

Anti Dumping as a Trade Remedy Under the WTO Regime: Experience of Pakistan

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Abstract

Economic interest of nations frequently clash and trade conflicts among them do arise. Un-restricted and flow trade, business and commerce activities between different nations is alleged in global Market, as means to economic growth and betterment of living standard in way to a happier situation of human survival. For aggrieved persons there are some essential trade remedies. For trade remedial measures there are options in form of WTO agreements. The WTO agreements provide to have recourse to trade remedial measures. In this context Pakistan has promulgated the Anti-Dumping Ordinance to stop the unfair trade and to protect the interest of stake holders. To determine and investigate the local injury towards the domestic industry, the law provides the tool for it. The purposed project establishes the relationship between Dumped products and its affect on economic growth and trade.

Keywords: Anti-Dumping, WTO, Trade, Pakistan

I. Introduction

GATT was one of the institutions that forms part of the Bretton Woods system that aimed in the post-war period to set up structures dealing with international trade, currency exchange and developmental funding, GATT has operated for 45 years but is now subsumed into a new World Trade Organization (WTO) (Pryles, Waincymer, & Davies, 1996).

The organizational structure provides regulatory frame work for trade activities (I. Carr et al., 2005). The jurisprudence of the system is to preclude unjust business practices in orbicular market and provide transient remedies to the receiving country. AD law has been gaining increasing relevance to business stake holders in the global regime Anti Dumping appraise have a reference on policy formulation by the key players of international trade in one way or other. Moreover, WTO trading system describes basic multilateral principles to help trade activities in sustainable manner and eliminating the tariff and non-tariff barriers (Haque & Khan, 2009). The flow of the trade to great extent pretence is emerging issues both for Government and local manufacturers and producers. In this context, the home market businessmen face challenges of dynamic contest from more developed producers throughout world.

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They might sell their services as well as their goods at lesser prices as compare to those which can be existing in the importing market and in this fashion they might be the ground to threat home market. In reality, no country wants its domestic industry to be collapsed and authorized its public to mislay their business. In this context the WTO agreement on Anti-Dumping has been designed to provides a remedy to the aggrieved party in the form of Anti Dumping Duties (ADD), (Gupta, 2003).

II. Background and Discussion

It is significant to substantiate that even before the establishment of WTO the GATT was not a single agreement. It involved numerous primary documents. These include the initial agreement established in 1947, protocols accession agreements and the Codes consulted throughout the Kennedy and Tokyo rounds. The Uruguay Round has been the most significant of all the Rounds to date, not the least because it proposed the establishment of new organization, (Pryles et al., 1996).

The WTO came into existence in 1995 but it really represents a point on the continuum of institutional responses or regulation of international trade that started in era after WW2. A successful attempt was made to subject the conduct of international trade to multilateral rules through the GATT, 1947. Latterly of Second World War institutional initiatives were lunched in order to establish a regulation system in the economic sphere and coming up with the response to challenges of now times. These efforts led to the establishment of what is known as the Bretton Wood Institutions, namely the International Monetary Fund (IMF) and International Bank for the Construction and Development (IBRDD). It also intended to establish a third pillar of the system for regulating International Trade.

An agreement (Havana Charter) was in fact reached to set up the International Trade Organization (ITO). However, the ITO experienced is stillbirth, as the USA was not inclined to ratify the agreement. Consequently the GATT by default became an institutional Mechanism regulation International Trade and it was replaced by the WTO in 1995. Pakistan was also one of the founding Members of WTO, **(I. Haque, An Overview of the WTO and Implications of its Membership for Pakistan, KCFR 2005).**

It has developed an institutional structure and coordinated significant reductions in tariff and other trade barriers. It has promoted adaptation of binding trading rules and finally has developed a working dispute resolution mechanism. On the other hand, the problems of protectionism remain significant.

