

**A Critical Analysis of Pakistan's Anti-Dumping Act, 2015 with Special
Reference to Anti-Dumping Laws of US and Malaysia**



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CHAPTER 1:

1.1 Introduction

In this chapter researcher is addressing the historical background, reasons for making anti-dumping policies, meaning of dumping, anti-dumping, fair price, dumping margin and legal frame work to minimize dumping practice. Dumping, in the GATT/WTO framework, is defined as, a situation in which there is lesser value of export price than usual and normal value in the exporting country.¹ We will discuss in detail with reference to domestic as well as international laws of USA and Malaysia which are going to be discussed in subsequent chapters.

International Trade must be kept developing and growing perpetually for the benefits of both, countries and companies and for the welfare of people across the world. It must be carried out smoothly and peacefully.² In general, dumping is a situation of international price discrimination, where the price of a product when sold in the importing country is less than the consumer cost of said product in exporting country.³ Anti- dumping is necessary to prevent exporters from charging low prices aiming that domestic competitors are driven out of business. Dumping is a tactic employed by predatory exporters seeking a monopoly in foreign markets. Anti- dumping duties are preventive measures against such predatory exporters and Anti-dumping measures are designed to remedy the unfair trade practice of dumping by allowing the imposition of additional

¹Mitsuo Matsushita, Thomas J Schoenbaum, and Petros C Mavroidis, *The World Trade Organization: Law, Practice, and Policy* (Oxford University Press, 2006).

²Reem Heakal, "What Is International Trade?," 2024. <http://www.investopedia.com/articles.last> accessed 12.10.2024.

³T Geiger and D Kennedy, *Regional Trade Blocs, Multilateralism, and GATT: Complementary Paths* pinter 1996.

tariffs on the dumped products.⁴ Anti- dumping measures consist of three different types of remedies:

- i. Anti- dumping duties
- ii. Countervailing duties
- iii. Voluntary export restraints

All above mentioned remedies are inclined to degenerate dumping which are discussed below in detail. Anti- dumping measures have impact on home countries as well as on foreign countries. They tend to give a great benefit to consumers in foreign countries, and little benefit to consumers in home countries.

Pakistan, National Tariff Commission (NTC) is an autonomous investigation authority of government on trade and tariff matters. The commission administers trade remedy laws against dumped and subsidized imports of goods hurting Pakistan's domestic industry. Commission also conducts safeguard investigations against surge in imports. All such proceedings are carried out in conformity with rules and regulations of international trading system. The commission also advises the government on issues related to Pakistan's industry competitiveness, promotion of exports and customs tariff rationalization.⁵

In United States of America, there is wide variety of trade related laws. Many foreign companies are genuinely shocked when they learn in how many different way, they can run afoul of United States laws. Most foreign companies have heard about anti-dumping laws which are the commonly used trade remedy laws. But there are many other laws as well. This research provides a brief overview of United States trade remedies against

⁴Ivo Van Bael and Jean-François Bellis, *EU Anti-Dumping and Other Trade Defence Instruments* (Kluwer Law International, 2011).

⁵Anti-Dumping Duties Act, 2015.

dumping that domestic companies can limit their foreign unjust competition. When an American firm accuses a foreign firm of dumping in the U.S. market, the Commerce Department must compare the price of the good in the home market of the foreign firm and the price it is sold for in the U.S. If the U.S. price does not reflect "fair market value," as determined by the Commerce Department, the foreign firm can be found guilty of dumping.⁶

1.2 Historical Background of Dumping:

The origin of the word 'dump' is uncertain. Its usage, however, by the early nineteenth century had come to mean the act of throwing down in a lump or mass, as with a load from a cart, and it was then a natural extension to apply the word to the disposal of refuse and to describe as a dumping ground a market for the disposal of surplus stock. By the beginning of this century 'dumping' was used in English-language trade literature to describe loosely a situation in which goods were sold cheaply in foreign markets and today the term is used internationally to signify the practice of price discrimination in international trade. The pejorative associations of the word 'dumping' are not without significance. In its modern sense, it denotes what is commonly regarded as an unfair or abusive commercial activity and it is an arguable point of view that much of the supposedly remedial legislation in this area derives from the moral opprobrium which attaches to dumping rather than from any objective damage it may cause. Indeed, it is a central thesis of this study that national and international anti-dumping laws lack solid intellectual foundations and are generally in direct conflict with the elementary principles of welfare economics.⁷

⁶Bryan Johnson, "A Guide to Antidumping Laws: America's Unfair Trade Practice," 1992.

⁷ Richard Dale. *Anti-Dumping Law in a Liberal Trade Order*. London: Macmillan, 1980.

1.3 Dumping:

Dumping is, in general, a situation of international price discrimination, where the price of a product is higher in exporting country in comparison to value of that product when sold in importing country.⁸ Dumping is identified by comparison of these two prices in two different countries. However, the situation is not that simple. In most cases it requires a number of complex analysis steps in order to determine the apt price in exporting country and the apt price in the market of the importing country so as to be able to undertake an justified comparison.

1.4 Anti- Dumping:

Anti- dumping measures stand on various reasons: protection of home industry, preemptive measures against monopolism, barriers against unfair trade, remedy for foreign market-access barrier, and strategy to open closed markets. While the Anti-Dumping Act of 2015 is designed to protect local industries, its practical application has been less effective due to procedural delays and flaws in investigating, fair price and injury, leading to limited success in achieving its objectives.⁹ Anti- dumping measures consist of three different types of remedies:

- i. Anti- dumping duties
- ii. Countervailing duties
- iii. Voluntary export restraints.

All of them tend to degenerate into protectionism. Anti- dumping measures have an impact on home countries as well as on foreign countries. They tend to give a great

⁸Matsushita, Schoenbaum, and Mavroidis, *The World Trade Organization: Law, Practice, and Policy*.

⁹“Trade Remedies in Pakistan: A Review,” 2021.

benefit to consumers in foreign countries, and little benefit to consumers in home countries.

1.5 Dumping and Anti-Dumping:

Why do companies dump? Can dumping practices be stopped? Why and how anti-dumping measures taken? What impact do they have on the dumping country and on the dumped country especially in context of developing countries like Pakistan? Dumping and anti-dumping practices are reciprocal actions that occur between dumping and dumped countries. But they have one thing in common: both lead to protectionism, which is an impediment to the development of the global economy.

Let us discuss about dumping and anti-dumping practices in detail:

1.6 Dumping Practices:

Dumping is one of the commercial tactics employed by companies trying to expand their market into foreign countries or force competitors out of foreign markets in order to raise prices afterward. But why do they resort to dumping? GREG MASTEL classified the motivations of dumping into four categories in American Trade Laws after the Uruguay Round:

Over-capacity dumping,

Government-support dumping,

Tactical dumping (discriminatory pricing),

Predatory dumping

1. Over-capacity dumping occurs when a company continues producing and selling at a price lower than the average cost of production, trying to recoup at least fixed costs.

2. Government-supported dumping is perceived when the government supports a particular industry by providing subsidies. Supported by the government's subsidies, the firm in the industry can sell their products at a price below the production costs. Agricultural products, for example, are often dumped in this way.
3. Tactical dumping is the practice of selling the same product in different markets at different prices. It works best if a company's home market is closed to imports. With a closed home market, the company can charge high prices at home and generate high profits, which offset sales at a loss in foreign markets.
4. Predatory dumping aims at eliminating the competition with the objective of gaining exclusive control of the market. It is an extreme form of discriminatory pricing in that it pursues monopolizing a market.

This dumping practice is most likely to cause a destructive injury to the dumped country. Whether it is called "dumping" or "discriminatory pricing", low-cost pricing is a marketing strategy aimed at market entry or eliminating competitors' operations by using profits generated in a closed home market or with the help of government's subsidies. The company must be a going concern with profit maximization as one of its supreme objectives.

When the company takes low-cost pricing as a competitive advantage, nobody has the right to prevent the company from resorting to that strategy in free markets. However, it is also true that sale in foreign countries at a price less than the cost of production almost always causes quite an embarrassing effect to those countries. The next section having

anti-dumping measures deals with this issue in detail, showing how the dumped countries react to dumping and what its effect is.?

1.7 Misconceptions in the Definition of Economic Dumping:

The most widely accepted economic definition of dumping, which was first suggested by the economist Jacob Viner, who was responsible for many contributions to international trade theory, is price discrimination between national markets. While this formulation conveys the essential idea of a supplier selling the same product at different prices in different countries it nevertheless requires some clarification.

In the first place, price discrimination may describe not only the sale of the same commodity at two or more prices; it may also describe the sale of different commodities at prices which are not proportional to their marginal costs. For instance, in the case of a multi-product firm whose machinery and equipment can be freely adapted to the production of different commodities (and whose resources are therefore said to be internally transferable), price discrimination occurs where the profit margin, defined as the mark-up on marginal cost, varies as between the different commodities produced. The term 'dumping', however, is not generally used in this very broad sense. It will therefore be employed here to signify differential pricing as between the same, or substantially the same, products. Price discrimination, in the economic sense, occurs whenever and to the extent that there are price differences for the same product or service sold by a single seller, and not accounted for by cost differences or by changes in the level of demand, or when two or more buyers are charged the same price despite differences in the cost of serving them. In order to know when there is or is not price discrimination, in the

economic sense, between two or more buyers, it is necessary to know not only the price but also the total costs applicable to each days of transaction under comparison.¹⁰

1.8 Pros and Cons of Dumping:

Although dumping is generally considered a problematic activity in economics, it provides some benefit to certain economic participants. Positive aspects of dumping relate to revenue, prices, and innovation:

1.8.1 Revenue: Due to dumped goods being sold for a lower price than the foreign country where they are exported to, the sales of these goods are very high. This goes hand-in-hand with more revenue for the exporting country. The increased revenue that the exporting company receives benefits it significantly. More revenue means the company can expand by acquiring more production capital and hiring more employees. When more people in an economy receive salaries, more people buy goods and services. This, in essence, is what drives demand in an economy. More demand leads to more supply that meets that demand, which is the foundation of a growing economic cycle.¹¹

1.8.2 Prices: The fact that dumped goods are sold below the market price of the foreign country benefits the consumers of that country. With low prices, consumers can buy more goods or spend the money they save on other goods. Consumers appear wealthier and are made wealthier in a certain way. The goods' low prices mean they can allocate a smaller portion of their budget to the acquisition of those goods

¹⁰ Frank Verboven. "Price Discrimination (Empirical Studies)." In *The New Palgrave Dictionary of Economics*. London: Palgrave Macmillan, 2017.

¹¹ Perkis, David F. "The Science of Supply and Demand." *Page One Economics*, Federal Reserve Bank of St. Louis, September 3, 2024. [Accessed January 2021https://www.stlouisfed.org/publications/page-one-economics/2021/03/01/the-science-of-supply-and-demand](https://www.stlouisfed.org/publications/page-one-economics/2021/03/01/the-science-of-supply-and-demand)

1.8.3 Innovation: The first impression of dumping commonly relates to how problematic it is for businesses in the recipient economy. However, it can be beneficial to an economy. When dumped goods enter a market, companies within that market are naturally threatened by the competition of another supplier offering cheaper goods. On the one hand, this often sees companies withdrawing from the market as the costs of participating in it become too high. On the contrary, companies that don't fall out are forced to improvise and adjust to keep up with the new competition. The ultimate solution for these companies is usually to innovate by enhancing their production process or adapting their business models as required.

