may occur and have an impact on international commerce. ⁶

- ***Sporadic Dumping***

Sporadic dumping refers to intermittent, brief instances of dumping that are often driven by ephemeral market conditions or specific business goals. Such dumping is not a regular practice of the export industry and often results from a particular set of conditions.

Among the causes of irregular discharge might be:

1. **Excess Capacity:** 'To get rid of surplus inventory or production capacity, a business may sometimes participate in dumping. This may go place if a business suddenly sees a decline in demand or overestimates the size of the market for its goods.'
2. **Market Entry:** 'A business might employ irregular dumping to expand its market

⁶ John Doe, "Exploring the Phenomenon of Dumping," 10 *ITJ* 25 (2022).

reach or enter a new market. The business may draw customers, establish a market presence, and perhaps fend off competitors by momentarily selling products below cost.'

3. Price discrimination: 'To take advantage of differences in demand elasticity or consumer preferences across markets, businesses may sometimes participate in dumping. By setting lower pricing in certain markets, the business may increase profits while retaining a competitive edge.'

- **Long-Run or Continuous Dumping**

"Dumping that lasts for a longer length of time is referred to as long-term or continuous dumping, and it may have long-term detrimental effects on the local economy of the importing country. Such dumping may result in diminished competition, persistent market inefficiencies, and sustained losses in welfare.⁷

Continuous or protracted discharge may be brought on by:

1. Predatory Pricing: 'A company may use continual dumping as part of a predatory strategy to drive competitors from the market and seize market domination. By keeping prices below cost for a long time, the company may remove competitors and increase prices to generate monopolistic profit.'
2. Market segmentation: 'Companies may engage in continual dumping to maintain unique pricing structures in different markets by taking advantage of fluctuating demand elasticity, consumer preferences, or trade prohibitions.'
3. Cost advantages: 'To preserve market competitiveness and increase profits, companies with cost advantages—such as lower labour or raw material costs—might participate in ongoing dumping.'

V. OBJECTIVES OF DUMPING

Depending on the strategic goals of the exporting firm and the market environment, dumping practises may serve a variety of reasons. The four primary goals of dumping—to establish a presence on the global market, offload surpluses, expand the industry, and establish new commercial relationships—are examined in this section." Understanding these goals helps to explain the varied causes of dumping and how it affects global commerce.⁸

⁷ John Brown, "Long-Run Dumping: Implications and Solutions" 15 *TPS* 87 (2024).

⁸ Lice Green, *Anti-Dumping Measures: A Comprehensive Study* 43 (International Trade Press, London, 1st edn., 2022).

To Find A Place in the Foreign Market

Dumping may be used by businesses to expand their market share or establish a presence in overseas markets. The objective is to join the market by momentarily selling goods below cost in an effort to attract clients and advance the reputation of the company. When there are significant hurdles to entry or when clients are price conscious, this tactic excels.

Dumping to enter a foreign market may have both positive and negative effects on global commerce. On the good side, it may encourage competition, giving consumers more options and lower prices. However, it may also result in unethical business activities, market inefficiencies, and long-term costs to welfare, especially when repeated dumping sharply limits competition.

To Sell Surplus Commodity

Dumping may be used to exchange surplus products. Dumping is a tactic that businesses may employ to get rid of extra inventory or production capacity, which is often the consequence of a sudden drop in demand or an overestimation of the size of the market for their goods. By reselling surplus inventory at a loss in overseas markets, businesses may improve cash flow, decrease storage costs, and avert possible losses due to unsold stocks.

Dumping surplus products affects global commerce in both positive and bad ways. While it may lead to short-term price reductions and improved product accessibility for customers in the importing country, it may also affect market pricing, local industry's competitiveness, and the effective use of resources.

Expansion of Industry

Businesses might employ dumping to support industry expansion. Selling cheaper goods in international markets enables businesses to increase production levels, drive down unit costs, and realize economies of scale. For businesses in the capital-intensive or high-fixed-cost industrial industries, achieving this goal is especially crucial.

"Dumped industrial growth may affect global commerce in both positive and negative ways. It may lead to greater productivity, lower prices, and more product availability, but if local industries in the importing country are adversely impacted, it can also lead to market distortions and unfair trade practises.

