

Globalisation, Trade Flows and Anti Dumping: Recent Indian Experience

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Abstract

This paper examines the use of the provisions of anti-dumping by India against other countries and the pattern of such actions by others on Indian exports. India has emerged as one of the biggest players in using anti-dumping actions, and most of it, unlike the expectations, is targeted against other developing countries, rather than the developed OECD countries. Also, much of these actions have been in industries where there exists monopoly and high concentration. In contrast, developed countries have raised the maximum objection to Indian exports under the dumping route, and most of it is in industries that have great export potential for India. The analysis presented in the paper, based on data from WTO and the DGAD, Ministry of Commerce and Reserve Bank of India, reveals that the imports of a number of goods are increasing in the post reform period. The increasing imports and lower prices have affected a number of industries. Though both the big and the small firms face the foreign competition, the big firms resort to anti dumping action to fight the imports. The anti dumping actions tend to protect inefficient firms. Moreover, the anti dumping law does not take cognizance of technological and quality differences, but considers only the substitutability between goods. There is a strong need for the inclusion of public interest clause to prevent the misuse of anti dumping legislation. The analysis identifies a clear strategic role for Government in shaping the pattern and rate of growth of trade from the Indian perspective.

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1. Introduction

Liberalisation, privatization and globalization [known as LPG] have tremendously changed the functioning of the developing and developed economies. As the developing economies discard their trade restrictions and open their markets for trade in goods and services, a number of new issues are emerging. One of the important issues in trade led development is the use of anti-dumping provisions by the developing country governments in dealing with the problem of dumping. Dumping is defined as the sale of good at a lower price in the international market compared to the domestic market. However the practical definition of dumping includes the sale below normal value and sale below average cost. Viner (1923) dealing with dumping was concerned about predatory pricing by the foreign exporter which would lead to destruction of the domestic industry and establishment of foreign monopoly. He recommended the levy of anti dumping duty by the government of importing country.

Anti dumping legislation dates back to the early twentieth century. Canada was the first country to enact anti dumping law in 1904 and it was followed by US, European countries and Australia. They are considered to be the big four or traditional users (Vermulst 1999) of anti dumping legislation. In the post war period GATT provisions recognized the need for anti dumping measures and GATT provided the basic guide lines for the enactment of such an anti dumping law. Anti dumping provisions form part of WTO agreements. These provisions try to make the laws uniform throughout the world and define the conditions under which anti dumping actions can be initiated. The conclusion of Uruguay round of GATT and the establishment of WTO have accelerated the process of globalization. The international trade statistics shows that the growth in trade is also accompanied by rapid growth in anti dumping initiations especially by non traditional users. While the developing economies were the victims of anti dumping actions till 1980s initiations by the developing economies including India are also growing in the last decade.

The economists are divided in their opinion on the use of anti dumping law. Doubts have been raised whether powerful industry lobby uses the anti dumping legislation as a tool of protection against international competition. Similarly there is a view that measures like anti dumping duty, countervailing duties and safeguard measures are legal means of obtaining protection in the light of falling tariff and abolition of quantitative restrictions (Bhagwati

1988). It is alleged that the definitions and the procedures in the anti dumping law are open to misuse by domestic firms (Dale 1980), (Finger 1998).

The objective of the study is to analyse the growing anti dumping actions in general and India in particular in the light of the above arguments. Specifically, the study aims to examine the pattern of anti dumping actions taken by India in a comparative perspective. It, further, traces the trends in anti dumping actions initiated by India against other developed and developing countries and the reciprocal cases initiated by other countries against India. The paper attempts to identify the nature of the Indian firms resorting to the anti dumping actions in terms of corporate structure and market share, and tests whether the anti dumping procedures are used by the domestic producers to their advantage. The analysis carried out in the paper is based on the Indian and international sources of statistics such as Semi annual reports and international trade statistics of WTO. Anti dumping reports published by Department of Commerce, Government of India - Economic survey and Reserve Bank - Annual reports and statistics from DGC I&S Case hearings reported in the Gazettes and the website of Ministry of Commerce, Government of India.

The paper begins with a description of the treatment of the issues of dumping and anti dumping in economic theory and literature [Section 2]. Section 3 focuses on the WTO agreement on the issue of anti dumping action. While Section 4 attempts to analyse the trends in the anti dumping action over three decades, Section 5 mainly deals with the anti dumping actions taken by India and how India is affected by the anti dumping actions of other nations. Section 6 attempts to study whether the anti dumping actions are being used by the large firms as a tool of protection, and Section 7 provides the summary and conclusions of the present study.

2. Economic theory and Anti-Dumping:

This section studies how economic theory deals with the issues of dumping and anti dumping. Trade and industrial economists from the US and European countries have discussed these issues from a theoretical and practical view point. Classical and modern trade theories support free trade on the grounds efficiency, specialization and maximization of consumer welfare. Though a low priced imports may maximize the consume welfare the free trade may also lead to the problem of dumping.

Perspectives regarding dumping and anti dumping, however, vary. Following Hoekman (1998) we can classify the views into three categories. The first view recognizes dumping as

a problem and considers anti dumping action as an appropriate response to the problem. According to the second view point the threat of dumping is a non issue in the long run and anti dumping is simple protectionism without any economic justification. The third view point favours the use of anti dumping measures on the second best grounds. It may be necessary when a country closes its market to foreign imports but encourages its own firms to promote exports through predatory pricing. Anti dumping legislation provides level playing field when the competition laws are heterogeneous among various countries.

Viner (1923) was one of the early writers to discuss the issue of dumping. He was of the view that dumping was a problem in the international trade and a foreign exporter had the potential to establish his monopoly through predatory pricing of the exports. Industrial economists have supported anti dumping measures wherever necessary. They look at it not only from the point of view of efficiency but also fairness. According to this view point a domestic producer has a right to be protected against a foreign seller who may not be restricted by the competition rules in his home market which restricts the domestic producers. Homes (1997) justify the use of anti dumping measures under the following conditions in the absence of other tools.

- 1) Monopolistic predatory pricing
- 2) A strategic dumping supported by the long purse of the government of the exporting country
- 3) Dumping by state trading organisations which do not have any profit constraint.
- 4) Price dumping in downward cycles to be acted upon only if the exporter is protected in the home market but to be allowed when all the markets are open.