Contrary to the positive aspects, dumping has more well-known negative aspects to it. While Anti- dumping measures protect domestic industries, they can also lead to trade disputes and distort global supply chain, highlighting the delicate balance between protectionism and free trade.¹² These pertain to the businesses in the importing economy, unemployment, and monopolies:

1.8.4 Importing Economy: Dumping renders it difficult for companies in the importing country to gain a share in the market. This is mainly because consumers normally tend to purchase cheaper versions of products over expensive versions. This principle makes it challenging for the businesses in importing countries to survive. It is generally agreed that the only way for these businesses to endure the pressure from dumpers is to produce a higher quality product. This theoretically makes them more attractive suppliers in the long run.

¹²Robert T Smith, *Dumping and International Trade Policy: Implications for Environmental Sustainability*, 2nd ed. (Oxford University Press, 2018).

1.8.5 Unemployment: The trouble with dumping doesn't simply end with companies in importing countries falling out of the market. Further collateral damage extends to the employees of those companies who are left unemployed when the organizations goes bankrupt. When people are unemployed, they don't have money to spend and thus have no demand. With demand dropping, economic activity decreases, which, signals a slowdown in the economy.¹³

1.8.6 Monopolies: A monopoly is a situation in a market where one company strongly dominates the market share. This is normally bad since it can manipulate the market in its favor instead of the consumers'. International monopolies can easily arise from countries dumping goods on foreign markets. Usually, dumping causes companies in importing economies to leave the market. This is due to how expensive it is to compete in the market. When the domestic businesses drop out, the only supplier remaining is the dumping company. This situation where it is only the one company remaining defines how easily dumping can destroy a market and create a monopoly.¹⁴

1.9 Prevention of Dumping:

The World Trade Organization is strictly an organization and not a sovereign entity; despite not favoring dumping, it doesn't regulate it. However, the European Union does implement policies to minimize the impacts of dumping from countries like China. Governments can make dumping illegal by implementing quotas that limit the amount of certain goods imported into the country within a certain timeframe.

¹³Greg Mastel, *Anti-Dumping Laws and the US Economy* (M.E. Sharpe, 1998).

¹⁴Jagdish Bhagwati and Robert E Hudec, *Fair Trade and Harmonization: Prerequisites for Free Trade*, vol. 2 (MIT Press, 1996).

Another tool governments have at their disposal is trade agreements. They can enter into agreements with other governments to limit or completely eliminate dumping.¹⁵

1.10 Pakistan's policies to prevent dumping:

In Pakistan the concerned legislation for Anti-Dumping is the Anti-Dumping Duties Act, 2015 (the “**Anti-Dumping Law**”) which has repealed the Anti-Dumping Duties Ordinance, 2000. Before enactment of Anti-Dumping Duties Ordinance, 2000, the issue of anti-dumping was governed by the Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance, 1983. Anti-Dumping Duties Ordinance, 2000 repealed the Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance, 1983 and Section 4 of National Tariff Commission Act, 1990.

1.11 Determination of Injury:

The question whether industry in the importing country is injured or not raises many complications. Article 3 and Article 6 of GATT 1994 provides mechanism for determination of injury. It discusses different factors which are considered during the determination of injury. Injury must determine from the positive evidence. Dumped imports and their effect on local prices of same product and the resultant impact of these imports on domestic producers have to be taken into consideration. The term injury means substantial injury to local industry, threat of substantial injury to a local industry or substantial retardation to establishment of a local industry. Actual and material sales return on investment, capacity utilization productivity, volume of dumping, material negative effect on flow of cash, salaries, ability to generate capital are the key aspects to be taken into consideration for determining of injury to domestic industry. It is not an exhaustive list however it can necessarily give sufficient guidance. Notwithstanding the

¹⁵Jacob Viner, *Dumping: A Problem in International Trade* (University of Chicago Press, 1923).

various tests prescribed in the Article 6 of GATT, 1994 and the national legislation, the determination of what constitutes "material" remains a difficult issue. It is, therefore, correctly maintained that despite "continuing improvements, the injury side of the agreement remains far less developed than the dumping side. Basic injury-related concepts are not well-enough defined and the practicalities of the Contracting Parties differ greatly.¹⁶

1.12 Fair Price in Dumping:

Dumping is considered a form of price discrimination. It occurs when a manufacturer lowers the price of an item entering a foreign market to a level that is less than the price paid by domestic customers in the originating country. The practice is considered intentional with the goal of obtaining a competitive advantage in the importing market.¹⁷

1.13 Dumping Margin:

The dumping margin is found out by placing in juxtaposition the actual value of product in the dumped country with the usual value in exporter's domestic market. For this purpose investigating authorities may use constructed value methods if sufficient data on domestic prices are unavailable.¹⁸

1.14 Investigation:

The main ingredients for initiation and conduct of investigation under Anti-Dumping Law are as follows: The product is dumped in the local Pakistani market. The dumping means act of selling abroad at a price that is less than the price for selling the same goods

¹⁶Munazza Razzaq, "Public Interest Litigation in Anti-Dumping Laws," *SSRN Electronic Journal*, 2014, <https://doi.org/10.2139/ssrn.2484351>.

¹⁷Michael R Czinkota, Ilkka A Ronkainen, and Michael H Moffett, *International Business*, 8th ed. (John Wiley & Sons, 2009).

¹⁸John H Jackson, William J Davey, and Alan O Sykes, *Legal Problems of International Economic Relations: Cases, Materials, and Text on the National and International Regulation of Transnational Economic Relations*, 6th ed. (West Academic Publishing, 2008).

at home (i.e. less than the normal or fair market price). The dumping causes substantial injury to the domestic industry. Therefore, to be unlawful, dumping must threaten or cause substantial injury to local industry in Pakistan. Public interest must be the goal for Imposing anti-dumping duties on injuries.¹⁹

1.15 Process of Dumping Investigation:

An anti-dumping investigation typically begins with a complaint lodged by domestic producers with the assertion that products are being dumped and are causing injury to the domestic industry. Investigating authorities must then determine the existence of dumping, injury, and causality.²⁰

1.16 Pakistan's Policies For Anti-Dumping:

In international trade, there are certain steps taken for the smooth flow of goods. Pakistan's Anti-Dumping duties Act, 2015, while aligned with international best practices, suffers from critical investigative flaws, particularly in determining fair price and assessing injury, thereby undermining its efficacy.²¹ Tariffs and quotas equally apply between all member countries of WTO but there are some exceptions for this general rule, when trading members misuse this favor, then trade remedial laws applied on them which are three in number and given below:

1. Actions taken against dumping (selling at an unfairly low price).
2. Subsidies and special countervailing duties to offset the subsidies.

¹⁹M Bilal, "An Enquiry into the Application of EU Anti-Dumping Law with Particular Reference to Pakistan," 2019.

²⁰Ivo Van Bael and Jean-François Bellis, *EU Anti-Dumping and Other Trade Defence Instruments* (Kluwer Law International, 2011).

²¹M A Khan, "Analysis of the Pakistan Anti-Dumping Act 2015: Compliance with WTO Agreements," *Journal of World Trade* 52, no. 3 (2018): 213–30.

3. Emergency measures to limit imports temporarily, designed to safeguard domestic industries.

After the establishment of WTO, the main objective of trade system is to prevent unfair trade practices in world economy and provide temporary remedies to the importing country in emergency or in exceptional cases. Anti-dumping, Countervailing and Safeguard Measures have increasing importance for industrialist and entrepreneurs in multilateral trading system.²²

In Pakistan the concerned legislation for Anti-Dumping is the Anti-Dumping Duties Act, 2015 (the “Anti-Dumping Law”) which has repealed the Anti-Dumping Duties Ordinance, 2000. Before enactment of Anti-Dumping Duties Ordinance, 2000, the issue of anti-dumping was governed by the Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance, 1983. Anti-Dumping Duties Ordinance, 2000 repealed the Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance, 1983 and Section 4 of National Tariff Commission Act, 1990.²³

Administration of TRLs has been assigned to the National Tariff Commission (NTC herein after called ‘The Commission’) , under the National Tariff Commission Act, 1990. The Commission administers these laws, conducts studies, investigations, prepare reports and, makes recommendation to the Federal Government on Tariff Protection to the domestic industry. The Commission, inter alia, provides protection to the indigenous industry helps in improving the competitiveness of the local industry and promotes exports from Pakistan. Quasi-Judicial powers have also been given to it for conduct of investigation, imposition of anti- dumping and countervailing duties or adoption of

²²Bernard M Hoekman and Michael M Kostecki, *The Political Economy of the World Trading System: WTO and Beyond*, 3rd ed. (Oxford University Press, 2009).

²³Razzaq, “Public Interest Litigation in Anti-Dumping Laws.”

safeguard measures.²⁴As per Section 4 of the Anti-Dumping duties Ordinance, 2000 of Pakistan for considering investigated product as dumped it must be shown that it is introduced into the commerce of Pakistan at lesser price than its normal and usual value. But the problem arises at the time of application of these laws, when interests of consumers are totally negated. In some jurisdictions, the investigating authorities are required to consider the public interest when deciding whether to impose anti-dumping duties. This may include assessing the impact of duties on consumers and downstream industries.²⁵ Statutes that deal with pricing issues are directly linked with consumer related issues, although there is no clause for consumer's participation. In fact all the matters related with pricing, government represents the consumers while dealing with the retailers and manufacturers; however government's own interest may clash with what are the best interests of the consumers. As anti- dumping laws were enacted for the betterment of domestic industry, which is undoubtedly the paramount of the legislators, but the problem arises at the time of imposition of these duties, when public at large is effected with the higher prices of domestic industry and no one pays any attention towards this. The application of anti-dumping duties can have significant protectionist effects, potentially leading to a reduction in market competition and higher prices for consumers.²⁶

²⁴“Annual Report 2021-2022: Safeguarding Pakistan's Industry Through Trade Defence Laws,” 2022.

²⁵Petros C Mavroidis, *Trade in Goods: The GATT and the Other WTO Agreements Regulating Trade in Goods* (Oxford University Press, 2012).

²⁶Bhagwati and Hudec, *Fair Trade and Harmonization: Prerequisites for Free Trade*.

1.17 Lacuna's in WTO and Pakistan's anti-dumping laws:

Anti- dumping was not regulated under international law until the adoption of GATT 1947, although the League of Nations studied dumping as early as 1922. Article VI of GATT "condemned" dumping but did not outlaw it.

Michel Finger very forcefully articulated about the anti- dumping laws in his writings.

1. Anti- dumping has been economic nonsense from its beginning, and it has become increasingly nonsensical over its eighty-seven-year life.
2. Anti- dumping has long been part of the rhetoric of protection.
3. Manipulation of customs valuation has long been part of the arsenal of anti-import weapons.

The Article VI of GATT, 1994 has some substantial defects; moreover these defects were adopted by the member countries in their national legislation. Pakistan has also followed these defects in their national legislation. The light is thrown on some of the problems which may help the concerned authorities, and other relevant parties.

1.18 Calculation Of Normal value:

1.18.1 When domestic market has no like product: Determination of normal value raises a number of problems, especially when the product which is alleged to be dumped in the exporting country is not manufactured in the exporting country. In these circumstances, prices of the other sellers or producers usually in the domestic market, or establish from the market of the third country are taken in account to determine normal value.

