

## ANTI-DUMPING

### The most emerging issue of today

*Saifullah Khan, ACMA, pleads that a stronger Anti-Dumping Directorate (in Pakistan National Tariff Commission) will, no doubt, help strengthen industry, but both government and industry must be careful to ensure that the precedents set for establishing dumping do not usher in a fresh form of administered protectionism.*

When the word "dumping" is mentioned in a social or business conversation, the connotation normally made is that the product in question is of an inferior quality and is sold at a very low price. This is far from the truth. It is for the instance possible that an imported product which is "dumped" can be sold at a higher price than the domestically manufactured product. The quality of such a "dumped" product can even be superior to the domestically manufactured product.

The WTO, previously the General Agreement on Tariffs and Trade "GATT" considers product being dumped if;

- ❖ An imported like product is sold at a lower price than in the exporting country's own market.
- ❖ If the like product is sold for less than its production cost.

In other words "Dumping" is defined as a situation in which the export price of a product is lower than its selling price in the exporting country. A bargain sale, in the sense of ordinary trade, is not dumping. Where it is demonstrated that the dumped imports are causing injury to the importing country within the meaning of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-dumping Agreement"), pursuant to and by investigation under that Agreement, the importing country can impose anti-dumping measures to provide relief

to domestic industries injured by imports.

Before we move on with the subject I believe it is important for us to have idea about the following terms in light of the Pakistan's Anti-Dumping Ordinance 2000 to be used later in the article.

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#### "Country"

Means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or separate customs territory.

#### "Domestic Industry"

Domestic Industry means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case "domestic industry" shall mean the rest of the domestic producers.

#### "Domestic Like Product"

Means the domestically produced product which is a like product to an investigated product.

#### "Dumping Margin"

Dumping margin in relation to a product means the amount by which its normal value exceeds its export price.

#### "Injury"

Means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when dumped imports are causing such injury.

#### "Investigated Product"

Means a product which is subject to an anti-dumping investigation as described in the notice of intimation of the investigation.

#### "Like product"

Means a product which is alike in all aspects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product.

#### "Export Price"

An export price is a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan.

The basic rule in respect of dumping, is that the introduction of an anti-dumping duty can only be considered if:

- ❖ There has been a significant increase in the dumped goods. Either in absolute terms or relative to production or consumption.



- ❖ The prices of such imports have undercut those of the domestic products and as a result have depressed the price of the product or have prevented that price from increasing.
- ❖ As a result of the injury caused to the domestic industry, or if there is a threat of continued injury to the domestic industry of the importing country.

In short, if the export price is lower than the normal value i.e. the comparable price actually paid or payable in the ordinary course of trade for the product in the export country, then the difference is called the "Dumping Margin"

In trying to make sense of the dumping process, it is best explained by the "DIC" principle. Effectively there are three principles to consider when conducting an anti-dumping investigation, namely Dumping, Injury and Causality. What it means is that if a dumping margin is determined, it has to be proven that the dumping is causing the domestic industry material injury, i.e. a casual link must exist in order for an anti-dumping duty to be imposed.

International trade agreements give countries who are members of the World Trade Organisation (WTO) the right to impose anti-dumping duty/fees to abolish foreign goods suspected of illegally flooding local markets with goods at artificially low prices, and to discourage their further sales.

## Background

Dumping was originally perceived as a motivated action—the sale of goods that were priced deliberately below the cost of production so as to maximize market shares and drive competitors out of business. These predatory tactics presumed the existence of considerable financial muscle; therefore, for much of the 1980s, anti-dumping investigations were largely targeted at Japanese

firms. Today, however, as both big and small exporters around the globe face a rising tide of anti-dumping actions, dumping is being increasingly equated with cheap imports—irrespective of the motive.

## General Implications

Ironically, anti-dumping restrictions are directly correlated to the spread of free trade. The more open the economy, the greater is the reliance on anti-dumping measures. Indeed, the world's most open economy, the US, ranks first on anti-dumping actions taken against imports. With the imposition of anti-dumping duties on over 20 products, India already ranks 12<sup>th</sup> despite her relatively-high

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tariff-walls. As these walls are lowered, and as quantitative restrictions on imports are phased out by 2002, the number of anti-dumping actions initiated by India will only rise.

Moreover, dumping only poses a serious problem if domestic industry is not efficient, and if it continues to produce unbranded, low-quality goods. So what our industry needs to do, it has to become cost-competitive to cope with cheaper imports. Ultimately, the only effective way to develop that competitiveness is through freer trade—not through fairer trade.

Any anti dumping investigation involves the interests of 3 parties: the

producing industry, the user industry, and the exporter. And any ruling is bound to hurt one of these parties.

## Legal Point of View

The international anti-dumping rules are provided by (a) GATT Article VI and (b) the Anti-dumping Agreement under the WTO.