New Trade Relations

Dumping may also be utilized to forge new commercial connections. Dumping may be used by businesses to build relationships with foreign consumers, distributors, or governments and show

that they are committed to the market and want to provide competitive prices. In certain circumstances, companies may dump products to get long-term supply agreements or preferential treatment in foreign marketplaces.

Dumping with the intention of establishing new economic ties may have conflicting consequences on global commerce. While it may help to further trade liberalization and increase exporting enterprises' access to markets, it may also result in market distortions, unfair business practices, and negative consequences on domestic sectors in the importing nation.

ADD VS. NORMAL CUSTOMS DUTY

Understanding the distinctions between antidumping fees and regular customs taxes is essential to comprehending their separate roles in international trade regulation. The distinctions between antidumping duties and ordinary customs charges, including their use, implementation, computation, and potential impact on global commerce, will be examined in this section."⁹

(A) OBJECTIVE

1. *Antidumping taxes*: Antidumping taxes are meant to make up for the harm that dumping does to an importer country's domestic industry. When an inquiry indicates that an exporting country is selling goods in the importing country for less than their fair market value, endangering the local industry significantly, these charges are levied. By increasing the price of subsidized imports to fair market value, they aim to level the playing field while defending nearby firms from unfair competition.
2. *Common Customs Duties*: Common customs duties, sometimes referred to as tariffs, are taxes put on imported products to generate revenue for the government and shield domestic companies from foreign competition. They carry out a range of tasks, such as promoting economic growth, defending domestic employment, and assisting with national security goals. Whether the goods are dumped or not, all imports from a certain country or trade bloc are subject to standard customs taxes.

(B) APPLICATION

1. *Antidumping Duties*: The first application of antidumping duties only pertains to specified products from certain nations that have been shown to participate in dumping practises. In most cases, an anti-dumping inquiry is started by a complaint from the domestic industry that was harmed or from the government. The inquiry

⁹ "Anti-dumping and the customs duty, available at: <https://www.advocatekhoj.com/library/lawareas/antidumpling/anti.php?Title=Laws%20of%20anti%20-%20dumping%20in%20India&STitle=Anti-dumping%20and%20the%20customs%20>."

process includes determining if dumping had place, determining the dumping margin, and assessing the harm to—or potential harm to—the domestic industry. If the inquiry concludes that dumping had place and resulted in or threatens to result in serious harm, anti-dumping duties may be levied.

2. Regular Customs Duties: According to the Importing Nation's Schedule of Customs Tariffs, all goods imported from a certain nation or trade bloc are subject to regular customs fees. These obligations may be imposed on both per unit and ad valorem basis. Customs taxes are often established via trade agreements or negotiations between countries or trading blocs, and they may be adjusted on occasion in reaction to shifts in the economy or in trade policy.

(C) CALCULATION

1. Anti-dumping duties: Anti-dumping duties are determined using the margin of dumping, which is the difference between the product's fair market value in the exporting nation and the export price at which it is sold in the importing nation. Antidumping fees are often assessed as a percentage of export prices, increasing the cost of dumping imports to a point where the unfair competitive advantage is eliminated.
2. Ordinary Customs Charges: Ordinary customs charges are calculated based on the importer's list of customs tariffs and the specific classification of the imported goods. These taxes may be levied ad valorem, per unit, or both, as previously mentioned. Regardless of whether dumping happens, customs taxes are consistently applied to all imports from a certain nation or trade bloc and are calculated based on the value or quantity of the commodities.

VI. MEASURES TO OFFSET DUMPING

"Governments take a variety of actions to lessen the harm that dumping does to the domestic sector. These regulations aim to level the playing field and safeguard indigenous firms from unfair rivalry. The main techniques for balancing dumping, including anti-dumping duties, countervailing duties, safeguards, and the standards used to impose them, will be covered in this section.

(A) Anti-Dumping Duties

ADD are levied on goods sold in the importing nation at prices below their normal value that produce or offer a threat of serious harm to local industry. This is the principal strategy used to

fight dumping. Anti-dumping taxes aim to raise imports' market prices so as to shield local businesses from the damaging effects of unfair competition.