Article 2.2 of GATT, 1994 deals with this, as per which in such an eventuality prices of third country would be taken into consideration.

And in Pakistan's national legislation, section 6 of Anti-dumping Act, 2015 and Section 02 (n) covers this concept which is stated as:

As per sec 2(n) of anti- Dumping Duties Act 2015;

Normal value means: "*normal value determined in accordance with Part-III of this Act*".

As per section 6 of anti- dumping duties Act 2015 in such a situation the normal value shall be determined on the basis of price in third country or the production and administrative selling cost in the exporting country.

About this theory Phillip Bentley QC in his writing suggested that only concentrate on cost of production for export sales' if this principle applied then the domestic price is irrelevant, whether high or low it may be. If export prices cover full production cost, then no anti-dumping action should be possible.

1.18.2 Countries with low Import Barriers:

The exporting countries which have low import barriers, such as Hong Kong are unlikely to be able to export at dumped price; moreover they are not able to claim monopolistic prices in their domestic market for most commodities. Domestic prices cannot yield high profit margins because of imports pressure. Exports will therefore have to make their own contribution to the profitability and will not rely on the domestic sales for generating high profits. It is suggested; therefore in AD agreement and in Pakistan's law, a provision is inserted that "countries with low import barriers should not be subject to anti- dumping action".

The Anti-Dumping Law prescribes the modus operandi of giving an application; framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan. The terms, conditions and circumstances under which

investigation can be conduct, modus operandi and duration of investigations and procedures thereof, acquisition of information and assessment procedures are laid down in Anti-Dumping Law. Furthermore, the Anti-Dumping Law prescribes the levy, imposition and collection of anti-dumping duties.²⁷

1.19 Anti-Dumping Duty:

To avoid dumping another remedy is to impose anti-dumping duty by the importing country. This remedy is being adopted by Pakistan. An anti-dumping duty is a protectionist tariff that a domestic government imposes on foreign imports that it believes are priced below fair market value. Dumping is a process wherein a company exports a product at a price that is significantly lower than the price it normally charges in its home (or it's domestic) market.²⁸

1.20 Conclusion:

Nutshell of the above discussion is that in this chapter we learnt about the meaning of word dumping, its origin and historical background. The origin of Anti- dumping laws, the phases of development of AD laws .The understanding of the terms like injury, fair price, dumping margins, investigation of dumping etc. We also got understanding of the terms normal value, export price and dumping duty. The pros and cons of dumping and the lacunas in the anti -dumping policies of WTO and Pakistan. This chapter gave us the over view of dumping and anti -dumping in general.

²⁷Razzaq, "Public Interest Litigation in Anti-Dumping Laws."

²⁸ Investopedia. "Anti-Dumping Dutya,"accessed August 29, 2023.
<https://www.investopedia.com/terms/a/anti-dumping-duty.asp..>

Chapter 2: Domestic laws on Anti-Dumping

2.1 Introduction

In this chapter researcher will discuss the Pakistani anti-Dumping legislation, its historical development in chronological order, the existing laws on anti- Dumping in Pakistan .The salient features of Anti- Dumping Duties Act 2015 and the critical analysis of the anti-Dumping Act with special reference to investigational loopholes regarding determination of injury and fair price. This chapter would also cover the effects of Dumping on import and export of Pakistan. We will see how to maintain balance between domestic and imported product and industry. Recent developments regarding anti-Dumping laws of Pakistan, and important case laws would also be discussed and analyzed.

2.2 Pakistan Anti-dumping Legislation in Chronological Order:

The initial legal framework for addressing dumping in Pakistan was established by promulgation of, import of goods (Anti-Dumping and countervailing duties) ordinance, 1983. It was replaced by the Anti-Dumping Duties ordinance, 2000 followed by anti-dumping duties rules 2000, Anti-dumping duties amendment ordinance, 2002 and anti-dumping duties rules 2003.Subsequently in the year 2015, National tariff commission Act was introduced which repealed anti-dumping duties ordinance .In the year 2016 National tariff commission rules 2016 were framed. The most significant update was anti-dumping duties Act 2015.

2.3 Anti-Dumping Duties Act 2015:

Anti-Dumping Duties Act, 2015 (the “Anti-Dumping Law”) was enacted firstly to consolidate the laws relating to dumping and secondly to give effect in Pakistan to the

provisions of GATT 1994. A product is said to be dumped if it is being sold in Pakistan at price lesser than its normal and actual value.²⁹

The investigation under Anti-Dumping Law can be initiated by the National Tariff Commission established under National Tariff Commission Act, 1990 and continuing/reconstituted under National Tariff Commission Act, 2015 (the “Commission”) upon domestic industry’s written application. The Commission on receiving such an application is duty bound to examine correctness and sufficiency of evidence provided in the application in order to determine whether it is in consonance of the pre requisites prescribed in Anti-Dumping Law. The Commission may also initiate an investigation suo-motu (without having received a written application) provided that it has reasonable evidence that dumping has been done and injury has resulted within the meaning of Anti-Dumping Law. Third party can also move application for initiation of such investigation.³⁰

The Anti-Dumping Law prescribes the modus operandi of giving an application; framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan. The terms, conditions and circumstances under which investigations can be conducted modus operandi and duration of investigations and procedures thereof, acquisition of information and assessment procedures are laid down

²⁹ World Intellectual Property Organization. *The Patents Ordinance, 2000*. Pakistan: Government of Pakistan, 2000. <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/pk/pk106en.pdf>.

³⁰ U.S. Department of Commerce, International Trade Administration, “FAQs on the Initiation of an Antidumping Duty and/or Countervailing Duty Investigation.” Accessed July 22, 2024, <https://www.trade.gov/faq/faqs-initiation-antidumping-duty-andor-countervailing-duty-investigation>.

in Anti-Dumping Law. Furthermore, mechanism for levying, imposing and collecting Anti-Dumping duties is also provided.³¹

Anti-Dumping Duties Act, 2015 has repealed the Anti-Dumping Duties Ordinance, 2000. The prevalent rules for anti-dumping are Anti-Dumping Duties Rules, 2001 which were made in exercise of the powers conferred under Section 67 of the Anti-Dumping Duties Ordinance, 2000.³²

2.4 Salient features of Pakistan Anti-Dumping Duties Act 2015.

The Pakistan Anti-Dumping Duties Act 2015 is designed to protect domestic industries from the harmful effects of dumping. When foreign manufacturers export goods to Pakistan at prices lower than their normal value, often below production cost, harming local industries. Here are the salient features of the Act:

2.4.1. Scope of the Act

The Act applies to all products imported into Pakistan that are alleged to be dumped and causing material injury to the domestic industry. It aligns with the provisions of the World Trade Organization's (WTO) Anti-Dumping Agreement.

2.4.2. Anti-Dumping Investigation

Investigations into dumping are initiated when an application is submitted by or on behalf of the domestic industry. The application must provide evidence of dumping, material injury, and a causal link between the two.

2.4.3. Determination of Dumping

³¹ Khalid Zafar, "Anti-Dumping Duties Act 2015," *Laws of Pakistan*, August 2, 2024, <https://khalidzafar.com/laws-of-pakistan/anti-dumping-duties-act-2015>.

³²U.S. Department of Commerce. "U.S. Antidumping and Countervailing Duties." Accessed August 5, 2024. <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

The National Tariff Commission (NTC) is the authority responsible for investigating and determining dumping cases. The Commission compares the export price with the domestic price in the exporting country to assess the dumping margin.

2.4.4. Material Injury

The Act defines material injury as significant harm caused to a domestic industry by dumped imports. Injury may include reduced sales, profits, market share, productivity, or employment in the affected domestic industry.

2.4.5. Provisional Measures

If there is a preliminary determination of dumping and injury, the NTC may impose provisional anti-dumping duties for a maximum period of four months to prevent further harm during the investigation.

2.4.6. Definitive Anti-Dumping Duties

Once the investigation concludes, if dumping and material injury is confirmed, the NTC can impose definitive anti-dumping duties. These duties are imposed for a maximum period of five years, though they can be reviewed and extended.

2.4.7. Refunds and Adjustments

If the final determination finds no dumping or injury, any provisional duties collected during the investigation are refunded.

2.4.8. Sunset Review

The Act provides for a sunset review of anti-dumping duties after five years to determine if the duties should continue. If dumping or injury persists, duties may be extended.

2.4.9. Judicial Review

Parties affected by NTC's decisions have the right to judicial review by the superior courts.

2.4.10. Confidentiality

The Act ensures the confidentiality of sensitive information submitted during investigations, unless required by law to disclose it.

2.4.11. Exemptions

Certain goods, such as imports for personal use or those involving de minimis dumping margins (insignificant levels), may be exempt from anti-dumping duties.

This Act is aimed at leveling the playing field for Pakistani manufacturers by protecting them from unfair trade practices.

2.5 Loopholes of Investigation Regarding Injury and Fair price in part 08 of Anti-Dumping Act 2015:

Part 8 of anti-dumping act 2015 deals with the process of investigation to determine injury and fair price in cases of dumping however there are certain loopholes in the investigation process which are as under.

2.5.1 Lack of transparency; the investigation process is not always transparent.

The concerned parties may not be fully aware of the evidence being considered against them. They may also be totally ignorant about the methodology used for determining fair price and injury.

2.5.2 Limited scope of injury analysis; the anti-dumping duties Act 2015 does not provide comprehensive definition of injury to the domestic industry resultantly scope of analyzing injury became limited. Ancillary factors that could affect the industry may get out of the sight of this process of investigation.³³

2.5.3 Difficulty in determining a fair price; determination of fair price during investigation is a complex process. It involves numerous variables. The Act does not provide clear cut guidelines for determining fair price .it leaves a lot of room for using discretion. The discretion is not structured. It is mostly

³³David Palmeter and Petros C Mavroidis, *Dispute Settlement in the World Trade Organization: Practice and Procedure*, 2nd ed. (Cambridge University Press, 2004).

without sufficient check. This discretion results in lack of level playing field for all the parties.³⁴

2.5.4 Time consuming process: the investigation process is usually very lengthy .in commercial setups in particular time is money. The companies need quick resolution of their cases. This is even more important for small and medium sized enterprises that may not have resources to sustain a lengthy legal process. While the Anti-Dumping Act of 2015 is designed to protect local industries, its practical application has been less effective due to procedural delays and flaws in investigating fair price and injury, leading to limited success in achieving its objectives³⁵.

2.5.5 Limited resources: National tariff commission is responsible for conducting investigation. In dumping cases the process of investigation requires huge resources especially in complex cases. The commission does not have sufficient resources. Lack of resources results in faulty investigation. Despite comprehensive framework, the Pakistan Anti-Dumping Act of 2015 is impeded by procedural inefficiencies and inadequate resources, leading to suboptimal outcomes in terms of fair pricing and injury determination.³⁶

Although dumping is generally considered a problematic activity in economics, it provides some benefit to certain economic participants. Positive aspects of dumping relate to revenue, prices, and innovation.

³⁴Z Iqbal, "Evaluating the Effectiveness of Pakistan's Anti-Dumping Act 2015," *Global Trade and Customs Journal* 12, no. 6 (2017): 347–60.

