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TRADE REMEDIES UNDER WTO DISPENSATION

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ABSTRACT

There were times when trading was confined to people living in the same neighbourhood and today the concept of international trade is a reality, how did it happen? A group of open-minded people came together to reduce the import rates and make international trade easy. The group is called the 'Doha round' which came into existence in the year 2001. The Doha Ministerial Declaration came up with the new round of multilateral trade negotiations in the year 2001 and anticipated the need of negotiations in the area of World Trade Organization rules which would be aimed towards "clarifying and improving decisions" and on Subsidies and Countervailing Measures. Here came the aspect of Anti-dumping measures which had been used most frequently as a trade remedy action throughout the world and as a result, most of the discussion focused on changing ways of antidumping actions.

Next was the Agreement on Subsidies and Countervailing measures including a discussion of the Agreement on Agriculture. This includes the aim of providing an in-depth knowledge about the World Trade Organization's multilateral disciplines on subsidies which are related to trade in goods and also includes unilateral measures in order to respond to these subsidies. Another important aspect is related to the Safeguard Agreement which establishes rules for the application of safeguard measures. The current research paper examines the safeguard measures in the WTO context. In addition to this, it addresses the conditions for the imposition of safeguard measures and distinguishes between various types of measures that may be imposed as a safeguard.

KEYWORDS: *WTO, Doha Round, Anti-Dumping Measures, Countervailing Measures.*

Introduction

India has emerged out as one of the biggest players in the use of anti-dumping actions and most of these actions are targeted against other developing countries, rather than targeting them towards the developed OECD (Organization for Economic Co-operation and Development) countries. In addition to this, the actions are concentrated towards those industries where monopoly and high concentration in Indian industries existed. Initially, India was in the process of phasing out its quantitative restrictions regime on imports. On the removal of licensing restrictions on imports, there had been a tendency on the part of several trading partners in India who started dumping different kinds of goods and created a situation of unfair competition in the domestic market due to which the domestic industry suffered a lot of injury. In order to protect the domestic industry from such kind of injury and address the scenario of unfair trade practices, the anti-dumping measures assumed a great deal of significance.

Another important aspect to minimize unfair trade practices is countervailing measures which are used for red-light and yellow-light subsidies when imports of certain subsidized goods causes harm to competing domestic industry. In addition to this, countervailing measures may only be used after an investigation has been carried out according to the procedures specified in the Agreement. The third important aspect related to the safeguard measures which imply that the right to apply a safeguard measure and its appropriate structure is meaningless if these considerations are not handled in the context of domestic investigation. There had been various rationales which were offered for the inclusion of safeguard measure in trade agreements. Moreover, this paper also talks about the escape clause which was incorporated in the multi-lateral trading system with respect to "emergency actions on imports of particular products."

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Objectives

- To examine the use of provisions of anti-dumping measures by India against other countries and identify the pattern of such actions by others on Indian exports.
- To relate Economic theory with anti-dumping measures.
- To focus on legal analysis and evaluate subsidy and countervailing measures from a normative point of view.
- To examine safeguard duties in the WTO context, address the conditions for imposition of safeguard measures and distinguish between various types of measures that may be imposed as a safeguard.

India and Anti-Dumping Measures under the World Trade Organization

Trade policy system in most of the countries have transformed from an inward orientation to a more outward and liberal trading system and this liberal trade policy is subjected to many types of pressures as against giving protection to specific industries. Therefore, GATT introduced certain contingent measures of which one of them is anti-dumping measures. The anti-dumping remedy was originally enacted in the national legislation by various countries in the early 20th century. The share of developing countries in adopting this measure increased gradually which raised fears among researchers, analysts and specialists of its misuse. In addition to this, many economic analyses were conducted by scholars who suggested that anti-dumping legislation is economically inefficient and also it does not conform to the economic explanation of protection. In the past 20 years with respect to the creation of the World Trade Organization in 1995, we can say that anti-dumping measures have emerged out as a tool/technique for import-sensitive industries.

While developed countries seemed to be increasingly absorbed towards Doha's original genesis, developing countries eagerly condemn their narrow commercial focus in the Doha Round talks. Talking about developing country like India, with the advent of globalization, the importance and need for trade remedy actions became more of a business and economic tool rather than limiting itself as merely a necessity measure. A question arises as to what were the reasons due to which the anti-dumping, countervailing and safeguard measures were undertaken? The answer lies here; Initially, India committed itself to reduce custom trade barriers, however, the Indian domestic industries had no option but to compete with imports from other countries. With respect to this, under the World Trade Organization regime, three types of trade remedies namely-antidumping duties, countervailing duties and safeguard duties had been contemplated in order to protect against injurious imports from other countries.

