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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANTI DUMPING DUTIES INDIA- CHINA TEADE POLICIES.

AUTHORED BY - MS. MAARIA LAKDAWALA (A017)

YEAR: BBA-LLB 4TH YEAR, SEMESTER-VIII

THE SVKM'S NMIMS, NAVI MUMBAI

KIRIT P. MEHTA SCHOOL OF LAW FOR BBA LLB [HONS.]

DECLARATION

I, MAARIA LAKDAWALA, hereby declare that this submitted to the Kirit P. Mehta, School of Law represents my original work and has not been previously submitted for academic or publishing purposes. Furthermore, this paper represents my own opinions and conclusions. The materials/sources utilized in this paper are given their due credit.

Date: 24.02.2023

ABSTRACT

This paper aims to understand the anti-dumping policies in relation to India and China trade. It understands on how anti-dumping is a trade policy measure used by countries to protect domestic industries from imports that are sold at a price lower than their fair value or below the cost of production in the exporting country. The paper looks into legislative and procedural front and dives into how anti-dumping duties can be manipulated and used as protectionist policies for the nation and the adaptation of unfair practices for trade policies. The paper briefly looks into India's trade treaties on a global front and its relationship with China. The paper looks into China's policies with investigation report and prevalent policies on goods imported from China. The paper also examines various other research papers to understand the dynamic of India's policies with China, the retaliatory nature of China's policies. Additionally this paper examines case laws to understand the topic from a judicial point of view in Indian Perspectives so that a better understanding of the nature of the topic is taken holistically.

RESEARCH OBJECTIVE

- To understand the concept of Anti-Dumping Duties in Indian Perspective.
- To Understand the anti-dumping policies between India-China.
- To understand the judicial perspective of anti-dumping policies from Indian Perspective.

METHODOLOGY

The doctrinal research methodology is used to complete this research paper which includes gathering facts, identifying issues, analysing the issues in order to search for the law, doing background reading and then locating primary material, synthesising all of the issues in context, and reaching a tentative conclusion. The focus of this research is to analyse the controversy around the issue. The content of this work is largely derived from secondary sources. Information on this topic is essentially free of charge, making it an excellent source for a research paper. Most of the information necessary for this work was found on the internet. Secondary sources include newspapers, newspaper stories, books, transcripts of interviews, research papers, on-line publications and blog entries. Research articles on internet journals was an important source of information for this paper. Such information is valuable since it gives an insight of what previous researchers were looking at.

INTRODUCTION

Anti-dumping is a trade policy measure used by countries to protect domestic industries from imports that are sold at a price lower than their fair value or below the cost of production in the exporting country. Dumping is considered as an unfair trade practice, and anti-dumping measures are imposed to prevent its adverse effects on domestic industries. In India, anti-dumping policies and treaties have been implemented to safeguard domestic industries and maintain fair competition in the international market. Anti-Dumping policies enhance the scope of trade for developing countries. Many developing countries have nascent or vulnerable industries that are not yet able to compete with more established players in the global economy. Anti-dumping measures can help to protect these industries by preventing the import of goods that are being sold at prices below their fair market value, which can harm domestic producers. The use of anti-dumping measures by developing countries has increased significantly over the past few decades. According to the World Trade Organization (WTO), the number of anti-dumping investigations initiated by developing countries has grown rapidly, from just 4% of all investigations in 1986-1990 to 42%

in 2011-2015. India has a well-defined anti-dumping policy framework administered by the Directorate General of Trade Remedies (DGTR) under the Ministry of Commerce and Industry. The DGTR initiates investigations based on applications filed by domestic industries alleging dumping and injury caused by imports. The DGTR investigates and recommends anti-dumping measures, and the Ministry of Finance decides whether to impose anti-dumping duties on imports. India is a signatory to the WTO Agreement on Anti-Dumping and has also signed several bilateral and regional trade agreements that include anti-dumping provisions. India is a member of the World Trade Organization (WTO) and has signed several bilateral and regional trade agreements that include anti-dumping provisions. Some of the notable agreements and treaties related to anti-dumping are:

1. WTO Agreement on Anti-Dumping: India is a signatory to the WTO Agreement on Anti-Dumping, which provides a framework for the imposition of anti-dumping measures.
2. India-ASEAN Free Trade Agreement (FTA): The India-ASEAN FTA includes anti-dumping provisions, which provide for the imposition of anti-dumping duties on imports that are sold at prices below their normal value.
3. India-Korea Comprehensive Economic Partnership Agreement (CEPA): The India-Korea CEPA includes provisions for the imposition of anti-dumping duties to protect domestic industries from dumped imports.
4. India-Japan Comprehensive Economic Partnership Agreement (CEPA): The India-Japan CEPA includes provisions for the imposition of anti-dumping duties to protect domestic industries from dumped imports.

LEGISLATIVE AND PROCEDURAL FRONT OF ANTI-DUMPING POLICIES.

The Indian government is authorized to charge AD (anti-dumping policies) on imports under Sections 9A and 9B of the Indian Customs Tariff Act, 1975 [CTA], which were added through an amendment in 1982, if the imports cause or threaten to cause serious harm to the Indian local industry. On September 2, 1985, this amendment became effective. This revision brought Indian law into compliance with the GATT, 1947, which was in effect at the time. 1985 saw the publication of the Customs Tariff (Identification, Assessment and Collection of Duty or Extra Duty on Dumped Goods and Determination of Damage) Regulations.

India revised its law to bring the anti-dumping regime in accordance with its commitments under the AD Agreement following the founding of the WTO and the entry into force of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [AD Agreement]. The Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Goods and for Determination of Damage) Regulations, 1995 [AD Rules], which took effect on January 1st, 1995, also repealed the preceding regulations. In order to allow an ADD return in specific circumstances, a new provision of the CTA was added in 2000¹. Refund of Anti-Dumping (Paid in Excess of Actual Margin of Dumping) Regulations, 2012, published by the Central Government in 2012, lays out the administrative method for refunds when ADD has been paid in excess of the real margin of dumping. Also, these clauses have occasionally undergone some modest revisions to address any issues with how to apply them in practise.

Because of India's high import tariffs, which otherwise made sure that dumping or subsidization would not seriously harm any Indian business, the AD law was only seen as a paper fix up until 1993. However, since 1995, when import duties were reduced, the Indian government has frequently applied AD law.

The Supreme Court of India had the opportunity to review the goal and objectives of the anti-dumping legislation in India and stated in the land mark case of ***Reliance Industries Ltd. v. Designated Authority & Ors***¹, verbatim “*The anti-dumping law is, 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’s 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* ”.

There is a lot of controversy on the issue of major proportion and the amount of domestic product comprises of it, which was elaborated in the case of ***Lubrizol (India) Pvt. Ltd. v. Designated Authority***,² the courts the words "major proportion of the total production" in the definition of domestic industry can also be interpreted to mean a significant proportion or important part of the total production, which need not necessarily be more than 50%, according to the Customs Excise Service Tax Appellate Tribunal [CESTAT].

¹ Reliance Industries Ltd. v. Designated Authority & Ors (2006) 10 SCC 368.

² Lubrizol (India) Pvt. Ltd. v. Designated Authority, 2005 (187) E.L.T. 402 (Tri. - Del.).

ANALYSIS OF INDIA AND CHINA'S ANTI- DUMPING

POLICES AND PREVELANT SCENARIO.

India and China had a massive trade gap of US\$63 billion (2017– 2018). India has been the target of Chinese product dumping. Indian producers have suffered greatly as a result of this dumping because they were unable to compete with China's less expensive goods. Under- invoicing, exorbitant export subsidies, special favours for state-owned businesses, opaque trading practises, round-tripping from Hong Kong and other nations, and misappropriation of intellectual property rights are only a few examples of China's unfair trade practises . Such unethical trade tactics harm India's domestic industry by giving Chinese exporters an unfair advantage.