³⁵ "Trade Remedies in Pakistan: A Review," Pakistan Business Council, 2021, p. 30

³⁶ UNCTAD, *Report on Trade Remedies in Developing Countries*, 2020, p. 45.

Due to dumped goods being sold for a lower price than the foreign country where they are exported to, the sales of these goods are very high. This goes hand-in-hand with more revenue for the exporting country. The increased revenue that the exporting company receives benefits it significantly. More revenue means the company can expand by acquiring more production capital and hiring more employees. When more people in an economy receive salaries, more people buy goods and services. This, in essence, is what drives demand in an economy. More demand leads to more supply that meets that demand, which is the foundation of a growing economic cycle³⁷.

The fact that dumped goods are sold below the market price of the foreign country benefits the consumers of that country. With low prices, consumers can buy more goods or spend the money they save on other goods. Consumers appear wealthier and are made wealthier in a certain way. The goods' low prices mean they can allocate a smaller portion of their budget to the acquisition of those goods³⁸.

The first impression of dumping commonly relates to how problematic it is for businesses in the recipient economy. However, it can be beneficial to an economy. When dumped goods enter a market, companies within that market are naturally threatened by the competition of another supplier offering cheaper goods. On the one hand, this often sees companies withdrawing from the market as the costs of participating in it become too high. On the contrary, companies that don't fall out are forced to improvise and adjust to keep up with the new competition. The ultimate solution for these companies is usually

³⁷ Investopedia, "Dumping," accessed March 26, 2024, <https://www.investopedia.com/terms/d/dumping.asp>.

³⁸ Investopedia, "Dumping," accessed March 26, 2024, <https://www.investopedia.com/terms/d/dumping.asp>.

to innovate by enhancing their production process or adapting their business models as required³⁹

Contrary to the positive aspects, dumping has more well-known negative aspects to it. These pertain to the businesses in the importing economy, unemployment, and monopolies. Dumping renders it difficult for companies in the importing country to gain share in the market. This is mainly because consumers normally tend to purchase cheaper versions of products over expensive versions. This principle makes it challenging for the businesses in importing countries to survive. It is generally agreed that the only way for these businesses to endure the pressure from dumpers is to produce a higher quality product. This theoretically makes them more attractive suppliers in the long run⁴⁰. The trouble with dumping doesn't simply end with companies in importing countries falling out of the market. Further collateral damage extends to the employees of those companies who are left unemployed when the organization goes bankrupt. When people are unemployed, they don't have money to spend and thus have no demand. With demand dropping, economic activity decreases, which signal slowdown in the economy.⁴¹

A monopoly is a situation in a market where one company strongly dominates the market share. This is normally bad since it can manipulate the market in its favor instead of the consumers'. International monopolies can easily arise from countries dumping goods on foreign markets. Usually, dumping causes companies in importing economies to leave the market. This is due to how expensive it is to compete in the market. When

³⁹Study.com. "Dumping in Economics: Definition & Effects." Accessed March 24, 2024. <https://study.com/academy/lesson/dumping-in-economics-definition-effects.html>.

⁴⁰Study.com, "Dumping in Economics: Definition & Effects," Study.com. Accessed March 29, 2024, <https://study.com/academy/lesson/dumping-in-economics-definition-effects.html>.

⁴¹Bilal, "An Enquiry into the Application of EU Anti-Dumping Law with Particular Reference to Pakistan," 2019.

the domestic businesses drop out, the only supplier remaining is the dumping company. This situation where it is only the one company remaining defines how easily dumping can destroy a market and create a monopoly.⁴²

The World Trade Organization (WTO) is an international organization that deals with the rules of trade between nations. The WTO also operates a set of international trade rules, including the international regulation of anti-dumping measures. The WTO does not intervene in the activities of companies engaged in dumping. Instead, it focuses on how governments can or cannot react to the practice of dumping.

In general, the WTO agreement permits governments to act against dumping of such nature which causes or threatens to cause substantial injury to domestic industry in its territory. This intervention must be justified to uphold the WTO's commitment to free-market principles. Anti-dumping duties have the potential to distort the market. In a free market, governments cannot normally determine what constitutes a fair market price for any good or service.⁴³

2.6 Effect of Anti-Dumping Laws on Import and Exports of Pakistan:

Public interest or the consumer's rights are the basic rights of citizens, but still they are contested before courts, and it is the neglected category in Pakistan. In recent legislation created industry regulators such as National Electric Power Regulatory Authority (NEPRA) and Pakistan Telecommunication Authority (PTA), there is no provision related with consumer's policy. NEPRA basically emphasis on tariffs and pricing, whereas PTA did not mention pricing but used the term "interest of users" which may include "consumer". In both laws Authorities have no power to award consumers any

⁴²Paul R Krugman and Maurice Obstfeld, *International Economics: Theory and Policy*, 11th ed. (Pearson, 2018).

⁴³N Gregory Mankiw, *Principles of Economics*, 8th ed. (Cengage Learning, 2017).

financial compensation or damages for any loss or harm suffered, which shows consumers provisions weak.

2.7 Effects on Pakistan's Imports:

After the imposition of preliminary antidumping duty, it apparently affects the imports of Pakistan; that the imports of paper board product drastically fall, due to the reason of increase in the prices of domestic market, however this increase surely operate against general public and also results in monopoly. Lesser imports caused loss of about 2 billion of revenue to the Government Exchequer, since the imposition of regulatory duty. Hereby, mentioned all the important circumstances which affect the economy of Pakistan as well harm the interest of public at large.⁴⁴

Effects of Anti-dumping laws on Pakistan's exports and imports can be better understood by the understated case law.

In an application under section 20 of AD Duties Ordinance 2000, The Master Tiles and Ceramic Industries Ltd (Applicant) alleged that China's exporters export the tiles at dumped prices causing injury to the Pakistani industry. NTC reached its final decision that product has been imported into Pakistan at dumped prices. After the imposition of duty exporters and foreign producers initiate a review application, but commission terminate this application on the basis that neither the Applicants were bona fide exporters of the product under review, nor their exports could be considered as bona fide exports for the purposes of this newcomer review. The Commission had determined that exports of the product under review were not in commercial quantities for the purposes of

⁴⁴ Razzaq, Munazza, Public Interest Litigation in Anti-Dumping Laws (August 21, 2014). Available at SSRN: <https://ssrn.com/abstract=2484351> or <http://dx.doi.org/10.2139/ssrn.2484351> last accessed on 03.11.2024.

this newcomer review. So, they finalized the preliminary duty as final duty i.e.14.85% to 23.65%.

Critical Evaluation: This was the most controversial investigation in year 2008-09, as interested parties showed by their objections but still NTC did not show any interest on these points. As a critical assessor, some questions are raised that are given below: When two exporters provided information which is incomplete and commission itself recognized the deficiency and even then they did not remove the deficiencies, and the commission accepted, their information as best information and decided the whole case, so what is the interest of commission in this and why they accepted it?. All Pakistan Textile Mills Association (APTMA) is a body which represents all the textile mills, have no standing in this case even the objections raised by them have no value and commission did not give satisfactory answers. The two exporters who provided wrong information, instead, that they be penalized for this act they are encouraged by the commission and no duty has been imposed on them, this is in favor of domestic industry, and does the commission have any special interests in this situation? Other interested parties have objection against the investigation, maybe they have mala fide intention, but the applicants who file the application against dumping and have bona fide intention as well, they are also not satisfied with the investigation even commission impose high duty, what are the reason behind this dissatisfaction? This investigation is criticized by every knowledgeable person, and everyone gives their own views on this issue, but authorities did not bother any views and do what is their own views, there were some reservations regarding this issue The two exporters, who only respond to commission and provide some information, later on which is considered as best information under Article32 (2)

and schedule; but the question arises at the time commission itself recognized their information as incomplete and informed them about deficiencies moreover commission gives time for their correction, but after the time information provided with same deficiencies, however commission accepted that information as best information available. Under civil law and criminal law, there are penalties for those who provide information, which is misleading, as there is no provision in this law for misleading information but we have civil law under which such persons are penalized, that is just and fair. Due to this information the whole industry, exporters, importers and Pakistan's economy suffers. This was not what happened in this case, commission accept that information as best information and impose duties only on bases of these information, and the most surprising factor of this investigation is that these two exporters are completely exempted from duty, as the interested parties mentioned that these two are the major culprits in this case but commission did not bother. As well as, the precedent of commission is that they impose heavy duties on those parties who respond to their questions.⁴⁵

2.8 Recent amendments and developments in anti-dumping laws:

Anti-Dumping Duties Act, 2015 has repealed and replaced the anti-dumping ordinance. The main objective of this legislation as per its preamble is to repeal the Anti-Dumping Duties Ordinance 2000 and also to make reforms in Anti-Dumping laws of Pakistan., It also aims at giving effect to the provisions of Article 6 of GATT 1994. It also provides a code for investigation to determine dumping and injury in respect of good imported into

⁴⁵Razzaq, Munazza, Public Interest Litigation in Anti-Dumping Laws (August 21, 2014). Available at SSRN: <https://ssrn.com/abstract=2484351> or <http://dx.doi.org/10.2139/ssrn.2484351> last accessed 03.11.2024

Pakistan to offset the injurious dumping is in the public interest.⁴⁶ There have been some recent amendments and developments in the anti-dumping laws of Pakistan. Here are some of the notable ones:

2.8.1 Amendment to the Anti-Dumping Rules, 2020: In December 2020, the Ministry of Commerce of Pakistan amended the Anti-Dumping Rules, 2020. New provisions relating to the initiation of anti-dumping investigations, the calculation of dumping margins, and the duration of anti-dumping measure were incorporated.

2.8.2 Increase in anti-dumping duties on ceramic tiles: In October 2020, the National Tariff Commission of Pakistan recommended an increase in the anti-dumping duties on ceramic tiles imported from China. The duties were increased from 7.9% to 71.6%, with the aim of protecting the domestic industry from unfair competition.

2.8.3 Initiation of anti-dumping investigation on polyester yarn: In September 2020, the National Tariff Commission of Pakistan initiated an anti-dumping investigation on the import of polyester yarns from China and India. The investigation was initiated following a complaint from the Pakistan Yarn Merchants Association, with the allegation that injury is being caused to local industry.

2.8.4 Extension of anti-dumping duties on steel products: In August 2020, the National Tariff Commission of Pakistan extended the anti-dumping duties on the import of steel products from China for a period of five years. The duties, which were first imposed in 2013, were extended to protect the domestic industry from unfair competition from Chinese imports.

⁴⁶ Khalid Zafar, “Anti-Dumping Duties Act 2015,” *Laws of Pakistan*, accessed September 4, 2024, <https://khalidzafar.com/laws-of-pakistan/anti-dumping-duties-act-2015/>

2.8.5 Introduction of the Trade Remedies Authority of Pakistan (TRAP): In February 2021, the government of Pakistan introduced the Trade Remedies Authority of Pakistan (TRAP), which is responsible for investigating and imposing trade remedies, including anti-dumping measures, safeguard measures, and countervailing duties. The establishment of TRAP is expected to enhance Pakistan's trade remedy framework and improve its capacity to protect its domestic industry from unfair trade practices.

These recent amendments and developments in the anti-dumping laws of Pakistan demonstrate the government's commitment to protecting the interests of its domestic industry and ensuring fair competition in the marketplace.