Howell and Ballentine (1997) are of the view that anti dumping action is necessary to address the divergence which exists between various national markets with respect to competition policy. An inefficient firm can realize higher price in the protected domestic market and resort to predatory pricing in a foreign market. As a result the firm may enjoy higher capacity utilization and lower unit cost. But an efficient domestic firm in the aforesaid foreign market may not enjoy such an advantage due to the competition policy in that country and end up with a lower capacity utilization and higher unit cost. This deters the domestic producers from investing in highly capital intensive industries producing products with shorter life cycles.

Dale (1980) questioned the theoretical and practical validity of the concept of dumping under the changed world conditions. He argued that anti dumping is a serious problem in international trade. Finger (1993) stated that anti dumping is ordinary protection with grand

public relations programme. The traditional view supported anti dumping measures to prevent the establishment of foreign monopoly through predatory pricing. According to Finger it is anti dumping law that kills the competition. He states that “it is harnessing of state power to serve private interesta means by which one competitor can use the power of the state to gain an edge over another. It removes the checks and balances in anti trust law. The only constraint is that the beneficiary must be a domestic one and apparent victim a foreign one”³

Chicago school economists are skeptical about the argument which states that a foreign exporter can establish his monopoly through predatory pricing and then raise the price in future after driving out the domestic producers from the market. They believe that new firms will enter the industry in that eventuality and the foreign firm can not retain the monopoly. The concept of contestable markets strengthens this argument. Therefore they feel that the consumers should be allowed to enjoy the fruits of dumped goods at low prices and anti dumping action is not warranted. Finger (1993) is of the view “anti dumping is a threat to the liberal trading system that post world war western leadership struggled courageously and effectively to create. It offers a legal means to destroy GATT system”⁴

Bhagwati (1988) takes the middle course and justifies the of Anti Dumping laws as they help in the progress of free trade by reducing the political opposition. But at same time he accepts the possibility of misuse of anti dumping law and recommends the strengthening of the institutions to prevent misuse of anti dumping provisions. Bhagwati (1988) makes a distinction between the free trade for one country based on national efficiency argument and free trade for all based on the cosmopolitan efficiency for all. Institutions like GATT or WTO are based on the cosmopolitan approach to free trade. They are based on full reciprocity with the essence of symmetric rights and obligations for member states the cosmopolitan efficiency arguments are based on efficient free market price but the pricing may not be efficient in the case of subsidy by a government or inadequate intellectual property right etc. Bhagwati justifies countervailing duties and AD actions as a remedy against price distortions. Bhagwati tries to establish a relationship to the growing demand for protection in United States and the anti dumping initiations to the falling tariff rates in the successive rounds of GATT. In US average tariff fell by nearly 92% over 33 years spanning Geneva round of GATT in 1947. It had gone down to 4.9% in US 6% in EEC and 5.4% in Japan (World development report 1987 quoted in Bhagwati 1988). Bhagwati is of the view that US threw

³ Finger (1993) p 34

⁴ ibid

its weight behind the liberal trade order in the belief that security interests of the country were best served by the pursuit of liberal trade policy. U.S was willing to overlook the asymmetries in MFN status with developing economies or within members of EEC. However the protectionist lobby was becoming more and more powerful from the 1970s as US economy started faltering on account of the oil crisis. As US was already committed to tariff reduction it was not possible to grant protection in the form of tariffs. It led to the increasing use of the administered protection like countervailing duties, anti dumping duties and negotiations for voluntary export restraints which are permitted within GATT and WTO frame work US started initiating more and more anti dumping actions against the trading partners. Increasing use of AD actions by US became a bone of contention between US and EU and Japan.

These arguments can be extended to most of WTO members today. The WTO imposes symmetric obligations in MFN status and tariff and non tariff barriers. The developed counties are under obligation to implement their commitments within a shorter time period compared to developing nations. However WTO allows the use of countervailing and antidumping duties in case of unfair trade. Auboin and Laird (1997) have pointed out how anti dumping duty has become a key defense instrument of European Union (EU) against developing country imports in order to protect EU industries.

3. WTO and anti dumping

This section deals with the rules and procedural aspects of anti dumping measures as specified by WTO (and earlier GATT). The Government is to designate the anti dumping authority in each country. Affected local producer is expected to file for AD action against foreign imports in specific forms with the proper statistics proving dumping. The foreign exporters are given a chance to state their position in the anti dumping investigation and the dumping authority determines the dumping margin if the export price is less than the normal value. WTO provides three methods to calculate a product's "normal value". They are based on

- Price in the exporter's domestic market
- The price charged by the exporter in another country
- A calculation based on the combination of the exporter's production costs, other expenses and normal profit margins.

The last two alternatives are to be used in the absence of information on the exporter's domestic market price. According to WTO agreements calculating the extent of dumping on a product is not enough. Anti-dumping measures can only be applied if the dumping is hurting the industry in the importing country. Therefore, a detailed investigation has to be conducted according to specified rules first. The investigation must evaluate all relevant economic factors that have a bearing on the state of the industry in question. An anti dumping duty may be levied to the extent of the dumping margin if it hurts the domestic industry. The investigation should be completed within a specific time frame. WTO also allows the country to raise the price to the extent of dumping margin. However the anti dumping investigation should be stopped in the following cases

- When the dumping margin is insignificant (defined as less than 2% of the export price)
- When the volume of imports from any one country is less than 3% of the total imports. However investigation against many countries can proceed if they contribute to more than 7% of the imports even if each country contributes only less than 3%.

WTO anti dumping agreement also has a sunset clause under which the anti dumping action should end after 5 years unless new investigations prove that it is injurious to the domestic industry.

Under the GATT anti dumping agreement was based on the Tokyo agreement (1973-79) and all GATT members were not signatories of the agreement. WTO anti dumping agreement is based on Uruguay round of negotiations and all members of WTO are bound by the agreement. When the exporting countries do not agree with AD action of the importing country they can appeal to the appellate body of WTO.

Though WTO and earlier GATT have made specific rules and regulations for anti dumping there is a view that the procedures are subject to misuse. . Bhagwati (1988) classifies the administered protective measures into two categories.