China's anti-dumping policy is administered by the Ministry of Commerce (MOFCOM) and the China International Trade Commission (CITC). MOFCOM is responsible for conducting investigations and imposing anti-dumping measures, while CITC is responsible for providing recommendations. China is also a signatory to the WTO Agreement on Anti-Dumping and has signed several bilateral and regional trade agreements that include anti-dumping provisions. China's anti-dumping policies have been criticized for their lack of transparency and for not following WTO rules. The investigation process is often opaque, and there are concerns about the independence of the CITC, which provides recommendations to MOFCOM. In addition, China has been accused of using its anti-dumping policy as a tool for protectionism, rather than to protect its domestic industries from the adverse effects of dumped imports. ADDs (Anti- Dumping Duties) should be seen as a remedial measure against the unfair trade practices rather than a protective measure for domestic industry.

China is largely recognised as a Non Market Economy- The WTO defines non-market economies as those in which state-controlled monopolies trump market principles of competition. Non-market economies are those with high state control, according to Article VI of the WTO GATT.

Additionally, it describes non-market economies as nations "where all domestic prices are controlled by the state" and "nations which have entire or nearly complete monopoly of its merchant." The WTO made it plain in an interim decision issued in April 2019 that China does not meet the criteria for the designation of market economy. European Union, who was utilising a different method to determine the export price, was the case's defendant.

When China joined the WTO in 2001, it also agreed to permit other WTO members to continue utilising alternate methodologies (third country or surrogate country) to determine the cost and price of goods subject to Anti-Dumping (AD) measures. In other words, one might utilise the export price of a third nation mentioning the non-market economy when calculating export price to determine the dumping margin in the case of a non-market economy³.

According to the Investigation Report collated by the Directorate General of Trade Remedies (DGTR), for an anti-dumping on price effect and product market. the total demand increased from 8,289 units in 2009-2010 to 23,539 units in the investigation period. The import from subject countries, namely China and Taiwan, also increased significantly, from 6,961 units to 17,890 units, while the import from other countries increased to 667 units. Meanwhile, the sale of the domestic industry rose from 1,251 units to 7,437 units.

The market share of import from subject countries was 83.98%, while the import from other countries and sale of the domestic industry accounted for 8.04% and 7.98%, respectively. The investigation period saw the highest market share for import from subject countries at 85.16%. In terms of the share of imports in relation to production, the import from subject countries increased from 6,961 units to 7,437 units. The production of the domestic industry also increased from 1,068 units to 2,020 units. The dumped imports in relation to the production of the domestic industry were 652 units and 368 units in the two periods, respectively.

The capacity utilization and production figures for the domestic industry. The capacity utilization was 26.31% and 28.21% in the two periods, while the production was 4,058 units and 7,183 units. The production of the domestic industry in relation to demand was 13% and 20% in the two periods. The data on price suppression or depression shows a decrease from 100 in 2009-2010 to 72 in the POI, indicating a significant reduction in prices over the period of investigation.

The cost of sales index and selling price index also decreased from 358.4 and 317.2 in 2009-2010 to 255.17 and 231.24 in the POI, respectively. This indicates a significant decrease in costs and selling prices of the product.

The landed price per unit is not explicitly mentioned, but it is presented as a ratio of the selling price

³ (Morrison, 2019; Bryce, 2019)

to the index. The ratio decreased from 100 in 2009-2010 to 86, 74, and 63 in the subsequent years of investigation, respectively.

Overall, the report provides a comprehensive overview of the volume effects of dumping in terms of demand, import, sale, production, and capacity utilization for a specific period and suggests that the dumped imports had a significant price effect, resulting in a suppression or depression of prices, decreased costs and selling prices, and a reduction in the ratio of selling price to the index over the period of investigation.

In order to defend its own industry, India has since 2001 imposed anti-dumping charges (ADDs) on 155 different goods against China. Several domestic industries have collapsed and been forced to close as a result of the flood of Chinese goods into Indian marketplaces. Under these conditions, ADDs had to be implemented in order to save the domestic market.