Talking about India, the first provision in order to deal with the menace of dumping was enacted in the year 1982 but its provisions were not much in use until the creation of the World Trade Organization took place in the year 1995. It has been observed that the use of anti-dumping remedy is benefitting the domestic industry rather than acting as a fair investigative process which would give equal weightage to both domestic industry as well as exporters. However, it is to be noted that the purpose of anti-dumping measure is not to protect every domestic industry but to protect only those industries who can demonstrate a connection between the imports of products and the injury that is caused to the domestic industry by such products. In addition to this, under the anti-dumping measures, protection is provided only for those imports which have proved as being 'dumped' and have injured the domestic industry. Taking into account the above discussion, this paper attempts to identify the competing interests of exporting and importing WTO members, major users of anti-dumping laws and the future of anti-dumping actions.

In addition to the above-mentioned aspects, India experienced the dumping and anti-dumping measures in the post liberalization period in which it erected with high tariff and non-tariff barriers with an intention to protect the domestic industries but later on it was forced to reduce the tariff and non-tariff barriers under the WTO agreements. In addition to this, the use of anti-dumping remedy was seen as directed towards the domestic industry and this was witnessed from the judgement of Hon'ble Supreme Court in the case of "Reliance Industries vs. Designated Authority [2006 (10) SCC 368], which states 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."*

Furthermore, security under hostile to dumping arrangements can be profited for just such imports, which have been demonstrated as being 'dumped' and have harmed the residential business. Where the household business is getting influenced absolutely because of the sheer volume of imports, however decently valued, the arrangement lies in taking a response to safeguard measures, not against dumping measures. Essentially, where the items are coming into the nation at lesser costs simply because of appropriation benefits are given by the Government of such trading nation, security can be profited under Anti-sponsorship arrangements. From this, we can say that, the main aim of anti-dumping measure is not to protect each and every industry but only to those industries who determines a connection between imports of various products concerned and the injury that is caused to the domestic industry due to such imports.

Three Pillars of Anti-Dumping

As specified above, the remedy under against dumping arrangements is accessible just in such circumstances, where a dumping edge of merchandise from a sending our nation into the bringing in the nation has brought about damage to the household business of that great in the bringing in the nation. In this manner, an inconvenience of AD obligations includes an itemized examination of 3 main variables – Dumping, Injury and Causal Link.

Dumping

The AD Rules expresses that an article should be considered as being dumped on the off chance that it is traded from a nation or domain to India at a cost not as much as its typical esteem. This implies 'dumping edge' is the contrast between the 'typical' estimation of such item and its comparing send out cost.

Dumping margin = Normal value – Export price

Where,

Normal value = Domestic value for the like product in the exporting country.

Export price = Price of the article exported from the exporting country or territory.

Injury

A domestic industry is said to be harmed when it's imperative signs owing to the item concerned, on the whole, demonstrate a huge crumbling. As far as Section 9B, against dumping obligations might be forced just when the dumped imports make material damage to the local business. The term 'material damage' incorporates a risk of material damage and material hindrance of the foundation of the household business.

Causal Link

The third and last necessity in any antidumping examination is the foundation of a causal connection amongst dumping and material damage to the local business. It must be exhibited that the dumped imports are, through the impacts of dumping, making damage the household business. The utilization of the words "through the impacts of dumping" demonstrates a reasonable causal connection between the dumped imports and the material damage. The Tribunal presumed that exclusive if the causal connection between dumping of imported products and damage to residential industry is set up, the inconvenience of Anti-Dumping can be depended on.

Economic Theory and Dumping

This aspect talks about how we can relate the economic theory with the issues of anti-dumping measures. The most frequently given economic justification for anti-dumping laws is that these laws provides protection to the competitive process and saves the consumers from monopoly power of the foreign exporters. There were many industrial as well as trade economists from the US and European countries who discussed issues relating to this from both-theoretical and empirical perspective. It was found out that a low-priced import may maximize the welfare of consumers but at the same time, free trade may also lead to the issue of dumping. There were two protection-based justifications for imposing anti-dumping duties: Firstly, optimal tariff argument of protection and secondly, strategic trade policy argument. The first one emphasizes on the gains derived from trade through protection whereas the second one is based on externalities which are generated from certain sectors. Apart from this, anti-dumping measures are explained from the viewpoint of political economy of protection and justify the use of anti-dumping system in India through examining the hypothesis that in most of the cases in India the use of anti-dumping measures can be justified on economic grounds.

World Trade Organization and Anti-Dumping

This area manages the conception and procedural parts of anti-dumping measures as determined by World Trade Organization (and prior GATT). The Government is to assign the counter dumping expert in every nation. The outside exporters are allowed to express their position in the counter dumping examination and the dumping expert decides the dumping edge if the fare cost is not as much as the typical esteem. WTO gives three strategies to compute an item's "typical esteem". They depend on:

- Price in the exporters' domestic market;
- The cost charged by the exporter in another nation; and
- Estimation in view of the mix of the exporter's generation costs, different costs and ordinary overall revenues.