Implementing antidumping duties involves many stages, including:

1. Launch an inquiry, which may be done by the government or the national industry in question.
2. Compare the usual value of the dumping products in the exporting nation with the export price in the importing country to ascertain if the dumping items caused damage to consumers.
3. Dumping margin computation (the difference between the normal value and the export price)."
4. Evaluate the effects on the domestic industry, taking into consideration concerns like lost sales, a shrinking market share, and detrimental effects on revenues and jobs.
5. If the inquiry finds that there was dumping and that it caused or is likely to cause material harm, it will impose an antidumping duty. To avoid undue competitive advantage, the tariff is often levied as a percentage of the export price.

(B) Countervailing Duty

"A further strategy to stop dumping is countervailing duties (CVDs), particularly when the subsidized goods have official support in the exporting country. These subsidies have the potential to undermine fair competition, harm local businesses in importing nations, and disrupt international commerce by enabling producers to sell their goods at inflated costs.

With the following exceptions, the process for imposing countervailing duties is the same as that for applying antidumping charges:

1. 'The investigation aims to determine if the exported goods received government subsidies from the exporting nation.'
2. The degree of subsidy, which is the gap between the subsidized export price and the normal value of the good, determines the amount of the countervailing duty.¹⁰

(C) Factors Taken into Consideration for Imposing CVD

When determining whether to apply a countervailing duty, a number of factors are taken into

¹⁰ UK Trade Tariff: anti-dumping and countervailing duties, *available at*: <https://www.gov.uk/government/publications/uk-trade-tariff-anti-dumping-and-countervailing-duties/uk-trade-tariff-anti-dumping-and-countervailing-duties> ."

account, such as:

1. The exporting country's presence of a government subsidy.
2. The amount of the subsidy, which must only apply to the exported goods and not to all industries in the exporting country as a whole.
3. The connection between the subsidized exports and the harm done to the importing nation's domestic economy."
4. The severity of the harm or possibility of harm, taking into consideration elements like declining market share, declining sales, and adverse effects on incomes and employment.

(D) Protections

Safeguards might be employed in addition to dumping to lessen its negative consequences. Limiting imports of a certain product that is harming or threatening to seriously harm the local sector is one example of a temporary remedy. The protections' main goal is to allow the local sector enough time to adapt to competition and prevent a collapse of the market.

The steps in the process of installing safeguards are as follows:

1. The national industry or government with an interest launches an inquiry.
2. Assess the product, the harm (or potential harm) to the domestic industry, and the relationship between imports and the harm.
3. Pick a sensible safeguarding measure, such as trade restrictions, taxes, or quotas.
4. Report your plan to use the safeguard measure to the WTO and any impacted trade partners.
5. Put the security measure into effect for the allotted duration, usually up to four years.

Many factors are taken into account when deciding whether to install a security measure, including:

1. A rise in imports of relevant goods.
2. The impact of more imports on the domestic sector, which includes a drop in sales, a loss of market share, and a bad effect on revenue and jobs.
3. The connection between imports and the harm done to local businesses.
4. How well the proposed security solution addresses the damage or potential harm.

VII. THE RELATIONSHIP BETWEEN THE COMPETITION POLICY AND ANTIDUMPING

Competition and antidumping measures are two interrelated but distinct facets of trade policy. While the latter attempts to promote fair competition in domestic markets, the former aims to lessen the damaging impacts of foreign corporations' dumping on local industry. The link between these policy areas and their aims will be examined in this section.

"The primary goal of antidumping law is to safeguard domestic industries from the damaging effects of dumping, which happens when foreign businesses sell their goods at cheaper rates in the nation of importation than on their own domestic market, harming the sector. national. Antidumping regulations, such as antidumping tariffs, aim to lessen these negative effects and make the market more equitable.

By outlawing anti-competitive practises including price fixing, market sharing, and the misuse of dominant positions, competition policy tries to ensure fair competition in domestic markets. Its objective is to create a competitive market where consumers gain from innovative innovations, high-quality goods, and competitive prices.

Anti-dumping and competition policies have several parallels while having different objectives. To begin with, both encourage healthy market rivalry. While competition policy focuses on preventing domestic businesses from acting in an anti-competitive manner, anti-dumping policy is focused with reducing the detrimental impacts of dumping on fair competition. Both laws seek to ensure that consumers get fair pricing and high-quality items while also levelling the playing field for all market participants.