1. The measures that by pass GATT rules - politically negotiated restraints of imports fall in the first category.
2. The measures that capture the GATT rules and pervert it. . Countervailing duties and anti dumping provisions fall in this category. Capture of provisions by protectionists is felicitated by the fact that descriptions and characteristics of concepts like fair value are inherently vague and can be interpreted restrictively with bias against foreign exporters.

Dale (1980), Finger (1993), Messerlin (1990), have studied the AD procedures and cases in various countries and come to the conclusion that the AD rules in various countries are loaded in favour of the domestic producers and the definitions and interpretations of various terms like normal value are subject to abuse. Findings by Messerlin (1990) indicated the asymmetries with which domestic and foreign firms were treated. Fred Smith of competitive Enterprise institute (Bhagwati 1988) concluded that if the same anti dumping laws applied to us companies every after Christmas sale in US would be banned. According to Finger (1993) “AD is the fox put in charge of the hen house, trade- restrictions justified by GATT. The fox is clever enough not only to eat the hens but also to convince the farmer that it is only way things ought to be”⁵.

Non market economies are more at the receiving end in the absence of domestic market price. Under WTO regime China is the country against which maximum anti dumping actions have been initiated. In the absence of domestic market price, the normal value of exports from China have been constructed on the basis of ‘best available information’ provided by domestic producers in the importing countries or on the basis of the costs and prices of a third country comparable to China. In some cases other countries have used India as the basis for calculation of cost of production and price in Chinese market and India herself has initiated the maximum number of AD actions against china. Finger, Dale and McGee and Block have elaborated a number of cases to show how the imports from East European non market economies have been subjected to anti dumping action with repeated regularity. Chinese have voiced their objections against some of the anti dumping duties levied by India also.⁶

McGee and Block (1997) and Palmetter (1988) have pointed out that the AD dumping investigations do not give proper weightage to the sudden large scale depreciation in the value of currency. An exporter may face anti dumping action if the exchange rate shifts in wrong direction (Palmetter 1988) US is accused of following different procedures for the South East Asian Exporters during the currency crisis of the 1996-97 even though the currencies of all the countries suffered heavy depreciation.. Similarly exporters from countries facing hyper inflation can be hit by anti dumping action even if no dumping was intended.

When normal value is constructed it includes the full cost and profit margin. Dumler (1997) have criticized the inclusion of 10% for overhead costs and 8% profit by the International Trade Administration, the investigation authority of US. Dumler (1997) is of the view that

⁵ Finger 1993-p 34

⁶ ‘China wants anti dumping talks’ article by special Correspondent Hindu 10th April 2001

such adjustments are not needed because, in a competitive industry, profit margins will be close to zero, and the costs and prices reported by oligopolistic industries will already include a profit margin. It became important in the case of AD action against the import of super computers from Japanese firm NEC. NEC of Japan bagged a \$35 million contract to supply a weather-simulating supercomputer from a state funded agency - University Corporation for Atmospheric Research (UCAR) in Boulder, Colorado. Cray computers, a US based company had lost to NEC and they initiated anti dumping action against NEC. Since there is no domestic market for such an item like the special weather computer the normal value was constructed on the basis of AD dumping procedure in US and a dumping duty of 454% was levied. NEC was not satisfied with the overheads relating to research expenditures were allocated but the ITC levied the dumping duty on the basis of best information available and provided by Cray Inc.

While the super computer anti dumping case involves two multi nationals and dispute over cost the bed linen case against India shows how small exporters can be subjected to dumping duties on the basis of technicalities. The domestic manufacturers of EU filed for anti dumping action against Indian exporters of bed linen. It was found that the EU had used the costs of Bombay Dyeing, as the normal cost for calculation of dumping margin. As the costs of the exporters varied the dumping margin turned out to be negative in some of the cases. However the AD authority in EU took the negative margins as zero considered only the positive margins and levied a dumping duty. When TEXPROCIL the export promotion council for exports took up the matter with the WTO appellate authority they ruled in favour of Indian exporters and clarified that the negative margins can not be zeroed while calculating dumping margins. . The critics of anti dumping law have also criticized the enormous legal costs involved in the proceedings which deter the exporters in many cases when the producers are small enterprises and have small markets. The domestic producers virtually do not face any penalty even if the case is rejected or it turned out to be frivolous. This encourages them to take multiple courses of actions. “The legal dimension of the technique is to file a large number of petitions against a long list of exporters covering the spectrum of the industry’s products.” (Finger 1993). This ensures that some combination of legal and technical formalities win a favourable decision to the domestic producers.

While public interest aspect is taken into consideration in the investigations in some countries it does not the influence the outcome as much as the lobbying by domestic producers. Some of case studies prove that the AD action causes injury to more consumers and import user industries in the domestic market and benefits fewer domestic producers. Finger (1993) has

discussed the cases of import of frozen concentrated orange juice from Brazil, import of cut flowers from Colombia, colour televisions from South Korea and chemicals from Poland. All these imports attracted anti dumping duty in USA. The benefit of the imports to the consumers and user industries had been substantial in terms of fall in price and employment. However they could not exercise a countervailing power against the domestic producers. The outcome was different in each case. The initiation of anti dumping action made the Korean producers to reduce the domestic price to the benefit of the Korean consumers. But it affected the prices of orange growers in Brazil as the Brazilian exporters started pricing their exports on the basis of AD action and reduced the price paid for oranges in order to reduce their costs. Similarly the AD action against cut flower imports not only affected the income and employment in Columbia but also in US as it reduced the jobs in the distribution network due to a fall in demand for cut flowers. When EU threatened anti dumping action on chemical imports from Poland the state level corporation involved in exports opted for increasing the prices. Finger (1993) comments that the anti dumping rules teach a capitalist to behave like a socialist rather than to teach a socialist to behave like a capitalist - in an interface between market and non market economies.

Bhagwati (1988) explains why the countervailing power of the consumers fails to work in terms of the explanation given by Wilfred Pareto with reference to general protection. The protectionist measures confer large benefits to a small number of people and causes slight loss to large number of people. It is very much true of the anti dumping measures. The small benefit available to each and every consumer does not make it worth while to incur the lobbying cost in favour of imports. Bhagwati (1988) has also pointed out that the export industries have not been in general mobilized against the import competing industries' demand for protection. Countries like Australia, Canada and European Union consider the public interest angle before levying anti dumping duty but it is not mandatory in countries like US and India.