As indicated by the WTO agreements, figuring the degree of dumping on an item alone is insufficient for starting activities. Hostile to dumping measures can be connected just if the dumping is harming the business while bringing in nation. In this way, initially a definite examination must be led by the predefined rules. The examination must assess all significant monetary variables that have an orientation on the condition of the business being referred to. An AD obligation might be demanded to the degree of the dumping edge in the event that it harms the local business. The WTO likewise enables the nation to raise the cost to the degree of dumping edge. However, the counter dumping examination ought to be ceased when:

- The dumping edge is unimportant (characterized as under 2% of the fare cost) and
- The volume of imports from any one nation is under 3% of the aggregate imports. However, examination against numerous nations can continue on the off chance that they add to over 7% of the imports regardless of the possibility that every nation contributes just under 3%.

From the above discussion, we can say that, the mutual anti-dumping actions among developing countries are more than the anti-dumping actions between developed countries. Also, though India is a leading initiator of anti-dumping actions, it may not be in a position to protect its industries from any retaliatory action.

Agreement on Subsidies and Countervailing Measures

The present research paper intends to give a knowledge into the World Trade Organization's (WTO's) multilateral teaches on subsidies identified with exchange products and on one-sided measures to react to these subsidies, at the end of the day, countervailing obligations (CVDs).It had been noted that the 1955 GATT amendment introduced two forms of treatments that are still prevalent in the current multilateral system. Firstly, the multilateral system primarily targets export subsidies because of their direct trade-distorting effect. Secondly, disciplines on agricultural subsidies are also less severe as compared to other subsidies because of the negotiating power of some developed countries who showed resistance in cutting back their agricultural subsidies.

The Agreement on Subsidies and Countervailing Measures refers to two separate topics which are closely related to each other namely-multilateral disciplines which regulates the provisions of subsidies and the use of countervailing measures to eliminate the injury which is caused by subsidized imports. Talking about multilateral disciplines, they are the rules regarding whether a subsidy should be provided by a member or not. On the other hand, countervailing measures are a unilateral instrument which a member may apply after an investigation is carried out satisfying the standards specified by Subsidies and Countervailing Measures Agreement. The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) fortifies teach on exchange twisting subsidies that different governments use to give their organizations an unjustifiable competitive advantage. Not at all like the 1979 Tokyo Round Subsidies Code (Tokyo Round Code), which just 24 nations joined, all nations that progress toward becoming individuals from the WTO naturally will be liable to the Subsidies Agreement.

Classification of Subsidy

Articles 3 to 9 of the Agreement set up a three-class system for the classification of subsidies and subsidy remedies:

- **Prohibited/Red Ligmht Subsidies**

  Under Article 3 of Subsidies Agreement, there are two types of prohibited subsidies;

- Subsidies contingent whether solely or as one of several other conditions, on export performance,
- Subsidies contingent, whether solely or as one of several other conditions, on the use of domestic rather than imported goods.

- **Actionable/Yellow Light/Dark Amber Subsidies**

Under Article 5 of Subsidies Agreement, there are three types of adverse effects under this type;

- Damage to the local business of another WTO member,
- Invalidation or hindrance of advantages accumulating straightforwardly or in a roundabout way to other WTO individuals.
- Genuine bias to the interests of another member.

- **Non-Actionable/Green Light Subsidies**

Under Article 8.2, criterions and conditions are set out under which three types of subsidies may be non-actionable;

- Government help for modern research and pre-aggressive advancement movement;
- Government help to burdened locales; and
- Government helps to adjust existing plant and hardware to new natural prerequisites.

The Safeguard Agreement

Imposition of Safeguard duty is represented by Section 8B of the Customs Tariff Act, 1975 read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. Segment 8B gives that where the Central Government, in the wake of directing such request, is fulfilled that any article is transported in into India in expanded amounts and under specific conditions in order to cause or undermining to make genuine damage household industry, at that point, it might force a shield obligation on that article. Protect obligation is required for a time of four years. On the off chance that the Central Government is of the feeling that the household business has taken measures to acclimate to such damage or risk thereof and it is essential that the shield obligation should keep on being forced, it might expand the time of inconvenience past four years. In any case, defend obligation can proceed for a most extreme time of ten years from the date on which it was first forced.