India has launched an anti-dumping probe into import of a certain kind of Anti- Dumping Policy of "Vitamin A Palmitate". On the basis of a complaint from Piramal, India has opened an anti-dumping investigation into the import of a specific type of vitamin used for animal consumption from three nations. The Directorate General of Trade Remedies (DGTR), an investigative division of the Ministry of Commerce, is looking into claims of dumping of "Vitamin A Palmitate"⁴ coming from or exported from China, the European Union, and Switzerland. Piramal Pharma Ltd. has petitioned the directorate, alleging that the imports are being dumped on and harming domestic businesses. The petition calls for the implementation of anti-dumping duties on the imports.

In a notification, the DGTR stated that the authority "hereby commences an investigation" after having satisfied itself, on the basis of the prima facie evidence given, of the dumping of the subject items. The directorate further said that it would recommend the imposition of anti- dumping duty on these imports if it is established that the dumping has caused material injury to domestic players.

India has imposed anti-dumping duty on five Chinese products, including certain aluminium goods and some chemicals, for five years to guard local manufacturers from cheap imports from China. certain flat rolled products of aluminium; sodium hydrosulphite (used in dye industry);

⁴ Economic Times, 04.01.2023.

silicone sealant (used in manufacturing of solar photovoltaic modules, and thermal power applications); hydrofluorocarbon (HFC) component R-32; and hydrofluorocarbon blends (both have uses in refrigeration industry)⁵.

REVIEW OF LITERATURE

There is immense gap in academic study for the topic of India-China Trade however some academic papers have highlighted the paper adequately, Academic journal titled "Analysis of Anti-Dumping Cases in India" by Samir Kumar Singh⁶, The article analyses the trends and patterns of anti-dumping cases in India and their impact on India's trade relations with other countries.

The study examines the anti-dumping cases filed in India between 1992 and 2002, and analyses the industries affected, the countries involved, and the outcomes of these cases. The academic journal highlights that the majority of the anti-dumping cases filed in India during this period were against China and that the steel industry was the most affected. The findings of the study suggest that India's anti-dumping policies have been largely driven by the interests of domestic industries and have been used as a protectionist measure to safeguard them from foreign competition. The article also highlights the challenges and limitations of India's anti-dumping policies and suggests the need for a more comprehensive approach to trade policy.

The topic of anti-dumping policies in India-China trade by providing insights into the historical context, trends, and patterns of anti-dumping cases in India. The study's findings can help policymakers and stakeholders understand the implications of India's anti-dumping policies on trade relations with China and other countries and devise strategies to address the challenges and limitations of these policies.

The research paper titled "Retaliatory Antidumping by China" by Thomas Osang and Jaden Warren (2018)⁷, published in the Eastern Economic Journal, can provide useful insights into the topic of anti-dumping in India-China trade. The paper focuses on China's use of retaliatory anti-dumping measures against other countries, including India. The study examines the factors that influence China's decision to retaliate against anti-dumping measures imposed by other countries

⁵ Notification of Central Board of Indirect Taxes and Customs, extract of The Hindu 27.12. 2021.

⁶ "Analysis of Anti-Dumping Cases in India" by Samir Kumar Singh, Economic and Political Weekly Vol. 40, No. 11 (Mar, 12-18, 2005).

⁷ titled "Retaliatory Antidumping by China" by Thomas Osang and Jaden Warren (2018).

and analyses the effectiveness of China's retaliatory measures. The findings of the study suggest that China's retaliatory anti-dumping measures are primarily driven by political and strategic considerations rather than economic factors. The paper also highlights the challenges and limitations of retaliatory anti-dumping measures and discusses alternative approaches to addressing trade disputes. The study also highlights how policymakers and stakeholders understand the implications of retaliatory anti-dumping measures for India-China trade and devise strategies to mitigate their effects.

In order to determine how dominating the trade restriction effect of an anti-dumping tariff is on the US, the EU, China, and India from 1996 to 2015, The research paper *Does Anti- Dumping Duties really restrict import? Empirical Evidence from US, UK, China and India* by Choi (2017)⁸ looked at the "effects of anti-dumping measures on the imports." To assess the trade effects of ADDs, the impact of the regulations on imports has been calculated using a simple estimation equation. According to the study, a 1% increase in ADDs results in a 0.43– 0.51% decrease in the import of the targeted product. The report does discover, however, that imports of the targeted products rose by nearly 30% overall while anti-dumping regulations were in place.