4. Trends in anti dumping actions

This section analyses the trends in the anti dumping initiations Section 4.1 analyses the international trends in anti dumping initiations in the pre and post WTO period. Section 4.2 studies the anti dumping initiations in relation to the international trade flows.

4.1 Anti dumping initiations in pre and post WTO period

While the AD actions were mainly used by developed nations in the 1970s and 1980s they are increasingly used by developing countries like India also in the recent years. Dale

(1980) has done a study of anti dumping in the 1970s. Relying on GATT reports Dale has reported that the four main actors US, EU, UK and Canada had initiated 481 anti dumping actions between 1968 and 1978. Australia opened 100 investigations between 1975/76 and 1977 /78. Finger (1993) analysed the problem in the 1980s. He has reported 1558 cases between 1st July 1980 and 30th June 1989 from GATT sources. His study also confirms that the big four US, UK Canada and Australia initiated maximum anti dumping cases in the 80s and anti dumping cases were initiated by the developing countries only after 1985 and they had initiated 34 of the total 1558 cases (2.2%) in the 80s. However 2416 anti dumping cases have been initiated in the first 9 years of WTO between 1st January 1995 and 31st December 2003. Table 1 gives the comparative figures for the 70s, 80s and the WTO era. Though the periods are not exactly equal it varies from 9 to 10 years and show the basic trends.

Table 1- International Trends in Anti Dumping Initiation

Country	AD initiations between*	AD initiations between**		AD initiations between ^{\$}	
	July 1968 and June 1978	Jan 1980 and June 1989	Percentage	1-1-1995 and 31-12-03	Percentage
	Number	Number	Percentage	Number	Percentage
Australia	100	488	31.3%	163	6.7%
USA	233	398	25.5%	329	13.6%
Canada	113	318	20.4%	122	5.0%
EU	58	285	18.4%	274	11.3%
UK@	77				
Others	NA	69	4.4%	1528	63.4%
Developed		35	2.2%	2	
Developing		34	2.2%	1526	63.4%
Of which					
India				379	15.7%
Argentina				180	7.5%
S.Africa				166	6.9%
Brazil				109	4.5%
Mexico				73	3.0%
China				72	3.0%
Total	581	1558	100.00%	2416	100.00%

Authors' calculation based on

Source:

*Basic Instruments (Geneva: GATT Secretariat) Annual Supplements from Dale(1980)

**GATT 1979-89 quoted in Finger (1993)

^{\$} www.wto.org/english/tratop_e/adp

@ for further period UK is included along with EU

41 countries initiated 2416 anti dumping actions between 1-1-95 and 31-12-03. 10 countries accounted for 78% of the initiations. India tops the list and accounts for 16% of the anti dumping actions initiated during the period. The big four continued to initiate anti dumping cases and they accounted for 888 initiations. However they accounted for only 37% of the

total initiations compared to 96% in the 1980s. Japan initiated only two cases in the entire 9 years. More than 60% of the cases were initiated by the developing countries. Table 1 shows that 6 developing countries figured among the top ten initiators along with the big four. Governments seem to be using these measures to protect the domestic industries in the light of fall in the tariff barriers and other non tariff barriers. It highlights and warns the developed nations as to how the non traditional users are increasingly resorting to Anti dumping actions as a weapon of retaliation and that the anti dumping genie could be truly out of bottle. Anti dumping has become a bone of contention in the international trade relations. Increase in the anti dumping initiations by the developing countries does not necessarily mean that they have gained any advantage in trade. The analysis of the developing and developed countries experience reveals that the former is the more affected by the anti dumping initiations. Table 2 shows the mutual incidence of anti dumping initiations between developing and developed countries.

Table 2-Distribution of anti dumping cases according to development (1-1-95-31-12-03)

Initiating Country	Affected country					
	Developed Country		Developing Country		Total	
	Number of cases	Percentage	Number of cases	Percentage	Number of cases	Percentage
Developed country	211	9%	679	28%	890	37%
Developing country	463	19%	1063	44%	1526	63%
Total	674	28%	1742	72%	2416	100%

Authors' calculations based on WTO reports www.wto.org/english/tratop_e/adp

Developing countries have initiated 63% of the cases and the developed countries 37%. While developed countries have been affected by 28% of the cases the developing countries have been affected by 72%. The table also shows that 44% or nearly half of the cases have been initiated by developing countries on developing countries. Or out of the 1526 anti dumping cases initiated by developing countries 1063 are on developing countries. This accounts for 70%.of the cases initiated by developing countries. On the other hand the developed countries have initiated only 211 out of the total 890 cases against other developed countries or only 23% of the total.

According to WTO sources anti dumping actions were initiated against 97 countries between January 1995 and December 2003. 56% of the actions were initiated against 10 countries. Table 3 shows the top ten countries affected by the anti dumping initiations and their relative position.

Table 3-Top ten countries affected by anti dumping initiations

No	country	No of cases	Percentage
1	China, P.R.	356	15
2	Korea, Rep. of	182	8
3	United States	135	6
4	Chinese Taipei	123	5
5	Japan	106	4
6	Indonesia	99	4
7	India	98	4
8	Thailand	91	4
9	Russia	86	4
10	Germany	74	3
11	Others	1066	44
	<i>Total</i>	2416	100

Authors' calculation based on WTO semi annual reports

Table 3 shows that seven out of the ten countries are developing countries with China ranking first. Though US figures among the top ten initiators and affected countries Canada and Australia do not figure among the top ten affected countries. However the individual ranking does not reflect the position of EU and the member countries clearly. EU figures among the top ten initiators as the EU initiates the anti dumping action for the entire custom union. But in the case of action against EU initiation is sometimes against EU and sometimes against member nations. While there were 52 initiations against EU there were 382 initiations against EU and the member countries including Germany which figures in the top 10. India's position as initiator and affected country assumes more importance when we consider the relative position of India in the international trade. India occupied the 31st rank among exporters with 0.7% of world exports and 24th rank among importers with 0.9% of world imports at the end of 2003 (ITS 2003)⁷.