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There are always clash of Trade interests among nations often and disputes usually arise. Remedies are available for only those who feel themselves aggrieved. The WTO is the main body to provide remedies to countries. These are the provisions which are helpful to provide justice and protection against unfair and unmeant trade. So far as Pakistan is concerned, levying of Anti-Dumping duties on bed linen and matches by the EU and Egypt, correspondingly, explains the abuse of systole importing countries. Whilst the countries which are exporting get to know that the remedies which importing countries are adopting for their rescue are against the WTO rules and regulations, it can defiantly seeking for exporting country feels that adoption of trade remedial measures by an importing is violative of the WTO rules it can seeks for compensation from some other forum. **(I. Haque, An overview of the WTO and Implications of its membership for Pakistan, P7, KCFR 2005).**

Exposition of Dumping in the WTO:

In ordinary language, it may be defined as to sell the products in low price as compare to the price which is sold in exporting country. WTO law empower countries to levy Anti-Dumping duties on dumped products in order to protect its local market. In this context Pakistan has promulgated Anti-Dumping Ordinance, 2000 and has given effect to the WTO agreement on ADD. The purpose of the Anti-Dumping Law in Pakistan is to stop the unfair fluctuation of price in Pakistan as compare to foreign countries who has higher prices in their own countries (Gupta, 2003).

The law offers a theoretical account for inquiring and findings of scraping and significant injury more over levying of Anti-Dumping duty to compensate dumping.

Agreement on Anti-Dumping:

Under WTO, anti dumping law has been coded in one agreement called the AD agreement. Art. 6 of which expressly prohibit the dumping which cause material injury to the domestic market of one country. Dumping is not only prohibited under the law but also it contains procedural rules to take action against the country that is dumping the goods to the other country and is causing the injury to the domestic market. Rules regarding the AD laws are technical in which definition of dumping, determination of injury, domestic market and like product are comprehensively explained whereas, procedural rules regarding AD actions have been explained in three successive GATT AD codes. Art. 6 AD agreement recognizes that action in case of dumping can be

taken only in two in two conditions: first, where dumping is existed and the other is material injury.

There are three parts of ADA along with two Annexures. Part I, Articles 1-15 contains definitions of dumping and injury as well as all procedural rules to take action against dumping. Part I also is called as the heart of the agreement. Part II, Art. 16, 17, explain special rules regarding WTO dispute settlement, a dispute arises out of AD matters. Part I also contains a provision on the WTO Committee on AD Practices. Final provisions are mentioned in part III. However, a procedure for conducting on the spot investigation is discussed in Annex I while imposition of constraints is fully explained in Annex II.

- i. AD agreement is to make sure the lucidity of procedures
- ii. AD agreement provides interested parties full and fair opportunity to extend their arguments and full access to particular information
- iii. AD agreement provides obligation of anti dumping duties when the injury to the domestic industry is proved
- iv. To promote the level playing field for open and fair trade

Anti Dumping Legislation in Pakistan:

“The purpose of Anti-dumping Ordinance is to prevent unfair practice of price discrimination in which foreign firms sell any product in Pakistan at prices lower than they charge in their domestic markets i.e. selling at prices below the average total cost of production. This law provides a frame work for investigation and determination of dumping and consequential injury as well as imposition of anti-dumping duty to offset dumping" (National Tariff Commission, 2006).

According to Section 4 of Anti-dumping Ordinance,2000 a product is considered to be dumped if it is sold in Pakistan at a price which is less than its normal value, in exporting country. If the Commission determines that the product in question is being sold in Pakistan at a price less than its foreign market value than the case is referred for investigation. The Commission then investigates whether, as a result of the dumping a domestic industry is injured or is likely to be injured or even prevented from being established in Pakistan.

The normal value of an investigated product is determined on the basis of comparable price paid or payable in the ordinary course of trade for the sale of like products when

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destined for consumption in an exporting country. The Commission may also establish normal value of an investigated product on the basis of comparable price paid or payable in the ordinary course of trade for sale of like product when destined for consumption in the country of origin of the investigated product if:

- i. These goods are not fashioned in exporting country or
- ii. There is no analogous cost for them in an exporting country" (Haque & Khan, 2009).