The paper *Trade effects of Anti- dumping in India who benefits* by Aggarwal (2010)⁹ examines the consequences of the ADDs India imposed on 177 items between 1994 and 2001 on international trade. Panel regression is used in the paper to measure the impact of ADD's actions on import quantities, values, and prices. The conclusion arrived at points that "the application of ADD duties restricts trade (both volume and value and hikes import prices." The conclusion is that increased import prices are advantageous for domestic business. An anti- dumping duty is a costly kind of protection. It also examines the peculiar angle of how the financial position of anti-dumping duties improves at the expense of both consumers and downstream industries. Since anti-dumping is an expensive form of protection, only large and dominant producers in concentrated industries emerge as the major beneficiaries of this protection.

The research paper titled "Does Antidumping Use Contribute to Trade Liberalization in Developing Countries?" by Michael O. Moore and Maurizio Zanardi (2009)¹⁰, provides useful

⁸ *Does Anti- Dumping Duties really restrict import? Empirical Evidence from US, UK, China and India* by Choi (2017), *East Asian Economic Review*, Vol 21, No.1.

⁹ *Trade effects of Anti- dumping in India who benefits* by Aggarwal (2010 by Arahna Aggarwal, *International Trade Journal*, Vol. 25, 2010.

¹⁰ "Does Antidumping Use Contribute to Trade Liberalization in Developing Countries?" by Michael O. Moore and

insights into the topic of anti-dumping in India-China trade. The academic paper examines the relationship between anti-dumping measures and trade liberalization in developing countries, including India and China. The study analyzes the impact of anti-dumping measures on trade flows and the effect of these measures on subsequent trade policy liberalization. The findings of the study suggest that anti-dumping measures can have both positive and negative effects on trade liberalization in developing countries. The paper highlights that while anti-dumping measures can provide temporary relief for domestic industries, they may also hinder trade liberalization efforts by promoting protectionist policies. Overall, this paper can be useful for the topic of anti-dumping in India-China trade by providing insights into the broader trade policy context in developing countries. The study's findings can help policymakers and stakeholders understand the potential impact of anti-dumping measures on trade liberalization efforts in India and China and devise strategies to balance the interests of domestic industries with the broader goals of trade liberalization.

CONCLUSION

The issue of anti-dumping measures and their impact on trade relations between India and China has been a topic of considerable interest in recent years. Several research papers have shed light on various aspects of this issue, including the political, economic, and strategic factors that influence the use of anti-dumping measures, the effectiveness of such measures in promoting domestic industries, and their impact on trade liberalization efforts in developing countries. Despite the potential benefits of anti-dumping measures, there are also concerns about their impact on the global economy. One of the main concerns is that the use of anti-dumping measures can lead to protectionism and trade barriers, which can harm economic growth and development. Developing countries that rely on exports may also face retaliation from trading partners who feel that their goods are being unfairly targeted by anti-dumping measures. There are also concerns about the transparency and effectiveness of anti-dumping investigations in developing countries. Some critics argue that anti-dumping measures are often used for protectionist purposes rather than legitimate concerns about unfair competition, and that investigations may be subject to political influence or corruption. There are also concerns about the lack of technical expertise and resources in developing countries, which can make it difficult to conduct rigorous investigations and ensure that anti-dumping measures are being applied fairly. In conclusion, the use of anti-dumping measures by developing countries is a complex issue that requires careful consideration of both

the potential benefits and drawbacks. While anti-dumping measures can help to protect domestic industries and address trade imbalances, they can also lead to protectionism and harm the global economy. Developing countries that choose to use anti-dumping measures must ensure that they are being applied fairly and transparently, and that investigations are conducted in accordance with international standards. The use of anti-dumping measures should be seen as part of a broader strategy for economic development and integration into the global economy, rather than a standalone tool for protecting domestic industries.

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