4.2 Trade flow and anti dumping initiations:

The previous section highlighted how the developing countries are becoming the users of anti dumping legislation and how they are increasingly becoming the target of the anti dumping initiations. This section shows how the anti dumping initiations are targeted against the sectors with high potential of export growth for the developing economies. An analysis of the

⁷ International trade statistics , WTO table 1.5, p19

trade flows and the anti dumping initiations reveal that there is a close relationship between the ranking of the country in the trade flow, export growth of specific sectors and the anti dumping initiations. An analysis of the sectors reveal that five sectors - base metals and articles, chemicals, plastic and rubber, machinery and textiles- (Table 6 in section 5.2) account for more than 75% of the anti dumping initiations and maximum anti dumping initiations are initiated in the manufacturing sector. In 2003 EU, US, and Japan were the top 3 exporters of the manufactured exports with an export share of 43.4%, 10.8% and 8.1% respectively. However their share had fallen from 50.3%, 18% and 12% respectively in 1990. (ITS 2004)⁸. China which occupied the fourth rank had increased its share of export market in manufactured goods from 1.9% to 7.3% during the same period. Chinese manufactured exports grew at an annual average growth rate of 12% in the second half of 1990s and at a rate of more than 20% between 2000 and 2003. China's phenomenal growth arises due to the lower cost and price and the country is facing the maximum anti dumping initiations. Korea the second affected country has improved its market share of the manufactured exports from 1.4% to 3.3% with an annual average growth rate of around 6% in the second half of 90s and 8% in the first three years of 2000 in spite of a negative growth rate in 2001. In fact China and Korea figure among the top 15 in all the leading manufactured items like chemicals, textiles, Iron and steel , automotive parts and office machinery the details of which are discussed in the International Trade Statistics of WTO 2004. Similarly Taiwan and Thailand which figure in the list of top ten countries affected by dumping initiation also figure among the top fifteen manufacture exporters of the world gaining 1% market share each in two decades. These countries also figure among the top 15 exporters in various items. There are other countries that do not figure among the top 15 exporters in the overall ranking or the top 10 among affected countries but have performed well in the export of specific goods. They are facing maximum of anti dumping cases in those sectors indicating the potential threat to their future export growth. Russia ranked fourth in the export of iron and steel with a 4.6% market share in 2003 and 57 out of the 86 anti dumping cases – (two thirds of the total)-initiated against Russia were in the sector of base metals and articles. Similarly Ukraine occupying the third position in this sector with a market share of 4.7% was facing 39 anti dumping cases in this sector out of a total of 51 or the dominant export sector of the county was facing 76% of the total anti dumping cases. Similar trends are found in anti dumping initiations against other developing countries also.

⁸ ITS 2004 – table IV 26—p120

5. Analysis of Anti dumping cases initiated by and against India

Dumping has become a major issue in India in the post liberalization period. This section covers the Indian experience with dumping and anti dumping in the post liberalization period. Section 5.1 covers the actions initiated by India and section 5.2 the actions initiated against India. Developing nations like India that had erected high tariff and non tariff barriers to protect the domestic industries have been forced to reduce the tariff and non tariff barriers under WTO agreements. India has also been fulfilling her commitment to WTO in the matter of bringing down the trade and non trade barriers. The peak tariff rate has fallen from 110% in 1992-93 to 20 % by 2004-05.. India has abolished QRS by April 2001. Number of Indian industries is feeling the heat of the competition from rising imports and there are charges of dumping by foreigners. India initiated the first anti dumping action in 1992. India has initiated 167 anti dumping cases between 1992-93 and 2003-04 (DGAD 2004). In some of the products cases are initiated against many countries simultaneously. As a result the total number of cases initiated during this period against 50 countries is 387⁹.

Table 4: Year wise distribution of anti dumping cases (1995-2003) - World and India

Year	Total number of Anti dumping cases	Cases initiated by India	% Share of India in world	Cases initiated against India	% Share of India in world
1995	157	6	4	3	2
1996	224	21	9	11	5
1997	243	13	5	8	3
1998	256	27	11	12	5
1999	355	65	18	13	4
2000	294	41	14	10	3
2001	366	79	22	12	3
2002	311	81	26	16	5
2003	210	46	22	13	6
	2416	379	16	98	4

Authors' calculation based on WTO semi annual reports on anti dumping

India is also at the receiving end of anti dumping actions in the other countries. Indian exports especially the textile exports are facing AD actions in the advanced countries. The situation may become worse with the dismantling of the Multi-Fibre Agreement in 2005.

⁹ There is a difference of in the number of initiations by India as reported by WTO and the calculations based on DGAD report. It may arise because of the difference in reporting period or the Indian report has not included the countries where the cases were dismissed or withdrawn at a early stage

5.1 Anti dumping Actions initiated by India:

India has established the necessary legal machinery according to the guidelines provided by WTO. Directorate General of Anti Dumping (DGAD) is designated authority to investigate the cases of dumping by foreign firms. The Customs Tariff Act of 1975 amended in 1995 provides the rules on the basis of the WTO guidelines. The domestic producer share of 25% in production of a like article within India which is similar to the imported article or producer and supporters accounting for more than 50% or majority of the production can appeal to the authority for initiating anti dumping action. They are expected to give the necessary information in a Performa. On receipt of the application the anti dumping authority notifies in the gazette and seeks information from the exporter in a specific Performa. The consulates of the exporting country are also notified. Generally the interested parties are expected to submit the information within 40 days of notification. However the authority extends the time limit when specific request is made by the exporter or interested party. While the petitioner has to necessarily provide information regarding cost, production price and such details they may claim confidentiality for certain details. In that event the non confidential information is shown to the other interested parties. When the authority is satisfied with the claims they calculate the normal value and the export price of the imported good and find the dumping margin if any. If the dumping margin or the imports from a specific country are found to be de minimis as per the WTO guidelines then anti dumping duties are not levied against such countries. Otherwise a provisional duty is levied which may be equal to less than dumping margin. The duty is levied only if the dumped imports cause injury to the domestic producer in terms of parameters like price repression, loss, non utilization of capacity fall in employment loss of sales etc. The designated authority visits the premises of the domestic producer or the exporter if necessary to ascertain the facts. Specific hearing is also arranged for the interested parties to state their views. The final duty is levied afterwards. Any duty recommended by the DGAD has to be actually confirmed and levied by the revenue department of finance ministry. ADD once levied is valid for 5 years after which a sun set review is initiated. Similarly new shippers review may be initiated when a new exporter starts exporting from a country subject to ADD. The petitioner or an importer may also call for a mid term review under changing conditions. Any party who is not satisfied may appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The matter has been also taken to High Court and Supreme Court in India when the concerned party is not satisfied with the decisions of CEGAT. Similarly an appeal can be also made to the WTO appellate