Recent Legislative Development - Anti Dumping Duties Act, 2015 in the recent past the anti dumping ordinance has been repealed and replaced through Anti Dumping Act, 2015. The main objective of this legislation has been provided in the preamble of the Act in these words:

“An Act to reform and repeal the Anti Dumping Duties Ordinance 2000, Whereas it is expedient to give effect in Pakistan to the provision of Article VI of General Agreement on Tariffs, and Trade and to the agreement on implementation thereof and to amend and consolidate the law relating to imposition of Anti Dumping Duties to offset such dumping , to provide a frame work for investigation and determination of dumping and injury in respect of good imported into Pakistan..... to offset the injurious dumping is in the public interest”

Remedial Mechanism under AD Law:

Aggrieved party file a written application in a prescribed form along with required fee before the National Tariff Commission of Pakistan (NTC) with consist of Chairman and two members. The application duly submitted in NTC forms “Form I” [in case of an industrial undertaking and NTC form II in case of trading business]. After duly receiving an application, NTC demeanor a preface investigation and query to set up that if a product has been dumped into Pakistan and if the dumping has caused of pressures to cause material injury to Pakistan’s domestic industry or not. AD application is processed within period 12 months. NTC may provide discretionary relief by imposition of provisional duty after 60 days of initiation of the investigation. Final AD duty is imposed for a period of five years which may be extended further up to five years [the complete investigation mechanism is provide in ANNEXTURE A]. In case of non

satisfaction of the interested party an appeal may be file before Appellate Tribunal against the final decision of NTC. Meanwhile affected exporting Government may lodge a complaint against the decision of NTC before the WTO Dispute Settlement Body (DSB).

III. Results:

AD purpose is not only to destroy monopoly power but it also works as protectionist device in country group. So here can be concluded that AD can be worked as protectionist policy and it is helpfully used as in countries for determine the reasons of use of AD.

There is an urgent need for review of AD duty Act while put in it a civic or the public interest clause. After the examination of the AD investigation reports it comes out that a bulk of the verdicts have been given against overseas suppliers of underdone material for the different cost added industries in Pakistan. That helped out to take responsibility of reviewing related to the work of commission as more added the antidumping laws that transmit without confer with the stakeholders.

Economic Effects:

- a) Dumping would be favorable to dumpers, yet in the circumstances when dwelling market trades are made at a thrashing.
- b) Dumping increase capacity of the domestic market of the selling country. This permitslofty financial growth and high manufacturing levels.
- c) Users and consumers enjoy short term benefits but it may be less favorable in the long term, (J.H Jacksen, et al, Legal Problems of International Economic Relations 2002, P 689, 690).
- d) Level of production decreased and attraction for investment is weakened.

IV. Case Law Development on Antidumping Duties in Pakistan

In the following cases after reviewing the translucent investigations, the Commission forced definitive anti-dumping duties. The concise essentials of the cases are positioned below:

1) Imports of Sorbitol Case

In view of the analysis and conclusions with regard to likely continuation and recurrence of dumping, material injury and causation, it is imperative to continue imposition of definitive anti-dumping duties on imports of the product under review from Roquette, France and PT Sorini Agro, Indonesia. Thus, the

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Commission hereby continues imposition of definitive anti-dumping duties imposed on Sorbitol produced and exported by Roquette, France and PT Sorini Agro, Indonesia for a period of five years w.e.f. July 19, 2008.

2) Imports of Tinplate Case

In terms of Section 58(3) of the Ordinance, a definitive anti-dumping duty shall not expire if the Commission determines in a review that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury. In view of the analysis and conclusions with regard to likely recurrence of dumping, and material injury there is a need to continue imposition of definitive anti-dumping duty on imports of the product under review. Thus, the Commission hereby decides to continue the imposition of definitive anti-dumping duty imposed @ 27.33% on Tinplate produced by the Foreign Producer and exported by the Exporter for another period of 5 years effective from July 22, 2007.

3) Polyester Staple Fiber Case

In a complaint from three domestic producers of Polyester Staple Fiber (PSF) it was alleged that PSF produced in the Republic of Indonesia, the Republic of Korea and the Kingdom of Thailand was exported to Pakistan at dumped prices, which had caused material injury to the domestic industry (National Tariff Commission, 2006).

4) Ceramic Tiles Case

In a complaint from a domestic producer of tiles, it was alleged that tiles produced in the Peoples Republic of China were being exported to Pakistan at dumped prices and had caused and were causing material injury to the domestic industry. This was a significant case because the Commission had earlier hesitation to impose a trade remedy measure against China which was a great friend of Pakistan. This inhibition was overcome once the Commission learned to distinguish between friendly relations with a foreign comity and the reality of commercial injury to the domestic industries (National Tariff Commission, 2005).