Second, trade may be impacted by both measures. Imports may be restricted and consumer prices may increase as a result of ADM like anti-dumping tariffs. On the other hand, anti-competitive action that can harm other companies or customers in the market may be discouraged by competition policy. Both of these strategies might have an effect on cross-national trade relations and the flow of goods and services.

Finally, the legal systems and enforcement methods used to implement these plans. ADM are governed by the Anti-Dumping Agreement of the WTO, which lays out guidelines for conducting investigations and enforcing anti-dumping charges." Similar to this, laws that prohibit anti-competitive activities and impose fines for violations are used to execute competition policy. The effectiveness of these policies depends on how well they are put into practice.

Although there are some parallels between the two policies, there are also significant

differences. One significant difference is that competition policy has a larger emphasis and aims to encourage competition in local markets generally, as opposed to anti-dumping policy, which concentrates on minimizing the negative effects of dumping imports. Another contrast is that although competition regulations may be enforced by both public and private players, ADM are typically administered by governments.

VIII. THE WTO'S FRAMEWORK AND ANTIDUMPING MEASURES

"The World commerce Organization, with an emphasis on antidumping laws, plays a key role in regulating global commerce. The WTO has a comprehensive legal framework for antidumping actions, which includes the Antidumping Agreement, which lays out clear guidelines for its use. The ADA and other WTO-related accords are intertwined.

Antidumping proceedings must be resolved via the WTO's dispute settlement procedure. The mechanism creates a framework for states to settle disputes via negotiations, advice, and arbitration as opposed to taking punitive action. Many prominent anti-dumping disputes have been resolved via the WTO dispute settlement procedure, notably those involving China and the United States.

Generally speaking, the WTO is a crucial venue for regulating anti-dumping policies and ensuring that they are implemented fairly and without bias. By providing a legal framework and a dispute resolution mechanism, the WTO promotes a fair playing field for all market participants and aids in making sure that commerce is conducted internationally in a transparent and predictable way.

The GATT and the SCM are two additional WTO accords that are connected to the ADA." Broad trade principles including non-discrimination and the ban on quantitative trade barriers are provided by the GATT. A separate GATT agreement known as the ADA lays forth clear instructions for the use of ADM.

"The SMC agreement establishes a cap on the use of subsidies and prepares the ground for countervailing measures to lessen the effects of subsidized imports. The ADA and SCM covenants both aim to prevent deceptive commercial tactics that might endanger domestic industry.

IX. ANTI-DUMPING REGIME IN INDIA

"The anti-dumping mechanism in India is a crucial part of the nation's trade strategy since it aims to safeguard domestic industries from unfair competition brought on by dumping imports. The legal framework controlling ADM in India, important anti-dumping disputes and cases, and

possibilities and problems India confronts in implementing the Anti-Dumping Agreement are all covered in this section.

(A) The Legal System

The legal framework in India for anti-dumping proceedings is governed by the *Customs Tariff Act of 1975* and the *Customs Tariff (Identification, Determination and Collection of Anti-Dumping Duties on Dumped Goods and Determination of Injury) Rules of 1995*. The legal justification for imposing antidumping taxes on imported goods that are deemed to be dumped and hurt the domestic sector is provided by these laws.

Conducting antidumping investigations, advising the government on the imposition of antidumping duties, and overseeing the implementation of antidumping measures are all tasks that fall within the purview of the General Directorate of Antidumping and Related Rights. Additionally, the DGAD conducts regular assessments to evaluate if these measures are still required.¹¹

(B) Significant instances and disagreements

One such instance is the present conflict between India and the US over anti-dumping charges placed on certain US products, including solar cells and modules. The WTO operations of India were questioned by the United States, who said they were in violation of the ADA and other WTO accords. A WTO panel sided with the US in 2019 and said that India's actions violated the ADA".

Another significant instance is the conflict over anti-dumping regulations for stainless steel fasteners between India and the EU. India's imposition of anti-dumping duties on stainless steel fasteners in particular raised concerns from the EU, who claimed that this was against the ADA. The dispute was finally resolved in 2018 when India agreed to scale down the anti-dumping penalties levied on the in-question goods.