Countries have been amending their domestic anti-dumping implementation Legislation to bring it into conformity with the new AD Agreement. The AD Committee is charged with reviewing national legislation, and countries are required both to notify the relevant laws to the Committee and to respond to questions from other countries about their systems. If there are any problems found, countries are obliged to bring their national laws in line with the Agreement.

## Economic Implications

Anti-dumping measures are allowed under the GATT/WTO Agreement as an exception to the general disciplines. However, admitting selective imposition of duties in terms of country and supplier tends to lead to discriminatory trade policies. In addition, since anti-dumping measures directly affect pricing, which is the most fundamental element of business strategy, their abuse will have a tremendous negative impact on the pattern of trade and on the overall economy. Following are some of the serious economic implications of anti-dumping measures in cases where they are abused.

### i. The influence of the Initiation of Investigation

The mere initiation of an anti-dumping investigation will have a vast impact on exporters. When an anti-dumping investigation is initiated, the potential surfaces for anti-dumping duties to be imposed at some point in the future. This results in products becoming far less attrac-



tive to importers. Initiation of an anti-dumping investigation also places significant burdens on the companies being investigated. They must answer numerous questions from the authorities in a short period of time, spending enormous amounts of labour, time and money to defend themselves. The legal costs involved are particularly high.

## ii. Distortion of Normal Commercial Practices.

Anti-dumping measures also harm companies attempting to apply normal commercial strategies and practices. This effect is illustrated in situation of "forward pricing" in advanced technology products.

Forward pricing is a strategy designed to reduce costs by increasing sales volumes early in a product's life cycle. At the start-up phase of high-tech products, prices are set at a level below the per unit cost on the assumption that there will be a sharp reduction in such costs in the near future as production volumes increase. This practice not only enables rapid market acceptance of a product, it also allows companies to secure stable profits in a short period of time.

When an anti-dumping investigation of a forward-priced product takes place early in the product cycle, short-term average costs will still exceed domestic prices. Domestic sales will accordingly be deemed to be "below cost" and unusable for purposes of calculating anti-dumping duties. When domestic sales are unusable, the Anti-dumping Agreement allows the use of a "constructed value" of the exported good in the dumping margin calculation. The theoretical "constructed value" in such cases will be composed of the unusually high short-term average costs plus amounts for administrative costs and profits. This "constructed value" is then compared to the actual export price, resulting in a high dumping margin.

## iii. Effects on Technology Transfers (Unnecessary Expansion of the Product Scope Subject to Anti-Dumping Duties)

Anti-dumping duties are imposed on "like products" found by investigators to be dumped on domestic markets (GATT Article VI). However, depending on how the scope of "like products" is defined, there could be cases in which anti-dumping duties are imposed on products that are in fact different from the product subject to investigation. We are particularly concerned about vague word-

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ing in the definition of the range of products subject to dumping investigations. Care must be taken with regard to products that could or will be developed in the future so that the

definition cannot be expanded beyond those products "currently" causing injury.

## iv. Retarding globalization of Production

As the economy becomes more global in scope, companies are transferring their production overseas to their export markets or to developing countries where costs are lower. However, when such transfers take place for products that are subject to anti-dumping levies, they are often assumed to be attempts at circumvention. Anti-circumvention measures that inadequately distinguish between production shifting for legitimate commercial reasons and for circumvention purposes, risk not only distorting trade but also shrinking investment.

## Recent Trends

Anti-dumping investigations have been used primarily by the United States, the European Union, Canada, and Australia, because domestic anti-dumping laws have been enacted mostly in developed countries. However, the increase in actions brought by Brazil, South Korea, and South Africa is a recent development worthy of note. In addition, many other developing countries have recently introduced new anti-dumping laws, Pakistan is among one of them. Figures below shows the increasing number of investigations by each country.

Country	1969-1974	1975-1979	1980-1984	1985-1989	1990-1994	1995-1998	Total
US	125	140	146	219	249	75	954
EU	19	55	138	101	147	110	570
Canada	42	74	176	115	90	31	528
Australia	-	120	242	180	252	71	865
Japan	0	0	0	0	4	0	4
Others	39	64	10	74	227	395	809
Total	225	453	712	689	969	682	3730

## Number of Anti-dumping Investigations since 1993

Country	1993	1994	1995	1996	1997	1998
US	33	45	14	21	16	24
EU	21	43	32	23	43	12
Canada	24	2	12	5	13	1
Australia	58	13	5	17	42	7
Brazil	34	2	5	17	10	6
Korea	6	4	4	13	17	0
India	24	7	5	21	14	—
South Africa	—	15	17	31	23	15
Indonesia	—	—	11	9	4	8
Japan	0	1	0	0	0	0

### Further Explanation of Rising trend of Anti-dumping Measures:

WTO members notified 360 initiations of anti-dumping investigations in 1999, up 42% over 1998 as shown in chart below. In 1999, the European Union and India each reported the highest number of initiations, at 68, followed by the United States with 45 initiations. Counted together, the European Union and its Member States were the WTO members most affected by initiations of anti-dumping investigations (47), followed by the Republic of Korea (34) and Japan (23), although many other exporters were also affected, notably China.