5) Phthalic Anhydride (PA) Case

In a complaint on behalf of the domestic industry it was alleged that PA produced in the Republic of India, was exported to Pakistan at dumped prices and there was a casual relationship between dumped imports and the material injury suffered by the domestic industry (National Tariff Commission, 2005).

6) Formic Acid (FA) Case

In a complaint on behalf of the domestic industry producing Formic Acid it was alleged that FA produced in the Republic of Finland and the Federal Republic of Germany was being exported to Pakistan at dumped prices and caused material injury to domestic industry (National Tariff Commission, 2005).

7) Polyester Filament Yarn (PFY) Case

"In this case it was alleged that PFY Indonesia, Korea, Malaysia, and the Thailand export PFY to Pakistan at dumped prices and caused material injury to the domestic industry" (National Tariff Commission, 2005).

8) Urea Formaldehyde Moulding Compound ("UFMC") Case

"In a complaint on behalf of the domestic industry producing Urea Formaldehyde Moulding Compound ("UFMC") it was alleged that UFMC produced in China was exported to Pakistan at dumped prices and caused material injury to the domestic industry" (National Tariff Commission, 2004).

9) Acrylic Tow (AT) Case

"In a complaint on behalf of the domestic industry it was alleged that AT produced in Uzbekistan was exported to Pakistan at dumped prices" (National Tariff Commission, 2004).

10) Poly Vinyl Chloride (PVC) Resin Case

"In a complaint on behalf of the domestic industry it was alleged that PVC Resin produced in Korea and in Iran was exported to Pakistan at dumped prices and caused material injury to the domestic industry" (National Tariff Commission, 2004).

11) Glacial Acetic Acid (GAA) Case

"In a complaint on behalf of the domestic industry it was alleged that GAA produced in Chinese Taipei (Taiwan), China, was exported to Pakistan at dumped prices" (National Tariff Commission, 2004).

12) Sorbitol Solution (SS) Case

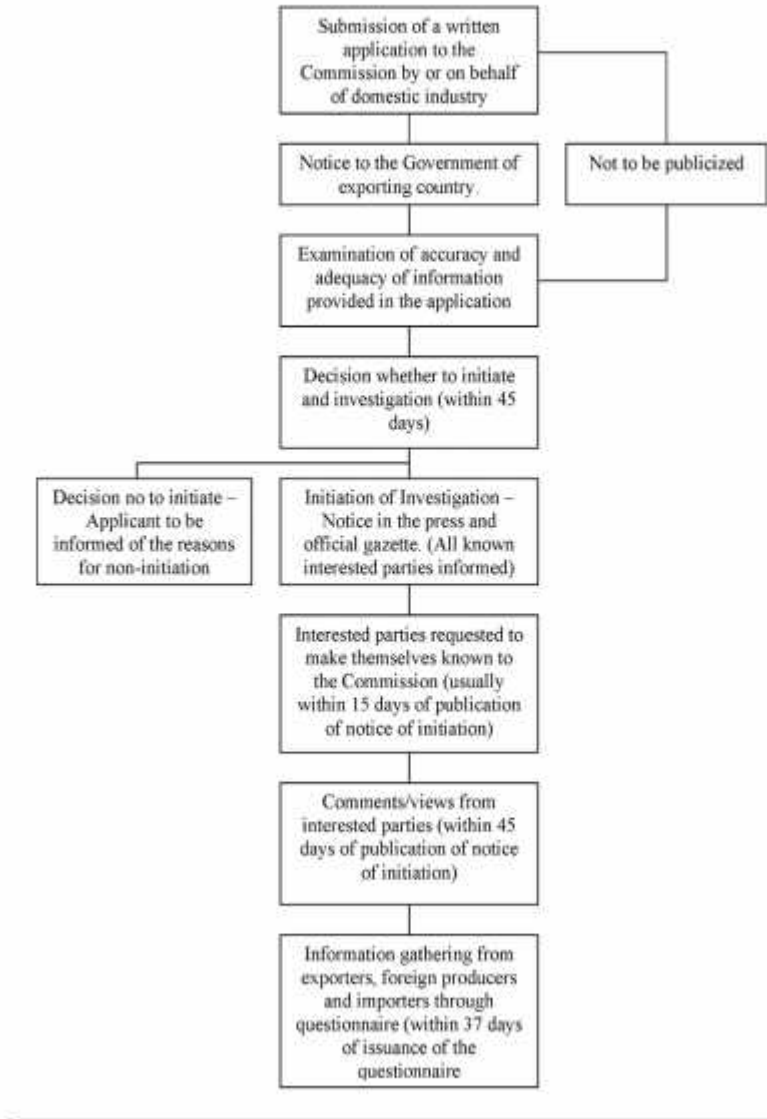
"In a complaint on behalf of domestic industry it was alleged that dumping of SS exported from Indonesia and France at dumped prices had caused material injury to domestic industry" (National Tariff Commission, 2003).