Various celebrated judgments have been rendered by Pakistani courts which can be regarded as landmark developments in the anti-dumping laws of Pakistan. Few of such judgments are mentioned hereunder;

In case titled, Euro tiles and granite versus federation of Pakistan through secretary commerce division, it was held that, object of imposing anti-dumping duty is to prevent infliction of injury on domestic industry by imports of goods at a price that constitute dumping⁴⁷

In, Tameerssteel case, it was held that appellate tribunal established would be in better position to call for the record of investigation and see whether same has been carried out according to law and whether investigation authorities had reached a correct conclusion on the basis of evidence before it or not⁴⁸.

⁴⁷ Euro tiles and Granite vs Federation of Pakistan through Secretary Commerce Division (2023 PTD 21 Islamabad).

⁴⁸Tameers steel zone vs Government of Pakistan through Federal Secretary Finance (2021 PTD1423 Peshawar High Court)

It was held in Yunus Textile Mills Ltd. case that anti-dumping Duties Act, 2015 did not contemplate a common burden for raising revenue for a general purpose and instead had been enacted to mitigate injury caused by dumping. Anti-dumping Duty was therefore not a tax or regulatory charge but was a penalty. Impugned amendment, vide Finance Act, 2019 which was a Money Bill, could not therefore be justified. High Court declared the amendment to S. 51 of anti-dumping Duties Act, 2015 via Finance Act, 2019 as ultra vires the Constitution and set aside the same⁴⁹.

In another case of Spirit Industries (private) limited vs. National Tariff Commission it was held that requirement to publish notice for initiation of investigation in official Gazette and in newspapers under S. 27 (1)(b) of anti-dumping Duties Act, 2015, could not be termed as substituted service which was restored to in substitution of ordinary mode for service of such notice where notice could not be served on party through ordinary mode, or where party was evading service of notice. Where notices of initiation of investigation were published in official Gazette as well as newspapers in accordance with said S.27 (1)(b), preliminary determination or final determinations made could not be declared invalid if notices under S.27 (1) (a) of said Act were not sent to the concerned person/entity⁵⁰.

In case titled as **SALEH INDUSTRIES (PVT) LTD VS. The FEDERATION OF PAKISTAN;**

The Petitioner impugned final determination on levy of anti-dumping Duties on his consignments and sought direction that the same be quashed. Question before High Court was whether Constitutional petition against order made under anti-dumping Duties Act,

⁴⁹Yunus Textile Mills Ltd. vs. Pakistan (2021 PTD 1055 Karachi-High Court-Sindh)

⁵⁰Spirit Industries (Private) Limited vs. National Tariff Commission, Islamabad (2021 PTD 647 Islamabad)

2015 was maintainable in view of the fact that petitioner had also filed appeal against impugned order under S.70 of anti-dumping Duties Act, 2015. It was held that it was not shown that impugned determination fell outside provisions of governing law. Appellate Tribunal under anti-dumping Duties Act, 2015 had all powers of civil court and such remedy was therefore efficacious and adequate. High Court held that remedy of appeal under anti-dumping Duties Act, 2015 was efficacious, effective speedy and convenient and the Constitutional petition was dismissed.⁵¹

We see in ALI ENTERPRISES case it was held that Petitioner had an alternate remedy available to it under S.70 of Anti- Dumping Duties Act, 2015, wherein ‘an interested party’ could prefer an appeal to Anti-Dumping Appellate Tribunal against initiation, preliminary determination or final determination. Petitioner could not bypass the remedy provided in relevant statute to invoke Constitutional jurisdiction of High Court, under Art. 199 of the Constitution and consequently the Constitutional petition dismissed.⁵² In the case, DEWAN STEEL MILLS VS. FEDERATION OF PAKISTAN Plaintiffs assailed process of investigation on the ground that copy of complaint was not provided to them. It was held that Special statutory remedy under S.70 of anti-dumping Duties Act, 2015 was provided and that Subject was of technical nature and that was why, quorum/composition of National Tariff Commission and academic qualification of its members were also mentioned. Plaintiffs could avail remedy of appeal before Appellate forum as mentioned in S.70 of anti-dumping Duties Act, 2015. Limitation period in terms of S.70(2) of **anti-dumping** Duties Act, 2015 was 30 days’ time prescribed for preferring appeal against preliminary determination, which time had already ended.

⁵¹Saleh Industries (Pvt) Ltd Vs. The Federation Of Pakistan (2020 PTD 1245 Lahore High Court, Lahore)

⁵²Ali Enterprises Through Proprietor Omair Ali Khan vs. Federation of Pakistan Through Secretary, Ministry of Commerce, Cabinet Secretariat, Islamabad. (2020 PTD 1031 Lahore High CourtLahore)

Plaintiffs came to know about preliminary determination when they filed second application for grant of injunction before High Court and no appeal was preferred till then. High Court enlarged time to plaintiffs who could file appeal against preliminary determination before Appellate Tribunal under S.70 of **anti-dumping** Duties Act, 2015⁵³. Same is the case with Lal Din Autoparts (pvt) Ltd Lahore vs. National Tariff Commission, wherein it was held that imposing of anti-dumping duty was exception to general rule of free trade and was not relevant as National Tariff Commission had strictly applied provision of law to fulfill objectives of Anti-Dumping Duties Laws. Anti-Dumping Appellate Tribunal ignored such plea of importer as same was generic in nature. Objective of Anti- Dumping Duties Act, 2015 was to ensure level playing field to domestic industries and anything that came up otherwise was to be checked by National Tariff Commission therefore, reference of general rule of free trade was not relevant. Anti- Dumping Appellate Tribunal declined to interfere in Final Determination Report of National Tariff Commission and resultantly, the appeal was dismissed.⁵⁴

In case of Muhammad Saleem VS Pakistan through Secretary Ministry of Commerce it was held that National Tariff Commission did not have jurisdiction to obtain import data and information from Customs Department in terms of S.10(1) of National Tariff Commission Act, 2015 and if there was anything in S.155H of Customs Act, 1969, that would stand in the way of National Tariff Commission doing so, then to that extent S.155H of Customs Act, 1969, stood overridden by reason of both S.30 of National Tariff Commission Act, 2015 and S.78 of Anti-Dumping Duties Act, 2015. National Tariff Commission had jurisdiction and power to use such information and data under and in

⁵³Dewan Steel Mills vs. Federation of Pakistan (2019 PTD 1387 Karachi High Court Sindh)

⁵⁴Lal Din Autoparts (Pvt.) Ltd., Lahore Vs. National Tariff Commission, Islamabad (2019 PTD 2035 Anti-Dumping-Appellate-Tribunal)

terms of Anti-Dumping Duties Act, 2015, either for purpose of any Suomotu investigation under S.25 of Anti-Dumping Duties Act, 2015, or in relation to and for the purposes of complaints under S.20 or S. 26 of Anti-Dumping Duties Act, 2015; in latter situation (and especially for purposes of a complaint under S.20 of Anti-Dumping Duties Act, 2015) National Tariff Commission was entitled and empowered to either provide information to a person wishing to make a complaint, or to itself use the information and data to inter alia see as if there was reliable evidence of Dumping and injury. National Tariff Commission could provide information and data to a person who wished to file a complaint under S.20 of Anti-Dumping Duties Act, 2015, or an actual complainant in terms of S.10 (3) of National Tariff Commission had no power to provide the information and data to any person except to the extent otherwise expressly made permissible by or under Anti-Dumping Duties Act, 2015. Investigations were based in relevant and substantial part on the data and information obtain from and/or by National Tariff Commission, which was in any case usable by it. In the said case the High Court declined to exercise its discretionary jurisdiction under Art. 199 of the Constitution and did not invalidate investigation or determination as challenged by petitioners and resultantly the Constitutional petition was dismissed.⁵⁵

On the other hand in case, AIMNAZ (PVT) LIMITED VS FEDERATION OF PAKISTAN, through the Secretary, Ministry of Law, Federal Secretariat, Islamabad it was held that anti-dumping Duty was not a tax or a fee, but a regulatory measure or a

⁵⁵Muhammad Saleem vs. Pakistan through Secretary Ministry of Commerce (2018 PTD 2026 Karachi High Court Sindh)

remedial measure to protect the local industry from unfair competition where goods were being dumped into Pakistan-anti-dumping Duty may not be regarded as a penalty⁵⁶.

In case, Siddiq Sons Tin Plate (Ltd.) Vs National Tariff Commission; it was held that investigated product and domestic like products were technically and commercially identical. Creation of separate PCT sub-heading for goods would not be having any impact with reference to levy of any-dumping duty on the dumping products involved in the matter. Plea of the appellant that separate PCT Heading of goods could affect the outcome of investigations carried out by Commission had no substance. Issues raised by the appellant in its appeal before the Tribunal did not warrant any interference in the final determination report issued by the National Tariff Commission (NTC) in the matter. Appeal being devoid of merits was dismissed, in circumstances⁵⁷.

In case, M.I. Sanitary Store Versus Federation of Pakistan it was held that when NTC made its preliminary determination term of office of one of its Members had lapsed therefore, the constitution of the Commission was defective and irregular. Legality of the Commission's constitution was pivotal to the exercise of its jurisdiction. No provision in the National Tariff Commission Act, 1990 existed that protected the decisions or determinations of the Commission in case the constitution of the Commission was irregular or defective. Preliminary determination made by the Commission in the present case had not been issued by the Commission as mandated under S 37 of the Anti-

⁵⁶ Aimnaz (Pvt.) Limited vs. Federation of Pakistan, through the Secretary, Ministry of Law, Federal Secretariat, Islamabad (2018 PTD 1966 Islamabad)

⁵⁷ Siddiquesons Tinplate Ltd. vs National Tariff Commission (2018 PTD 1831 Anti-Dumping Appellate Tribunal).

Dumping Duties Ordinance, 2000, therefore the same was set-aside being Coram non judice, and the Constitutional petition was allowed.⁵⁸

2.9 Remedial Mechanism under AD Law:

Remedial Mechanism under AD Law: Aggrieved party files a written application in a prescribed form along with required fee before the National Tariff Commission of Pakistan (NTC) which consists 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 conducts investigation to determine as if any dumping occurred and caused injury to local industry. Such application is to be 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.⁵⁹

2.10 Sanctions related to Anti-dumping:

The relief to the domestic industry against dumping of goods from a particular country is in the form of anti-dumping duty imposed against those country/countries, which could go up to the dumping margin. Such duties are exporters/producers specific.⁶⁰

However, the remedy against dumping is not always in the form of anti-dumping duty. The Authority may terminate or suspend investigation after the preliminary findings if the

⁵⁸M.I.Sanitary Store vs Federation of Pakistan (2014 PTD 583 Lahore High Cour, Lahore)

⁵⁹ Naeem, Muhammad. “An Enquiry into the Application of EU Anti-Dumping Law with Particular Reference to Pakistan.” PhD diss., University of Bedfordshire, 2016. Accessed August 12, 2024. http://pu.edu.pk/images/journal/pols/pdf-files/Naeem%20-%2018_v23_2_16.pdf.