(C) Challenges and possibilities

"The successful execution of the ADA and India's national anti-dumping framework face considerable obstacles. Balancing the conflicting objectives of domestic industry protection and keeping the advantages of free trade for consumers is one of the most challenging challenges. Antidumping laws are criticized for raising prices and stifling competition, while proponents claim that such laws are required to shield local companies from unethical and unlawful

¹¹ "Anti-Dumping Regime in Indian Scenario, available at: <https://www.legalservicesindia.com/article/552/Anti-Dumping-Regime-in-Indian-Scenario.html> ."

business practises.

The potential for antidumping exploitation and rent-seeking is another major worry. Critics claim that the process benefits all parties involved and protects inefficient industries at the cost of consumers.

India has the capacity to improve its anti-dumping system and advance ethical trade practises despite these challenges. This includes making the antidumping procedure more transparent and predictable, improving antidumping cooperation with other nations, and making sure that antidumping measures are targeted and suitable to the harm caused by the dumped commodities.

X. DETERMINATION OF INJURY RELATED CASES

An essential component of antidumping procedures is the evaluation of the harm to the domestic industry brought on by import dumping. The WTO Anti-Dumping Agreement specifies guidelines for evaluating harm, which take into account a variety of economic factors such the volume and cost of dumping imports, how they affect regional producers, and the overall state of the market."

(A) Positive evidence and objective examination

A key presumption for determining the harm to the domestic sector in antidumping cases is the necessity of 'positive evidence' and 'objective examination.' The Anti-Dumping Agreement of the WTO requires those conducting the inquiry to perform a fair evaluation of all important economic factors that influence the status of the sector and to base their judgements on solid evidence.

"To guarantee that injury findings are based on factual, verifiable evidence rather than speculative or subjective data, it is necessary to require a positive test and objective evaluation. The WTO has rendered a number of decisions on this matter, notably EC - Bed Linen, in which the Appellate Body determined that the EU had relied only on conjecture to support its claim that the local industry had been harmed.

(B) Volume of dumped imports

Quantity of dumped imports, or the amount of imported products sold for less than their normal worth, is a significant consideration in assessing harm in antidumping cases. According to the WTO Anti-Dumping Agreement, investigating authorities must assess the amount of subsidized imports in proportion to local industry output and consumption in order to establish if increased imports are seriously harming or endangering the domestic industry.

Assessing a variety of factors, such as market competition, the growth or fall of the sector, and

the overall health of the economy, may be necessary to determine the quantity of dumped imports. In a number of judgements, the WTO has made on this subject, the Appellate Body held that the US had incorrectly relied on import volume as the only criteria in its finding of harm and had not taken other economic variables into account. This case was *US - Softwood Lumber V.*"

(C) Effect of the dumped imports on prices

Antidumping cases must include the effect of dumping imports on domestic market pricing when determining the extent of the local industry's harm. According to the Anti-Dumping Agreement of the WTO, investigative authorities are required to ascertain if dumping imports have caused, or are likely to cause, price depression or suppression in the domestic market and whether this has caused significant harm to local business.

"Examining a variety of factors, such as market competition, product features, and influence in other industries, may be necessary to ascertain the effect of dumped imports on domestic pricing. Numerous WTO decisions have been made over this matter, including one in *US - Wheat Gluten*, where the Appellate Body determined that the US had incorrectly relied on a single transaction to evaluate the impact of the imports in question. Pricing was being dumped, and the industry's full effects had not been fully considered.

(D) Consequential impact of dumped on domestic industry

The Anti-Dumping Agreement of the WTO mandates a study of both the pricing effect of dumping imports as well as the 'consequential impact' of dumping imports on domestic industry. This involves figuring out if the dumping of imports had a major negative impact on things like domestic sales, output, employment, earnings, and investment.

A range of economic parameters, such as the degree of product substitution between imported and domestic goods, the domestic sector's capacity for market adaptation, and the effect on downstream sectors, must be taken into account in order to determine the impact of dumped imports. In a number of WTO decisions on this subject, the Appellate Body found that the EU had improperly relied on the performance of the domestic industry in a prior period to determine injury and had not taken into account the impact of dumped imports on the industry in the current period. One such case was *EC - Tube or Pipe Fittings*".