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13) Food grade dextrose monohydrate case, 2015

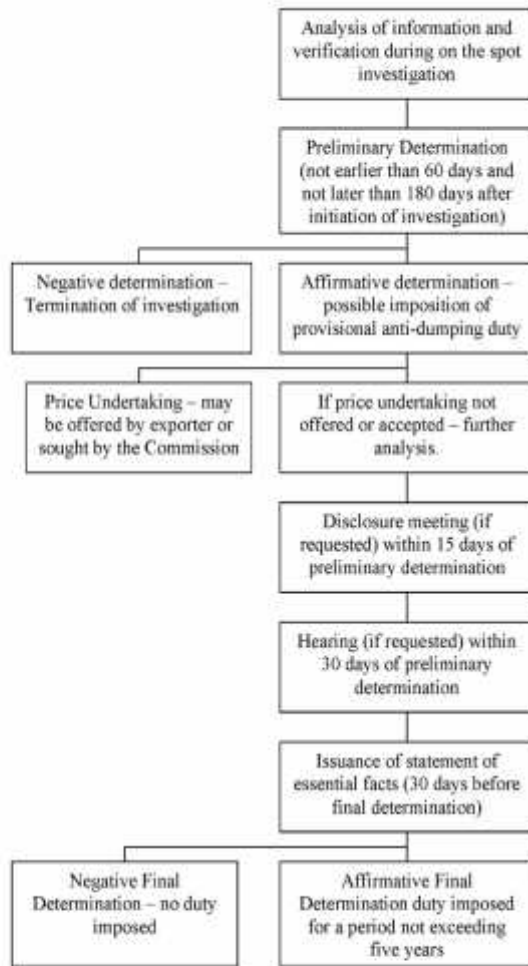
in this case “Investigation against Determination and levy of provisional anti-dumping duty on dumped imports of food grade dextrose monohydrate into Pakistan originating in and/or exported from the republic of India in question”

FLOW CHART OF AN ANTI-DUMPING INVESTIGATION



*source: <http://ntc.gov.pk/antidumping-investigation-process-flow-chart/> last visited: 15 March, 2016. This may be treated as ANNEX .

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V. Conclusion:

The instant projects inter-alia examines the economic effect of the Dumping on the economy of the Pakistan, the research provides a comprehensive set of procedure and requirements in respect of determination that a product has been dumped, factors to have in consideration in choosing whether or not injury will be caused, anti dumping examination measures, the relevance of events to prevent dumping and more over the role of the National Tariff Commission of Pakistan (NTC) and the analysis of the its reports. Reports investigated that AD Laws seek to control the inflow of squat priced refined goods to guard the domestic industry and not unrefined material and most decision by the NTC was adjacent to the overseas dealer of raw material. This issue is a great concern for policy makers. It is the need of time for Pakistan as especially in the perspective of globalization to manage structure of AD law in an objective manner and to create a center of attention for investment and trade in Pakistan.

VI. Recommendation:

1. There is a need for revisiting AD laws in Pakistan
2. There is a need for simplify the procedure for filing petitions and investigation
3. To strengthen the cooperation between the business and Government in order to have a more effective system
4. To enhance the capacity building of the legal institutions, chamber of commerce and industry
5. Creating the awareness among the lawyers, judges and legal researchers regarding the scope of AD law in Pakistan.

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