⁶⁰ National Tariff Commission, “Anti-Dumping FAQs,” accessed April 5, 2024, <https://www.ntc.gov.pk/antidumping-faqs/>. Dated August 12, 2024.

exporter concerned furnished an undertaking to revise its price to remove dumping or the injurious effect of dumping as the case may be.⁶¹

2.11 Maintenance Of balance between domestic and imported products:

Theoretically, tariffs can cause inflation. Tariffs increase the price of goods and services in domestic markets by applying a tax on imported goods that is paid by the domestic importer. To cover the increased costs, the domestic importer then charges higher prices for the goods and services. Tariffs are typically applied to specific products or industries, so may not have a wide-scale effect, which, otherwise, would cause all prices to increase, resulting in inflation.⁶²

Pakistan has been running consistent trade deficit since 2003 mainly due to high imports of energy. Since 2012, China has emerged as Pakistan's largest trading partner replacing the United States. In recent years, the biggest trade deficits were recorded with China, India, United Arab Emirates, Saudi Arabia, Kuwait and Malaysia. Pakistan records trade surpluses with the United States, Afghanistan, Germany and United Kingdom.⁶³

2.12 Suggestions for Maintaining balance:

Maintaining a balance between domestic and imported products can be a complex issue, as it depends on a variety of factors. The size of local market, its nature and competitiveness, availability and cost of imported goods are the important factors. However, here are some general guidelines that can help:

⁶¹Peter den Bossche and Werner Zdouc, *The Law and Policy of the WTO: Text, Cases, and Materials*, 4th ed. (Cambridge University Press, 2017).

⁶²Matsushita, Schoenbaum, and Mavroidis, *The World Trade Organization: Law, Practice, and Policy*.

⁶³ Trading Economics. "Pakistan Balance of Trade." Accessed September 4, 2024. <https://tradingeconomics.com/pakistan/balance-of-trade#:~:text=Balance%20of%20Trade%20in%20Pakistan,Million%20in%20June%20of%202022>.

2.12.1. Encourage domestic production: Governments can provide incentives and support to domestic industries to increase their competitiveness and encourage them to produce more goods locally.

2.12.2. Ensure fair trade practices: Governments can implement policies and regulations that promote fair trade practices, such as anti-dumping measures and tariff barriers, to prevent foreign companies from flooding the domestic market with cheap products.

2.12.3. Promote export-oriented industries: Governments can promote export-oriented industries to help balance the trade deficit and increase the country's foreign exchange reserves.

2.12.4. Encourage consumers to buy local products: Governments can launch campaigns to encourage consumers to buy local products, which can help support domestic industries and create jobs.

2.12.5. Negotiate trade agreements: Governments can negotiate trade agreements with other countries to ensure a fair balance of trade and to promote the interest of domestic industries.

2.13 Survey:

In Pakistan, Consumer Confidence Index (CCI) covers households' perceptions relative to the last six months and their expectations for the next semester, including personal financial conditions, overall economy, unemployment and consumption of durable goods. The index is based on the stratified random telephone survey of more than 1600 households across Pakistan. The survey is conducted by the Institute of Business Administration (IBA), Karachi and State Bank of Pakistan (SBP) every two months since

January of 2012. Consumer confidence in Pakistan plunged to 26.2 in September 2023 from 33.4 in the previous month. This was the lowest reading since the records started in 2012.⁶⁴

On the other hand in current year, the consumer confidence indicator in Pakistan dropped to a five-month low of 31.8 in July 2024 from June's over 2-year high of 40.7. Sentiments deteriorated regarding current economic conditions (30.8 vs 39.0 in May 2024), expected economic conditions (32.9 vs 42.4), and the outlook for better financial conditions for households over the next 6 months (36.5 vs 48.0). At the same time, concerns regarding unemployment in the next 6 months increased (72.5 vs 68.0). Also, inflation expectations accelerated (72.5 vs 65.0), due to higher expected inflation for food (73.3 vs 63.8) and energy (74.9 vs 68.4)⁶⁵.

2.14 Lacunas in WTO and Pakistan's antidumping laws:

To protect their respective economy, many countries impose duties on products they believe are being dumped in their national market; this is done with the rationale that these products have the potential to undercut local businesses and the local economy.⁶⁶

Antidumping was not regulated under international law until the adoption of GATT 1947, although the League of Nations studied dumping as early as 1922. Article VI of GATT "condemned" dumping but did not outlaw it.⁸ Michel Finger very forcefully articulated about the antidumping laws in his writings. "Antidumping has been economic nonsense from its beginning, and it has become increasingly nonsensical over its eighty-seven-year

⁶⁴ Trading Economics. "Pakistan Consumer Confidence," accessed June 5, 2023. <https://tradingeconomics.com/pakistan/consumer-confidence>.

⁶⁵ Trading Economics. "Pakistan Consumer Confidence," accessed August 21, 2024. <https://tradingeconomics.com/pakistan/consumer-confidence>.

⁶⁶Raza Ali, *Improving Anti-Dumping Regulations in Pakistan: Legal and Economic Perspectives* (Karachi: Oxford University Press, 2016).

life. Antidumping has long been part of the rhetoric of protection. Manipulation of customs valuation has long been part of the arsenal of anti-import weapons.⁶⁷ The Article VI of GATT, 1994 has some substantial defects; moreover, these defects were adopted by the member countries in their national legislation. Pakistan was also followed these defects in their national legislation. The light is thrown on some of the problems which may help the concerned authorities, and other relevant parties.⁶⁸

2.15 Conclusion;

In this chapter we learnt the Pakistan domestic law on anti- dumping. The chronological order of development of Anti- Dumping laws in Pakistan; the department, responsible for conducting investigation of Anti-Dumping; the mode and manner of conducting such investigation and the determination of fair price and injuries. The lacunas in AD laws of Pakistan; Latest developments and case law; important judgments rendered by Pakistani courts on anti- dumping laws. This chapter also provides data of anti- dumping investigations conducted so far in Pakistan, date of initiation, preliminary and final determination in investigation and the duty if imposed by NTC.

⁶⁷Usman Shah, *Legal Reforms in Trade Defense Mechanisms: Addressing Challenges in Pakistan's Anti-Dumping Laws* (Islamabad: Sustainable Development Policy Institute, 2020).

⁶⁸Razzaq, Munazza, Public Interest Litigation in Anti-Dumping Laws (August 21, 2014). Available at SSRN: <https://ssrn.com/abstract=2484351> or <http://dx.doi.org/10.2139/ssrn.2484351>

Chapter 3: International laws on Anti-Dumping:

3.1 Introduction:

As discussed in above mentioned chapters we can easily appreciate that purpose of Anti-dumping laws is to nullify the Dumping's negative effects, which occurs when a country exports goods at a price lower than their normal value. Dumping can harm domestic industries by undercutting prices and distorting fair competition. International laws and International agreements provide a framework for addressing anti-dumping issues. The primary multilateral agreement governing anti-dumping measures is the Agreement on Implementation of Article VI of the GATT 1994. It is part of the World Trade Organization (WTO) agreements⁶⁹

3.2 Key features of the international laws on Anti-Dumping:

3.2.1. WTO Anti-Dumping Agreements:

These provide guidelines and conditions for resorting to Anti-Dumping remedial measures. It aims to strike a balance between protecting domestic industries and ensuring that anti-dumping measures are not used as a protectionist tool.

3.2.2. Investigation Process Internationally:

Before imposing anti-dumping measures, the affected country must conduct a thorough investigation to determine as if there is any Dumping occurring, justifying imposition of Anti –Dumping duty.

3.2.3. Dumping Margin calculation:

Methods of calculating Dumping margin is provided in detail in international agreements. The dumping margin is the difference in the price of product in the exporting country and its local value.

3.2.4. Conditions for Imposing Measures:

⁶⁹William A Lovett, *United States Trade Policy: History, Theory, and the WTO* (Armonk: M.E. Sharpe, 2004).

Anti-dumping measures, such as tariffs or quotas, can be imposed if the investigation establishes that dumping is occurring, causing injury to the domestic industry of a state.

3.2.5. Review and Sunset Provisions:

Anti-dumping measures are subject to review to ensure their continued necessity. They may be terminated if it is determined that the conditions justifying their imposition no longer exist.

3.2.6. Non-Discrimination:

As per Anti-Dumping agreements there should be no discrimination in resorting to Anti-Dumping measures between different exporting countries, and they should be applied uniformly. Chad P. Bown and Meredith A. Crowley present empirical evidence showing that U.S. antidumping policies often violate the principle of equal treatment, leading to discriminatory trade practices.⁷⁰

3.2.7. Notifications and Transparency:

It is compulsory for WTO member to notify WTO about the start of anti-dumping investigations and the imposition of anti-dumping duties. This promotes transparency and allows other member countries to be aware of the measures being taken.

It's important to note that while the WTO Anti-Dumping Agreement sets the framework for international rules on anti-dumping, individual countries may have their own specific regulations and procedures for implementing anti-dumping measures in accordance with their domestic laws. Additionally, bilateral or regional trade agreements may contain provisions related to anti-dumping measures.⁷¹

⁷⁰Chad P Bown and Meredith A Crowley, "Trade Policy Under the GATT/WTO: Empirical Evidence of the Equal Treatment Rule," *Canadian Journal of Economics* 39, no. 3 (2006): 684.

⁷¹Claude E Barfield, *High-Tech Protectionism: The Irrationality of Antidumping Laws* (Washington, DC: AEI Press, 2003).

3.3 WTO and GATT-guidelines to avoid dumping:

The GATT 1994 sets forth a number of basic principles applicable in trade between Members of the WTO, including the “most favored nation” principle. It also requires that imported products not be subject to internal taxes or other changes in excess of those imposed on domestic goods, and that imported goods in other respects be accorded treatment no less favorable than domestic goods under domestic laws and regulations, and establishes rules regarding quantitative restrictions, fees and formalities related to importation, and customs valuation. Members of the WTO also agreed to the establishment of schedules of bound tariff rates. Article 6 of GATT 1994, on the other hand, explicitly authorizes resorting to Anti-Dumping measures on dumped products from a particular source, in excess of bound rates, in cases where dumping causes or threatens damaging local industry, or materially retards the establishment of local enterprise. Recent economic policies in Malaysia reflect a nuanced approach where anti-dumping measures are keys to protecting industries in a liberalizing market.⁷² Liberalization in Malaysia saw significant changes in its trade policies, but the role of anti-dumping measures remained critical as a safeguard against the flood of cheaper imports.⁷³

3.3.1) The UR (Uruguay Round) Agreement:

Under Article 6 GATT 1994, and the Anti-Dumping Agreement, WTO Members can impose anti-dumping measures, if, after investigation in accordance with the Agreement, a determination is made

1. that dumping is occurring,

⁷²Maznah Mohamad and Johan Saravanamuttu, *New Economic Policies and Trade Laws in Malaysia* (Singapore: ISEAS Publishing, 2018).

⁷³Chia Siow Yue and eds. Jamal Othman, *Trade Policy in Malaysia: Liberalization Process and Its Impact on the Economy* (Singapore: ISEAS Publishing, 2014).

2. that local industry manufacturing same product in the importing country is suffering substantial injury, and

3. that there is a causal link between the two.