body. Though DGAD has given final decision and levied duties in more than 100 cases, WTO appellate body has not ruled against any decision. But certain decisions have been modified by the local appellate authorities like Customs, Excise and Gold (Control) Appellate Tribunal high court and supreme court on appeal but the decisions of the designated authority Directorate General of Anti dumping and Allied duties (DGAD) have been confirmed in most of the cases. DGAD has been maintaining the time frame for investigations and they are reported in Government Gazettes and DGAD has been also bringing out annual reports. India initiated the first anti dumping action in 1992-93. It has been already discussed in section 4 how the number of initiations has been increasing over the year. Though India has initiated anti dumping actions against 49 countries 70% of the actions have been initiated against 10 countries. Table 5 lists the top 10 countries.

Table 5-Top ten countries affected by AD actions by India

Country	No of cases initiated
1. China	67
2. EU & member countries	66
3. Korea	27
4. Taiwan	26
5. Japan	20
6. USA	20
7. Singapore	18
8. Thailand	15
9. Russia	14
10. Indonesia	14
11. others	92
Total	379

source www.wto.org

Table 5 clearly reveals that nearly one fifth of the total 379 actions have been initiated against China. In this respect India's record is similar to the world statistics reported by WTO (Table no 3). A quick comparison reveals that India accounts for nearly 20% of the anti dumping cases initiated against China. The table also shows that India has initiated more anti dumping actions against developing countries rather than developed countries. This is also in line with the international trend shown in table 2.

An analysis of the sectors reveal that five sectors have contributed to more than three fourth of the anti dumping initiations at the international level and the same sectors are important to India also both as initiator and also as an affected country. However the Indian ranking is closer world pattern in the case of cases against India compared to cases initiated by India. The table also reveals that the anti dumping cases have been initiated in sectors that

contribute a huge share to the total exports and these sectors are also witnessing higher growth rates. Chemicals including plastic and rubbers accounted for 14.8% of Indian exports (RBI 2004) in 2003-04, and textiles accounted for 19%. Engineering goods which includes some base metal articles and machinery and appliances accounted for 19.4% of the total exports. They also represent some sectors in which India is increasing the market share at the international level in the post liberalization period. Table 7 shows the items of Indian exports which rank within the top 15 among all the nations and also affected by anti dumping initiations.

Table 6: Sector wise break up of anti dumping cases initiated by India and against India (1-1-1995—31-1-2003)

Sector	World		By India		Against India	
	No of measures	Percentage of each sector	No of initiations	Percentage of each sector	No of initiations	Percentage of each sector
Basemetals and articles	745	30.8	49	12.9	32	32.7
Chemicals	471	19.5	165	43.5	25	25.5
Plastic and rubber	298	12.3	52	13.7	14	14.3
Machinery and appliances	206	8.5	31	8.2	8	8.2
Textiles	159	6.6	40	10.6	13	13.3
Others	537	22.3	42	11.1	6	6.0
Total	2416	100	379	100	98	100

Authors' calculations based on semi annual reports of WTO source www.wto.org

Table 7- Share of Indian exports in world exports in selected items

Export item	India's share in total world exports (percentage)		Rank at the international level 2003
	1990	2003	
Chemicals	0.3	0.9	14
Iron and steel	0.2	1.5	14
Textiles	2.1	3.8	7
Clothing	2.3	2.9	6

Source- ITS 2004

International Trade Statistics 2004 specially mentions India as one of the six countries with rising chemical exports.¹⁰ While the world chemical exports increased by 7% and 5% between 1990-2000 and 2000-2003 respectively, the Indian figures for the corresponding

¹⁰ ITS 2004 p6

period are 13.5% and 14.2%.¹¹ The above data shows that anti dumping measures can pose a serious threat to export of goods that have an excellent growth potential.

6. Anti dumping action and protection:

This section tests the argument whether the anti dumping actions try to bring back a high duty regime by a proxy. 6.1 study the number of firms involved in anti dumping actions, 6.2 studies their market share and 6.3 their corporate profile. What is the cause of the growth of anti dumping actions in India? Agarwal (2002) rejected the arguments of predatory pricing, strategic trade policy and optimum tariff arguments as a basis for anti dumping duties levied by India. She concluded that anti dumping duties in India are based on political economy argument in which the domestic industries try to seek protection through anti dumping provisions. Singh (2005) has also concluded that the oligopoly firms predominantly use the anti dumping measures at the expense of the user industries in the small scale sector. While discussing trade and competition policy Bhattacharya (2004) has expressed the view that the abuse of anti dumping procedure is one of the reasons why the developing countries are not able to make headway with competition concerns.

The anti dumping cases in India have to be viewed in the light of the trade policy measures announced in the post reform period.

- Drastic reduction in import tariff
- Removal of quantitative restrictions and placing the items under Open General Licence except in few cases from the point of view of environment and safety
- Decanalisation of imports except in very few cases

Trade liberalization has touched more than 8000 goods and most of the manufacturing sector is facing international competition. Though the possibility of dumping can not be discounted the anti dumping actions need not necessarily be a guide to the extent of dumping. An analysis of the cases reveals that the anti dumping action has been initiated in respect of only 114 goods. The authorities have rejected the application in case of another 31 goods upto 31st March 2004 on account of various discrepancies and the cases have been initiated in some commodities like iso prophyll alcohol and black and white photographic paper and Gypsum plaster board again It may be partly explained by the fact that the liberalization of trade policy and investment policy have proceeded side by side and goods which might otherwise have been imported are produced locally. It is also likely that the industries affected may be

¹¹ ibid table 2

small scale industries that are not in a position to seek redressal through anti dumping action. A study of the corporate profile of the initiators can help in understanding the nature of actions.