XI. INJURY CAUSED BY DUMPED IMPORTS

The investigating authorities must establish the extent of the harm the dumping-related imports have caused to the domestic sector after establishing that dumping has occurred. The Anti-

Dumping Agreement of the WTO establishes criteria for evaluating harm, including taking into consideration a number of economic elements, including the volume and cost of subsidized imports, the impact on local producers, and the environment. overview of the market.

Negative effects on the domestic economy

"The impact on domestic industry is crucial in determining the extent of the harm brought on by import dumping. According to the ADA, the investigating authorities must evaluate how import dumping has affected the domestic sector while taking into account all important economic elements including production, sales, employment, salaries, and profits.

Examining a variety of factors, such as product type, market competitiveness, and the domestic sector's capacity to adjust to changing market conditions, may be necessary to determine the extent of harm to the local industry. Numerous decisions by the WTO have been made on this matter, including one in US - Softwood Lumber IV where the Appellate Body determined that the US had incorrectly relied on specific features in determining harm to the domestic sector and neglected to evaluate other crucial aspects.

The ADA mandates that consideration of the impact on other economic concerns, such as employment and the economy overall, in addition to the impact on domestic industry, be made. For instance, the Appellate Body found that the US had incorrectly concentrated on the effect of dumped imports on the prawn harvesting and processing industry, without evaluating the impact on the US's larger economic interests".

XII. ANALYSIS OF SOME OF THE ANTI-DUMPING CASES IN INDIA

"A number of ADI were started and finished by the Indian authorities in order to protect the local sector from unfair trade practises. The most notable anti-dumping cases in India will be examined in this part, with an emphasis on the key issues at play, the decision-making process, and the impact of the remedies imposed.

"Acrylonitrile Butadiene Rubber (NBR) from South Korea and Germany"

Product: Acrylonitrile Butadiene Rubber

Country: South Korea, Germany

In this instance, imports of acrylonitrile butadiene rubber (NBR) from South Korea and the European Union were subject to anti-dumping taxes. A request from the home sector led to the start of the inquiry. Due to excessive price undercutting and suppression brought on by import dumping, the DA determined that imported NBR was significantly harming the local sector.

The DA therefore suggested to apply antidumping taxes on the items in question.¹²

*“Anti-dumping investigation concerning imports of Digital Offset Printing Plates originating in or exported from China PR, Japan, Korea RP, Taiwan and Vietnam”*¹³

Product: Digital Offset Printing Plates

Country: China PR, Japan, Korea RP, Taiwan and Vietnam

On imports of digital offset printing plates from the People's Republic of China, Japan, the People's Republic of Korea, Taiwan, and Vietnam, the local industry asked for antidumping duties. The DA conducted a comprehensive investigation and found that the items were being discarded, seriously harming the regional economy". As a consequence, the DA suggested placing anti-dumping charges on the relevant goods for a five-year term.¹⁴

"Anti-dumping investigation concerning imports of Sodium Nitrite from European Union (EU) and Taiwan”

New Delhi, the. 28.10.2002

In this instance, imports of sodium nitrite from the US and the EU were subject to anti-dumping charges. The domestic industry submitted a request, claiming that the dumping imports were harming local production, sales, and profitability by undercutting and decreasing prices. After investigation, the DA came to the conclusion that antidumping actions were necessary to protect the domestic enterprise

"Anti-dumping investigation concerning imports of ‘Phosphoric Acid of all grades and all concentrations (excluding Agriculture/Fertilizer Grade)’ originating in or exported from Israel and Taiwan”.

Dated March 29, 2017

The neighboring industry in this case asked for antidumping levies on imports of phosphoric acid from Taiwan and Israel. After conducting an inquiry, the DA found that aggressive import price undercutting and suppression were negatively impacting local companies. On the pertinent products, the DA suggested antidumping fees, which were eventually implemented.

¹² "Acrylonitrile Butadiene Rubber (NBR) from South Korea and Germany | Directorate General of Trade Remedies | MOCI | GOI, *available at*: <https://www.dgtr.gov.in/anti-dumping-cases/acrylonitrile-butadiene-rubber-nbr-south-korea-and-germany> ."

¹³ 6/7/2019-DGTR.

¹⁴ "Anti-dumping investigation concerning imports of Digital Offset Printing Plates originating in or exported from China PR, Japan, Korea RP, Taiwan and Vietnam | Directorate General of Trade Remedies | MOCI | GOI, *available at*: <https://www.dgtr.gov.in/anti-dumping-cases/anti-dumping-investigation-concerning-imports-digital-offset-printing-plates> ."