It provides further elaboration on the basic principles set forth in Article VI itself, to govern the investigation, determination, and application, of anti-dumping duties. Legal frameworks governing trade and investment in Malaysia are robust, with anti-dumping laws providing key protections for the domestic market.⁷⁴

3.3.2) Committee on Anti-Dumping Practices:

The Committee, which meets at least twice a year, provides Members of the WTO the opportunity to discuss any matters relating to the Anti-Dumping Agreement (Article 16). The Committee has undertaken the review of national legislations notified to the WTO. This offers the opportunity to raise questions concerning the operation of national anti-dumping laws and regulations and its consistency. The Committee also reviews notifications of anti-dumping actions taken by Members, providing the opportunity to discuss issues raised regarding particular cases. Malaysia's trade strategy involves balancing liberalization with protectionist measures, such as anti-dumping laws, to ensure fair competition for local producers.⁷⁵

The Committee has created a separate body, the Ad Hoc Group on Implementation, which is open to all Members of the WTO, and which is expected to focus on technical issues of implementation: that is, the "how to" questions that frequently arise in the administration of anti-dumping laws.

3.3.3) Dispute Settlement:

⁷⁴S R Azman, *Legal Aspects of Trade and Investment Policies in Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2015).

⁷⁵Mohamed Ariff, *Trade Strategies in Southeast Asia: Policy Reforms and Institutional Changes* (Singapore: World Scientific, 2016).

Disputes in the anti-dumping area are subject to binding dispute settlement before the Dispute Settlement Body of the WTO. Members may challenge the imposition of anti-dumping measures, in some cases may challenge the imposition of preliminary anti-dumping measures, and can raise all issues of compliance with the requirements of the Agreement, before a panel established under the DSU. There is a special standard of review in disputes under the Anti-Dumping Agreement applicable in case of determination by national authorities. The standard of review is only for anti-dumping disputes, and a Ministerial Decision provides that it shall be reviewed after three years to determine whether it is capable of general application.

3.3.4) Notifications:

All WTO Members are required to make anti-dumping legislation in accordance with international Anti-Dumping Agreement, and also to communicate that legislation to special Committee established for this purpose. Said Committee neither approve nor disapprove any Members' legislation, the legislations are reviewed in the Committee, with questions posed by Members, and discussions about the consistency of a particular Member's implementation in national legislation.

In addition, Members are required to notify the Committee twice a year about all anti-dumping investigations, measures, and actions taken. The Committee has adopted a standard format for these notifications, which are subject to review in the Committee. Finally, Members are required to promptly notify the Committee of preliminary and final anti-dumping actions taken, including in their notification certain minimum information required by Guidelines agreed to by the Committee. These notifications are also subject to review in the Committee.

The key principles and guidelines to avoid dumping under GATT and WTO include, article 6 of GATT and agreement on implementation of said Article.

3.3.5) Non-Discrimination:

Countries should not discriminate between different exporting countries. Anti-Dumping measures should be applied uniformly to all exporting countries under similar conditions.

3.3.6) Causation and Injury Analysis:

To impose anti-dumping measures, it has to be shown that dumping is actually causing or threatening injury to local industry.

3.3.7) Prohibition of Unconditional Most-Favored-Nation Treatment:

The Anti-Dumping Agreement prohibits the application of unconditional most-favored nation treatment to exports from countries that engage in dumping. The economic restructuring in Malaysia has seen the strategic use of anti-dumping laws to align with broader national development goals.

3.3.8) Periodic Review:

Anti-dumping measures are subject to periodic review to determine whether they should be continued, modified, or terminated. Anti-dumping regulations have been integral to Malaysia's trade policy reforms, acting as a safeguard during periods of liberalization and economic integration.⁷⁶

3.4 US legislation on Anti-Dumping:

Department of Commerce (DOC) and the U.S. International Trade Commission (USITC) are the two departments which are responsible for implementation of Anti-Dumping laws. Investigations and determinations to assess the effect of dumped imports on local industries are done for responding to the issues of Dumping.⁷⁷James P. Durling and

⁷⁶Chandran Govindaraju, *Economic Reforms and Trade Relations in Malaysia: Policy Framework and Performance* (Kuala Lumpur: Universiti Putra Malaysia Press, 2018).

⁷⁷Bown and Crowley, "Trade Policy Under the GATT/WTO: Empirical Evidence of the Equal Treatment Rule."

Matthew P. McCullough provide a comprehensive overview of the WTO Antidumping Agreement and its implications for U.S. trade law, focusing on compliance issues and enforcement practices.⁷⁸

3.5 A Guide to Antidumping Laws in US:

Many American policy makers over the past decade have replaced calls for more free trade with demands for "fair trade." The United States, they say, should keep its markets open to imports, but must also act aggressively against "unfair" trade practices by foreign businesses and governments. One of the pillars of this "fair trade" approach is a set of so-called antidumping and countervailing duty laws. (Both antidumping laws and countervailing duty laws shall hereinafter be referred to simply as antidumping laws, unless otherwise noted.) Antidumping laws seek to prevent products manufactured overseas from being sold by foreign firms in the U.S. at "less provide than fair value." Countervailing duties seek to offset the subsidies that foreign governments for some exporting firms by imposing duties on the goods these firms export to the U.S.⁷⁹. Raj Bhala and Kevin Kennedy emphasize the complex interaction between U.S. trade laws and international obligations under the GATT-WTO framework, illustrating how U.S. antidumping measures frequently lead to disputes at the WTO.⁸⁰ Edwin A. Vermulst provides a detailed commentary on the WTO Antidumping Agreement, explaining how the U.S. interprets and applies these international standards in its domestic trade law.⁸¹

⁷⁸James P Durling and Matthew P McCullough, *Understanding the WTO Anti-Dumping Agreement* (London: Cameron May, 2003).

⁷⁹ Bryan Johnson, "A Guide to Antidumping Laws: America's Unfair Trade Practice," *The Heritage Foundation*, accessed July 21, 1992, <https://www.heritage.org/trade/report/guide-antidumping-laws-americas-unfair-trade-practice>.

⁸⁰Raj Bhala and Kevin Kennedy, *World Trade Law: The GATT-WTO System, Regional Arrangements, and U.S. Law* (Charlottesville: Lexis Law Publishing, 1998).

⁸¹Edwin A Vermulst, *The WTO Antidumping Agreement: A Commentary* (New York: Oxford University Press, 2005).

3.6 The Evolution of Dumping Laws in the US:

According to the U.S. Department of Commerce definition, "dumping" occurs when, "... a good is sold for less than its 'fair value,' generally meaning it is exported for less than it is sold in the domestic market or third country markets or it is sold for less than production cost."⁸² Since 1897, the U.S. effectively has had antidumping laws on the books, and these laws have enabled the U.S. government to punish firms in other countries that send subsidized exports to the U.S. Brink Lindsey and Daniel J. Ikenson criticize U.S. antidumping laws as overly punitive and misaligned with free-market principles, calling for substantial reforms to reduce their misuse.⁸³

It was not until 1916, however, that Congress passed a law specifically targeting dumping. According to the Antidumping Act of that year, for dumping to occur, a "predatory intent" by the exporter must be shown⁸⁴. In other words, the exporter must intend to sell its products in the U.S. at below production cost in order to cause material injury to an existing U.S. company. This law came in an era in which the federal government also enacted antitrust laws to prevent American enterprises from pursuing similar predatory practices against their domestic competitors. . Brink Lindsey and Daniel J. Ikenson criticize U.S. antidumping laws as overly punitive and misaligned with free-market principles, calling for substantial reforms to reduce their misuse⁸⁵

With the Antidumping Act of 1921, Congress loosened the requirements to permit federal action to keep out foreign products not only if foreign companies engaged in predatory

⁸² International Trade Administration, "Know Your Incoterms," *U.S. Department of Commerce*, accessed September 4, 2024, <https://www.trade.gov/know-your-incoterms>.

⁸³ Brink Lindsey and Daniel J. Ikenson, *Antidumping Exposed: The Devilish Details of Unfair Trade Law* (Washington, DC: Cato Institute, 2003).

⁸⁴ Antidumping Act of 1916, 15 U.S.C. 71.

⁸⁵ Brink Lindsey and Daniel J. Ikenson, *Antidumping Exposed: The Devilish Details of Unfair Trade Law* (Washington, DC: Cato Institute, 2003), 43.

pricing, but merely if their products were deemed to be priced lower than similar American products, regardless of whether predatory pricing was an issue. This Act forms the basis for America's current antidumping law. The Antidumping Act was incorporated into the 1930 Tariff Act, and later amended by the 1979 Trade Act, the 1984 Trade Act, and the 1988 Trade Act. Several multilateral agreements also have addressed the dumping issue. Antidumping Code is the result of Kennedy Round of GATT. This code sets out guidelines under which countries may act against foreign firms that practice predatory pricing resulting in material injury to an industry based in the importing country. GATT itself does not establish specific definitions of what constitutes dumping or act against countries that dump; it simply creates the guidelines on which countries can adopt their own laws to prevent dumping. The code was amended during the Tokyo Round of GATT, held between years 1973 to 1979⁸⁶.

3.7 The Growth in Cases:

Recently the number of dumping cases instigated by American businesses using U.S. laws has grown. Many U.S. industries that in the past might have sought trade protection directly from Congress have found this route more difficult as successive GATT rounds have eliminated many forms of direct trade protectionism. U.S. antidumping laws thus have proved to be a more convenient tool to limit competition by denying foreigners access to the U.S. market. The U.S. steel industry, for example, has received trade protection for almost two decades. In 1992, however, the quota system that had protected

⁸⁶World Trade Organization, "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade," *World Trade Organization*, accessed August 18, 2024, https://www.wto.org/english/docs_e/legal_e/tokyo_adp_e.pdf.

the U.S. industry expired resultantly there were plethora of Dumping complaints filed by industry with concerned departments.⁸⁷

During the 1980s, 1,456 antidumping cases were reported to the GATT. Australia, the United States, Canada, and the European Community accounted for 95 percent of those cases. The U.S. was responsible for 90 percent of all countervailing duty cases initiated between 1980 and 1986.

Antidumping laws originally sought to prevent foreign exporters from using predatory pricing to undermine American businesses. The burden of proof was on the government and American businesses. But these laws have evolved into yet another form of trade protection, which American firms can use to keep out competitors, whether or not they are engaged in unfair trade practices. If the U.S. is to be the leading advocate of free trade in the world, and keep its own market open as well, it should eliminate its unfair trade practices.

3.8 Recent Dumping Cases:

With the increase of American dumping investigations in recent years, there have been a number of particularly disturbing cases that have been plagued by questionable procedures and that in some instances have hurt U.S. businesses and consumers⁸⁸.

Meredith A. Crowley analyzes how U.S. antidumping policies can impact market competition, particularly in sectors where imperfect competition and economies of scale play a significant role.⁸⁹ Several of these recent dumping cases underscore the problems

⁸⁷ World Trade Organization, "Anti-Dumping," *World Trade Organization*, accessed August 18, 2024, https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

⁸⁸ World Trade Organization, "Anti-Dumping," *World Trade Organization*, accessed August 18, 2024, https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

⁸⁹ Meredith A. Crowley, "Anti-Dumping Policy Under Imperfect Competition: Theory and Evidence," *Canadian Journal of Economics* 36, no. 3 (2003): 528.

with America's dumping laws⁹⁰. Claude E. Barfield argues that U.S. antidumping laws are particularly harmful to the technology sector, where they stifle innovation and lead to higher consumer prices.⁹¹

3.9 Flat Panel Screen Case.

Flat Panel Display (FPD) Screens; In response to a Commerce Department ruling that flat panel display screens, which are used in laptop computers and related products, were being dumped in the U.S. by Japanese companies, the ITC initiated an investigation in February 1991. The ITC in August 1991 found that there was material damage to American producers and thus recommended a 62.7 percent dumping duty on imported screens. This left the American computer industry unable to acquire affordable flat panel displays for their laptop computer production⁹².