In addition to this, the safeguard agreements are those which establishes rules for the application of the safeguard measures as provided in Article XIX of the General Agreement on Tariffs and Trade (GATT), entitled “Emergency Action on Imports of Particular Products.” Now, a brief idea is given about what is a safeguard measure and its Indian scenario; Well, we can define it as a unilateral way of providing additional protection to the domestic industry. One can distinguish safeguard measures from that of anti-dumping and countervailing measures on the basis of their rationale and their functioning within the system, however, these three types of measures are often grouped together as different types of trade remedies.

In India, the imposition of safeguard duty is governed by Section 8B of the Customs tariff Act, 1975 which provides that where the Central Government is satisfied that any article which is imported into India in increased quantities and under certain conditions causing or threatening serious injury to the domestic industry, then, it may impose a safeguard duty on that particular article. Generally, the safeguard duty is imposed for a period of four years, but, if the Central Government finds that the domestic industry has taken certain measures to adjust such inquiry or threat and it is necessary to impose the safeguard duty, in such situation, the period of imposition may extend beyond four years. Moreover, this can be considered as a temporary measure which allows the domestic industry to adjust with sudden increase in the volume of imports that are coming into India.

- **Safeguards in the World Trade Organization Context**

We can say that a safeguard measure is a unilateral way to provide additional protection to the domestic industry. Safeguards are similar to different types of unexpected exchange security, for example, hostile to dumping and countervailing measures. In all the three cases, the protection offered is of a brief sort and is contingent. Article XIX of the GATT, entitled “Emergency action on imports of particular products,” was included in the multilateral trading system as an escape clause. Different bases have been offered for the incorporation of a safeguard statement in the exchange understanding. We can state that safeguard functions as a kind of protection system that enables a nation to go for certain kinds of risks which it would otherwise not go for. The Uruguay Round Agreement on Safeguards was the

consequence of a push to give more viable significance to the proviso of Article XIX of the GATT which was not really utilized as a part of the decade following the finish of the GATT. While little utilization had been made of Article XIX of the GATT safeguards, an essential number of measures with an impact equal to that of a safeguard (purported grey area measures), were utilized as a part of various ventures, for example, steel, cars and electronic hardware.

- **Conditions for Imposing Safeguards Action**

In WTO case law, the privilege to force safeguard measure has been recognized from the legitimate utilization of such measures. For a privilege to exist, a WTO part should guarantee that it has met all the prerequisites put forward in Article 2.1 of the Safeguard Agreement and Article XIX of the GATT; to be specific, it must demonstrate that its domestic industry has endured genuine damage because of unexpected advancements; for an application to be legal, the safeguard measure might be connected just to the degree important to balance the subsequent harm.

Three conditions are accommodated in Article 2 of the Safeguard Agreement:

- Increased imports,
- Serious damage to the residential business,
- The causal connection between the imports and such industry.

Hence, from the above discussion, we can say that the making of the WTO restored the utilization of ' safeguard' measures to secure disturbed ventures against surges in import rivalry. A significant number of these measures have now been tested in the WTO debate determination process, and for each situation the procedure has observed the tested measure to be an infringement of WTO law.

Conclusion

There is clearly extremely little proof accessible to decide how critical the hypothetical mischief to liberal exchange from activist WTO debate settlement will be practically speaking. In any case, hypothetical examination and experience to date allow two conclusions. Accepting that the Doha Round resumes, WTO individuals inspired by further disciplines upon the utilization of anti-dumping and other exchange cures ought to perceive that the cost of such teaches will be higher than would be normal even from the significant political impact of import-touchy enterprises. In fact, such nations may be better encouraged to focus on different concessions from the United States, in any event until the point that the debate settlement process has accomplished an impression of more noteworthy impartiality in its survey of national exchange cures. Talking about anti-dumping measures, numerous nations are as of now mishandling the anti-dumping condition so as to secure wasteful nearby businesses. However, the fault for this must be set on the Anti-Dumping Agreement itself, which contains numerous provisos. It doesn't consider issues emerging from: cash variances, exchange perishable items, development of the "ordinary" esteem, and (maybe in particular) differential estimating by makers.

The nonsensical inconvenience of anti-dumping contorts exchange. Since the WTO by and large attempts to get rid of exchange contortions, it must start acting responsibly on this front. The best choice lies in rejecting the residential hostile to dumping laws and disbanding the local against dumping directorate, so that there is no motivator for personal stakes to endeavour to control these directions. In the meantime, there is a need to adjust and fortify the WTO with the goal that influenced gatherings can document protests against those nations that keep on imposing hostile to dumping obligations to ensure their own particular producers. As a last point, for the individuals who are worried about universal confinements on the utilization of sponsorship, it ought to be reviewed that appropriations control still prohibits one classification of subsidies altogether. Notwithstanding how producer subsidies are dealt with, endowments to customers are probably going to be reliable with the principles (unless they result in true victimization outside makers, or have unfair conditions joined).

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