### The Dumping Investigation

An Anti-dumping investigation is usually carried out by the investigating authorities keeping in view the following points:

1. Preliminary screening of the application is made to ensure it is adequately documented.
2. Initiation of investigation is made if there is prima facie evidence of dumping and injury.
3. Obtain reasonable assurance that domestic producers sup-

porting the application account for at least 25% of total production.

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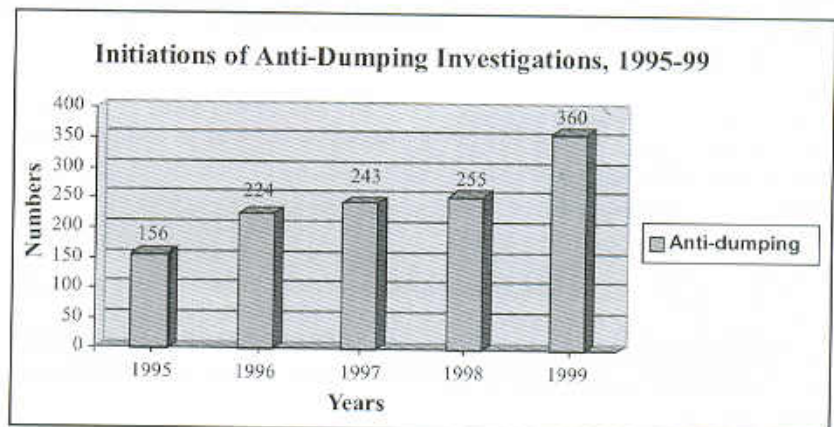
4. Send public notice to the concerned parties, including exporters and importers of the dumped goods.

5. Publish preliminary findings regarding dumping margin and the injury to domestic producers.
6. Can impose a provisional duty for 4 months to limit damage to domestic industry. Provided that the investigating authority may, upon request by exporters, which the investigating authority considers to be representing a significant percentage of the trade involved, extend the period of application of provisional measures to a period not exceeding 6 months.
7. Conclude investigation and, if necessary, levy anti-dumping duty for a period of 5 years.
8. Periodically review the need for the continued imposition of anti-dumping duties.

### Concerns with the Existing Process

It is relatively easy to prove 'prima facie' that a company or country is exporting at dumped prices to Pakistan. However, to prove material injury is more complicated and could be biased, as to whether the Pakistani industry is suffering a material injury. The reason being that the injury indicators and causality could be interpreted differently.

In my opinion recently promulgated Anti-Dumping Ordinance 2000





would upto certain extent remove such ambiguities as mentioned above as this Ordinance explains the regulation of the investigation process, ensuring that investigations are conducted in a fair and transparent way and within a set time frame such as the practice in Australia or New Zealand.

### Where Applicable

Anti-dumping risk is exposed to all Pakistani importers and overseas exporters of products to Pakistan and Pakistani exporters.

Anti-Dumping assistance is required to Pakistani manufacturers having to contend with product inputs and end products that are being exported to Pakistan at very low prices.

### Why to take initiative now

The reduction in Customs duties in Pakistan has resulted in an increase of product inputs and end products being exported to Pakistan. In a number of instances it may be possible that the products exported to Pakistan were at price lower than the domestic price of the similar product in the exporter's market.

While custom duties are being phased down, as said earlier, anti-dumping and countervailing duties are the only measures that our Government can use to protect there

manufacturing industry against unfair competition.

### What it means to Importers/exporters

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these measures and the possible consequences for their business; it is expensive and time consuming to get involved in defending an anti-dumping action. Today more and more companies are being affected by dumping, by either being accused of dumping their

goods on overseas markets, or by importing and/or distributing dumped goods.

One thing I want to mention here is this uptill now not even a single case has been initiated by National Tariff Commission (NTC) because not even a single application has yet been filed before NTC which fulfills all relevant requirements specified by NTC before it initiates an investigation against any exported product. One thing is for sure that NTC is working very hard and sincerely on this new challenging issue and analyzing few cases being filed by some effected parties. Hopefully we all we see some cases initiated by NTC in near future.

An Anti-Dumping application form has been made available at the office of NTC, for the facility of those Pakistani producer(s) / manufacturer(s) who intend to initiate Anti-Dumping case against any dumped product being exported into Pakistan and which results in Material Injury to the domestic industry.

By concluding I must say that a stronger Anti-Dumping Directorate (in Pakistan National Tariff Commission) will, no doubt, help strengthen industry, but both government and industry must be careful to ensure that the precedents set for establishing dumping and injury do not usher in a fresh form of administered protectionism ■