6.1 Number of firms initiating anti dumping action:

DGAD has a clause that the initiators should contribute to at least 25 of the total domestic production in order to qualify as a domestic producer to initiate the anti dumping action. Any producer who is an importer or related to the exporter is not considered as domestic industry. Whenever a firm produces a commodity for captive consumption without offering it for sale such a firm is not considered as a domestic producer for the purpose of initiating anti dumping action and production of the firm is not considered for the purpose of the total domestic production. It is found that the cases have been initiated by associations of industries in the case of 23 commodities. In the other cases they have been initiated by one or more individual firms. Table 11 reveals that cases have been initiated by a single firm in the case of 60 commodities by two firms in case of 19 commodities, 3 firms in the case of 5 commodities and 4 firms in the case of 4 commodities. The anti dumping authority has initiated cases on its own- (suo motto)- in the case of three commodities. The authority also initiated one case in the case of Bisphenol-A even though the remaining three cases for the same commodity has been initiated by the firm Kesar Petroproducts.

Table 8-Number of firms initiating anti dumping actions

No of firms initiating the case	No of commodities
1	60
2	19
3	5
4	4
Industry associations	23
Suo motto cases	3
Total	114

Source: Authors' calculation based on the case hearings.

Companies which are competitors in the market come together for initiating anti dumping actions against imports. In case of White cement the anti dumping action has been initiated jointly by Grasim Industries and J.K Synthetics two of large business corporations of India. The market share of the companies is reported to be 90 (initial findings of DGAD reported in the Commerce ministry website). The companies that are against each other in one case came together against imports in another case. While Reliance industries has demanded imposition of anti dumping duties on the imports of PTA - a raw material used in the

manufacture of polyester staple fibre- Indo – Rama has strongly argued against it and the latter company has questioned the domestic industry standing of Reliance as an initiator of the case. However they have jointly initiated anti dumping action against the imports of polyester staple fibre.

A study of the members of the various associations throws more light on the nature of the cases. In some of the goods the association represents a number of small producers. The central silk board has initiated action against import of mulberry raw silk in interest of small silk producers. Similarly the Centre for International Trade in Agriculture and Agro based industries has initiated action against the import of butter oil. But some of the associations consist of only a few large firms indicating some form of oligopoly cartel. The Association of Synthetic Fibre demanding anti dumping duty against the import of Nylon tyre cord is made of 4 companies from big industrial groups. Some of the associations are made up of multi national corporations also. The associations of ball bearing manufacturers and float glass manufacturers and Graphite manufacturers are examples of such cases. In some of the cases the DGAD had terminated the case in the final hearing but the importers had to go through an initial period of few months of hardship when they had to pay a provisional duty. Authority has initiated suo motto cases in the case of dry batteries, toys and sports shoes. In the case of toys the authority did not levy any anti dumping duty as no injury to domestic industry was established. However duties have been levied in the other cases and the resulting duties give protection to multinational companies also in the case of dry batteries. It is also found that the anti dumping actions relating to small industries like toys have not resulted in any action against dumped imports due to improper documentation by domestic producers or the inability of the associations to prove the injury. It is likely the small producers affected by dumped imports are unaware of or unable to take legal recourse. But the large firms are in a position to take action either individually or jointly.

In most of the cases it is found the small scale importers end up incurring additional cost in the form of anti dumping duty. For example CLFMA, an association for cattle and livestock feed manufacturers have appealed against the imposition of anti dumping duties at least in four different cases and pointed out how the imposition of the duty would lead to high cost of chicken and cattle feed to the detriment of lakhs of small cattle owners and poultry farmers. Similarly the associations of various small manufacturers of plastic articles, foot wear etc have pointed out how the anti dumping duty on raw material would affect their cost adversely. In a number of cases they have blamed the domestic firms for lack of quality, irregular supply and high prices which had forced them to resort to imports in the first place.

The anti dumping duties have been also opposed by the exporters who import raw materials as such duties would put additional burden on them even though they may be able to claim duty draw back. The exporters have also complained that some of the domestic producers claiming protection against dumping do not supply them the goods under advanced licensing schemes.

6.2 Market share of anti dumping initiators:

The anti dumping rules in India states that the initiator of the anti dumping action should be a domestic industry and have a market share of 25% or the petitioner and supporters should have 50% market share. This rule is imposed in order to ensure that an inefficient producer with a small market trade does not obstruct free trade. However the producers of the various commodities demanding levy of anti dumping duties command a market share ranging from 25% to 100%. table 12 reveals the market share of petitioners in all the 114 commodities.

Table 9: Market share of Petitioners

Market share of petitioners in percentage	No of commodities
100	40
90-100	9
80-90	5
70-80	11
60-70	10
50-60	7
25- 50%	32
Total	114

As many as 40 producers had control over 100% market.. In 31 of the 40 cases the 100% market belonged to a single firm. In one of the cases –analgin- the producer turned out to be the sole producer on account of the fact that the other producers had shut down production due to dumping. In other cases it represented a monopoly. Four of the firms have majority share holding by multinational firms and one firm is a collaboration company between the PSU and a multinational. One firm is controlled by overseas corporate body of NRI and two are PSU units of Gujarat. All the remaining firms are private sector firms and six of the firms belong to major industrial groups. These details also confirm the fact that the anti dumping rules are being used by large firms to gain protection.

6.3 Corporate Structure of the initiating firms:

What is the nature of the firm initiating anti dumping action? The study reveals that the action is initiated by various types of firms like multi national corporations, private firms controlled by NRIs and Over Seas Corporate bodies, State and Union public sector units and private companies belonging to large industrial groups or other wise. Table 13 reveals the nature of companies involved in anti dumping cases. The numbers of firms involved in individual action are 127. Some of the big firms have also participated as members of associations. Some of the firms are involved in more than one case. The firms are classified as MNCs (subsidiaries or firms with majority share holding by a foreign promoter), firms run by NRIs or OCBs, Public Sector companies, Companies belonging to major industrial groups and other public and private limited public sector companies. The members of some of the associations with limited membership of large firms are also included in the list.