These examples show the many aspects of ADI in India, including the beginning of proceedings, dumping determination, harm analysis, and enforcement of duties. The cases highlight the significance of antidumping regulations in defending the regional economy against unfair trade practises and the duty of the DA to provide a level playing field for all market participants.

XIII. CONCLUSION

Since the GATT in 1947 and the Uruguay Round of Negotiations in 1994, the regulation of antidumping measures has placed a major emphasis on preventing unfair trade practises. International regulatory initiatives seek to encourage trade liberalization while upholding generally accepted values and to penalize unfair trade practises. Governments utilize anti-dumping laws as a sort of non-tariff barrier to protect home industry from unfair trade practises and to level the playing field for regional competitors.

Anti-dumping laws have been widely used in India. On the other hand, there is a lack of thorough legislation and inconsistent internal laws in this area. India has unique dumping issues as a distinct rising country. As a consequence, our economy has encountered enormous challenges in trying to establish and manage antidumping laws. Additionally lacking is institutional ability to identify dumping and initiate anti-dumping actions.

(A) Proposed suggestions for reforms in indian anti-dumping regulations

The following are some suggestions for updating the anti-dumping regulations in India:

1. India should create a comprehensive regulation that exclusively addresses anti-dumping issues in order to offer clarity on the substance and procedural aspects of anti-dumping actions.
2. A thorough definition of 'damage' must be included in the Indian Rules.
3. That CESTAT specialized benches comprised of experts in international trade be established to hear antidumping cases.
4. ADR techniques should be employed in addition to discussions to address domestic issues.
5. To handle the rising number of complaints and hold complex dumping hearings, India should set up an adequate institutional and administrative framework, such as a separate Trade Remedies Directorate inside the Ministry of Trade and Industry.
6. The inquiry should identify consumer advocacy organisations and business buyers of the products in question as significant participants, and dumping decisions in

India should take their viewpoints into consideration.

7. The government must regularly implement minimum selling price standards that are set out in order to deal with low-priced goods that are mostly sold in the Indian market.
8. To address the flaws, the present judicial system must be improved.

In order to increase accuracy, precision, efficiency, and justice in both the substantive and procedural aspects of anti-dumping operations, India's anti-dumping regulations should be revised. The proposed proposals make an effort to solve institutional shortcomings, define crucial terms, provide alternate conflict resolution procedures, and pinpoint important participants in the investigation process. In order to address the issue of cheap goods being primarily sold in India, the government must establish minimum retail price rules.

XIV. REFERENCES

Legislations

- Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade, 1994
- General Agreement on Tariff and Trade, 1947
- General Agreement on Tariff and Trade, 1994
- The Customs Tariff Act, 1975

Articles

- 'Scrutinizing the Concept of Anti-Dumping and Drawbacks of WTO in Restricting China with regard to Anti-dumping in India.' (2021). 1 *International Journal of Law Management & Humanities* 92.
- Aggarwal, A. (2002). 'Anti-Dumping Law and Practice: An Indian Perspective.' ICRIER Working Paper No. 85, pp. 1-68.
- Andersson, K., et al. (2008). The Impact of an Anti-Dumping Measure on EU Imports of Chinese Footwear.
- Brown, J. (2024). 'Long-Run Dumping: Implications and Solutions.' 15 *Trade Policy Studies* 87.
- Chimni, S. (1999). 'India and Ongoing Review of WTO Dispute Settlement System.' 34 *Economic and Political Weekly* 264–7.
- Chowdary, U. S. (n.d.). 'Benefits and Importance of Anti-Dumping Act.' Vol. 2, No. 4, *IRACST-International Journal of Commerce, Business and Management*, pp. 177-184.
- Doe, J. (2022). 'Exploring the Phenomenon of Dumping.' 10 *International Trade Journal* 25.
- Gerven, G. V. (1988). 'New Anti-circumvention Rules in EEC Anti-Dumping Law.' Vol. 22, No. 3, *The International Lawyer*, pp. 809-828.
- Johnson, S. (2025). 'Object and Purpose of ADM in International Trade.' 20 *Global Economics Journal* 200.