Table 10: Corporate structure of firm initiating anti dumping actions

Category of the firm	No of firms
1. MNC subsidiaries or firms with majority share holding by foreign companies	19
2. NRI or OCB controlled firms	3
3. Public sector units	15
4. Private firms belonging to industrial groups	27

Calculations of the authors based on case hearings

All the other firms are mostly public limited companies in private sector and few private limited companies are also found. The different cases reveal that all types of firms have tried to take advantage of anti dumping duties as a means of protection. In the case of float glass the MNC petitioners have not included the Indian firm opposing the petition. In case of industrial sewing machine the MNC producer in India claimed as sole producer and initiated anti dumping action. However the importers revealed that another Indian firm accounted for 45% of production and the Indian producer did not join or support the petition. The petition was dismissed by the authority in the final hearing after the firm was found to be hiding more details after imposing a provisional duty at the preliminary hearing stage. The public sector unit ECIL in joint venture with a multi national company has resorted to anti dumping action after the X ray baggage system produced by the PSU was rejected on the grounds of safety and security. In such cases the loser would be only the government who would be forced to import the material at a higher cost after payment of anti dumping duty. A number of Indian

MNC pharmaceuticals and pharma exporters have also resorted to anti dumping action. The importers have complained that the initiating companies have themselves exported the product to other nations at around the same price. On the other hand certain pharmaceutical companies selling drugs subject to price control by DPCO (Drug Price Control Order) have been seriously affected by dumping by other countries especially China as the import prices are lower than even the prices permitted by DPCO.

The number of countries involved in a particular case can also throw some light on the nature of action. When an action is initiated against one or two producers or only one nation there is a likelihood of dumping by the firm or that country. When actions are repeatedly initiated against various countries and producers it is possible that the domestic producer may be a high cost producer who is not able to withstand competition from any where in the world.

Table 11: Anti dumping actions and number of countries

Number of countries (EU as a single entity)	Number of countries -counting members of EU separately	No of commodities for which action is initiated
1	-	38
2	16	21
3	17	20
4	18	11
5	19	7
6	20	5
7	21	6
8	-	1
10	24	3
13	27	1
17	31*	1

- *author's calculations based on DGAD data data though a case was initiated against European Union in this case it was dropped as dumping duty had been levied by individual member countries earlier.*

Table 11 gives the number of countries against which the dumping action is initiated for all the 114 commodities in question. As many as 37 initiations are against only one country of which 28 are against China. Anti dumping action has been initiated against as many as 17 countries in the case of Acrylic fibre. Eight different petitions have been filed at different points of time between September 1996 and May 2003. In many other cases anti dumping cases have been initiated against 8 to 10 countries simultaneously. In the initial period dumping actions were initiated separately against the 15 members of European Union. However in many cases anti dumping cases have been initiated against EU due to the similarities in the custom duty structure, although imports have been received from only one or two of the member countries. In such a case the anti dumping duty would be applicable to

imports from all the other members also for any future exports. When the individual nations are taken separately it would amount to levy of anti dumping duties on 15 nations (as on 31-12-03).

The treatment of EU in the WTO tables and the resultant numbers present an interesting picture. WTO tables show EU as a single nation from the point of view of initiation but EU as well the members are shown separately as affected countries. As a result EU figures in the top ten initiators of the world but it does not figure in the top 10 affected countries of the world. While 52 actions have been initiated against European Union as many as 330 measures have been taken against the various members of EU separately with highest (74) against Germany. India accounts for nearly two thirds of the anti dumping measures against EU. It is also interesting to see that US has targeted only individual EU members for anti dumping action rather than the Union. WTO tables show that US has not initiated any action against EU. This perhaps indicates how the Indian firms have taken advantage of the Union to get protection against maximum number of the countries. It is also interesting to note that the total anti dumping measures initiated against the SAARC members Nepal (2) and Bangladesh (1) have been all initiated by India.

Though the number of cases have been given on the basis of initiation anti dumping duties have not been levied against all the countries due to the following reasons

- Some of the cases have been just initiated and the hearing is in progress
- DGAD has not levied anti dumping duty for a commodity due to non injury or withdrawal by initiator
- Some countries have been excluded due to de-minimis as the country's import does not account for even 3% of the total imports into India

The table confirms the earlier proposition that the Indian industries are more affected by cheap imports from China with nearly one third of the cases only against China. With EU being the second largest affected party the anti dumping duties effectively blocks the competition from various nations especially with the recent expansion of EU.

8 Summary and conclusion:

This paper begins by analyzing the global trends in anti-dumping actions during the post WTO regime, and examines the use of the provisions of anti-dumping by India against other countries and the pattern of such actions by others on Indian exports. The analysis carried out in the paper points out that anti dumping [AD] actions have increased manifold especially

after the WTO provisions came into effect in 1995. India has emerged as one of the biggest players in using anti-dumping actions, and most of it, unlike the expectations, is targeted against other developing countries, rather than the developed OECD countries. Much of these actions have been in those industries where there exists monopoly and high concentration in Indian industries. In contrast, developed countries have raised the maximum objection to Indian exports under the dumping route, and most of it is in industries that have great export potential for India.

The analysis presented in the paper, based on data from WTO and the DGAD, Ministry of Commerce and the Reserve Bank of India, reveals that the imports of a number of goods are increasing in the post reform period. The increasing imports and lower prices have affected a number of industries. Though both the big and the small firms face the foreign competition, the big firms resort to anti dumping action to fight the imports. Small industries do not resort to this tactics on account of huge legal cost and other procedures involved. The anti dumping actions, therefore, tend to protect inefficient firms. In most of the cases the injury is proved only on the basis of price effect. Many foreign producers are not willing to reveal all the details due to trade secrecy or because of small market size of India. As a result, the government relies on the best available information and constructs cost that is provided by the firms seeking anti dumping actions. Wherever the importers were active and provided necessary information the injury claims of the domestic producers have been greatly reduced. Moreover, the anti dumping law does not take cognizance of technological and quality differences, but considers only the substitutability between goods. Continuous use of anti dumping action may adversely affect the small scale and export industries by raising the cost. It may negate the very advantages of the low tariff regime. It may also invite retaliatory action from other countries as is evidenced by the growing anti dumping actions against India. There is a strong need for the inclusion of public interest clause to prevent the misuse of anti dumping legislation. India should learn from the mistakes of other countries [like the US, against whom such concerns have been raised in the past] rather than repeating such errors. But at the same time the government has to have a strong monitoring mechanism for studying the effect of dumping on small industries that are not in a position to seek protection in the form of anti dumping action. The analysis identifies a clear strategic role for the Government in shaping the pattern and rate of growth of foreign trade from the Indian perspective.

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