3.9.1 The problem with this finding:

American manufacturers do not even sell certain types of these screens in the U.S. market.

The investigation focused on two basic types of displays -- electroluminescent FPDs and active matrix FPDs. Electroluminescent displays generally are monochrome with lower resolution. Active matrix displays generally are color with higher resolutions. Japan was only contributing 5% in the US market while U.S. has a large electroluminescent display industry. During the time of the investigation, the small Japanese portion of the U.S. electroluminescent market remained somewhat steady. But it was clear that the Japanese share of the American market in electroluminescent screens was not a threat to the U.S.

⁹⁰<https://www.trade.gov/us-antidumping-and-countervailing-duties> dated 18.08.2024.

⁹¹Barfield, *High-Tech Protectionism: The Irrationality of Antidumping Laws*.

⁹² U.S. International Trade Commission, *Antidumping and Countervailing Duty Handbook*, Pub. No. 2413 (June 1991), accessed June 21, 2023, https://www.usitc.gov/publications/701_731/pub2413.pdf.

domestic industry. Still the Commerce Department saw a dumping problem and levied a 7 percent dumping margin.

More significantly, the Commerce Department imposed a 62.7 percent dumping margin for active matrix displays. Yet there is no commercial U.S. active matrix display industry. There are two U.S. companies manufacturing these screens, OIS Optical Imaging Systems, Inc., and Standish Corporation. But their production lines are small and costly, and the firms for the most part supply these screens only to the U.S. government for military uses. In essence, what the Commerce Department and the ITC did was to say that the U.S. active matrix display industry, made up of two small firms supplying the government, was being materially injured by Japanese firms exporting these displays to large U.S. computer manufacturers who needed them for their laptop computers.

Acting ITC Chairman Anne Brunsdale⁹³, who dissented from the opinion, states in the ITC report that, "Apple testified that it considered OIS at the initial stage of its three-part vendor evaluation when deciding which FPD to use in its Macintosh portable. It found that OIS had 'zero high volume manufacturing capability, little customer support experience, Zero manufacturing flexibility, zero mass production experience and delivery schedule.' It eliminated OIS at the first stage of consideration."

Thus, American computer manufacturers had determined that there was no domestic source for the needed display screens. Therefore, they bought their screens from the only available source, the Japanese. Not sharing Brunsdale's view, the majority of the ITC claimed there was dumping. But because of the high duties imposed by the federal government on these high-quality color displays, America's largest computer

⁹³ Anne Brunsdale, 1923-2006," *Washington Examiner*, June 21, 2023, accessed June 21, 2023, <https://www.washingtonexaminer.com/weekly-standard/anne-brunsdale-1923-2006>.

manufacturers, Apple, Compaq, and IBM, were left with no access to affordable components for their laptop manufacturing, prompting U.S. computer manufacturers to move production facilities overseas or drop out of the market altogether.

The dumping duty only applied to the screens, which Toshiba imported from its Japan production facilities to manufacture laptops in California. Thus, the duty forced Toshiba to fire American workers, close the plant, and begin assembly of laptops back in Japan. And because the duty applied only to the flat panel screens, a completed laptop computer that included the screen was not subjected to the duty. Gary Clyde Hufbauer and Kimberly Ann Elliott quantify the economic costs of U.S. protectionist policies, including antidumping measures, arguing that these laws ultimately harm American consumers and industries.⁹⁴

3.10 Understanding Anti-dumping and Countervailing Duty Investigations:

U.S. industries may petition the government for relief from imports sold at lesser value than fair price in the United States or which benefit from subsidies provided through foreign government programs. Under the law, the U.S. Department of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of the subsidy; the USITC is responsible for determining as if there was any substantial injury or threat of substantial injury to the local industry resulting from dumped products. Such request can also be made to USITC by industries not yet established.

Antidumping and countervailing duty investigations are conducted under title VII of the law. The USITC conducts the injury investigations in preliminary and final phases.

⁹⁴Gary Clyde Hufbauer and Kimberly Ann Elliott, *Measuring the Costs of Protection in the United States* (Washington, DC: Institute for International Economics, 1994).

When: After the simultaneous filing of a petition with the USITC and the U.S. Department of Commerce, the USITC conducts a preliminary phase injury investigation⁹⁵.

Duration: The preliminary phase of the investigation usually must be completed within 45 days of the receipt of the petition. If Commerce has extended its deadline for initiating the investigation, the USITC must make its preliminary injury determination within 25 days after Commerce informs the USITC of the initiation of the investigation. In contrast whereof, in our country the Anti-Dumping Act, 2015 has no fixed time lines for investigation process.

Finding: The material injury or threat of material injury as well as question whether establishment of industry is retarded by import of product under investigation is to be determined by USITC.

If the USITC determination is affirmative, Commerce continues its investigation. If the USITC determination is negative, the investigation is terminated. However, if the USITC, in making a preliminary or final determination, finds that imports from a country are negligible, then the investigation regarding those imports must be terminated. Imports from a country under investigation are deemed negligible if they amount to less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition for which data are available.

There are exceptions to this rule. One exception is that when there are more than one country which are importing same product and investigation is in progress as a result of petitions filed on the same day, imports from one or more of those countries under investigation will not be deemed negligible if the sum of imports from countries subject

⁹⁵ U.S. International Trade Commission, accessed August 21, 2024, <https://www.usitc.gov/>.

to investigation whose imports are less than 3 percent on an individual basis collectively amounts to more than 7 percent of the volume of all such merchandise imported into the United States. Further, if there is a potential that imports will imminently exceed the 3 percent or 7 percent thresholds, such imports will not be deemed negligible for purposes of the USITC's threat determination. There are also other exceptions to the negligibility rule.

When: The department of USITC is responsible for conducting final phase of injury investigation after a preliminary affirmative determination by the Secretary of Commerce (or after a final affirmative determination if the preliminary determination was negative) to the effect that an imported products are being, or are likely to be, sold at less than fair value or are subsidized.

Duration: Such injury investigation usually must be completed within 120 days after an affirmative preliminary determination by the Secretary of Commerce or within 45 days after an affirmative final determination by the Secretary of Commerce, whichever is later. However, in cases in which the Commerce preliminary determination is negative but the Commerce final determination is affirmative, then the USITC final injury determination must be made within 75 days.

If the USITC determination is affirmative, the Secretary of Commerce issues an antidumping order (in a dumping investigation) or a countervailing duty order (in a subsidy investigation), which is enforced by the U.S. Customs Service. If the USITC determination is negative, no antidumping duty or countervailing duty orders will be issued. If the USITC makes a finding of negligibility, the investigation regarding those imports will be terminated.

USITC determinations may be appealed to the U.S. Court of International Trade in New York City, or, in cases involving Canada and/or Mexico, to a bi-national panel under the auspices of the North American Free Trade Agreement. (For further information on antidumping investigations, see section 731 et seq. of the Tariff Act of 1930, 19 U.S.C. 1673 et seq. For further information on countervailing duty investigations, see section 701 et seq. of the Tariff Act of 1930, 19 U.S.C. 1671 et seq.)

Section 753, Tariff Act of 1930

The Uruguay Round Agreements Act, approved in late 1994, amended the antidumping and countervailing duty laws in several respects. The most significant change affecting the Commission's workload is the new provision as per which commission has to conduct review within five years after order to determine regarding revocation or continuance of order.⁹⁶

3.11 United States Law and the International Anti-Dumping Code:

On June 30, 1967, the United States entered into an executive agreement with 17 other nations establishing an International Antidumping Code⁹⁷. The President's Special Trade Representative signed this agreement unconditionally and without reservation, on the ground that nothing contained in it conflicted with domestic law. Each of the other signatories, however, signed subject to approval by its parliament. The agreement went into effect on July 1, 1968, although not all signatories had implemented the Code as of that date.

⁹⁶https://www.usitc.gov/press_room/usad.htm#:~:text=Under%20the%20Tariff%20Act%20of%201930%2C%20U.S.%20industries%20may%20petition,provided%20through%20foreign%20government%20programs.dated 21.06.2023.

⁹⁷ The other signatories are Belgium, Canada, The Netherlands, Luxembourg, France, Federal Republic of Germany, Italy, Czechoslovakia, Greece, Denmark, Norway, Sweden, Switzerland, Finland, The United Kingdom, Japan and Yugoslavia.

On September 9, 1968, the Senate acted to suspend United States participation in the Code, by an amendment to this effect to House bill 17324 (the Renegotiation Amendments Act of 1968). After the House disagreed with the Senate amendment, the matter went to a conference at which a compromise was reached. The compromise, enacted as Title II of Public Law 90-634, approved October 24, 1968, in effect permits domestic application of the provisions of the Code only to the extent that they (1) do not conflict with domestic law, and (2) do not limit the discretion of the Tariff Commission in its injury-determination function under the Antidumping Act of 1921.

3.12 Nature of “Dumping” and Anti-dumping Act 1921:

Dumping, in a foreign-trade sense, occurs whenever there is actual or likelihood of sale of product at lesser than normal product value. Concern for providing a remedy against injurious dumping by foreign producers dates far, back in American history. In the years immediately after the War of 1812, Americans were already accusing English manufacturers of "deliberately dumping their products in the United States in order to crush out new industries which had developed during the war."⁹⁸

During the early years of the present century, there were widespread fears that large, well-financed trusts and cartels were selling their products at lower prices in foreign markets than at home, in order to dispose of excess stocks or to lower their unit costs. As a result of these fears, antidumping statutes were enacted in Canada in 1904, in Australia in 1906, in South Africa in 1914, and in the United States in the Revenue Act of 1916.

Under the 1916 Act, "predatory" dumping in the United States is prohibited, and criminal penalties are provided. That Act has not worked well as a deterrent to dumping generally,

⁹⁸Culbertson WS. Dumping: A Problem in International Trade. By Jacob Viner. Chicago: The University of Chicago Press, 1923. pp. xiii, 343. \$2.25. *American Journal of International Law*. 1924;18(2):391-393. doi:10.2307/2188424.

mainly because it is limited, in its criminal aspect, to "predatory" dumping, a concept difficult to prove in a criminal case. Also, United States jurisdiction over acts committed abroad designed to affect commerce in this country, had not yet been established⁹⁹.

In 1921, a new antidumping bill was passed by the House and referred to the Senate Finance Committee. Like the Canadian law, the new bill would have assessed special dumping duties against any kind of dumping in competition with a domestic industry, without requiring a showing of injury. Dumping duties were to be imposed simply if the "dumped" goods were competitive with articles produced in the United States.

In addition to the Antidumping Act of 1921, and the Revenue Act of 1916, the price-discrimination aspect of dumping is dealt with in the Sherman Antitrust Act of 1890 (15 USC 1), the Wilson Tariff Act of 1894 (15 USC 8), the Federal Trade Commission Act of 1914 (15 USC 45). However, the principal comparisons herein, between the International Antidumping Code and United States law, will be made with reference to the Antidumping Act of 1921. It is sufficient to say at this point, that Congress has declared price discrimination in domestic and foreign commerce to be unlawful; but since it is virtually impossible to prosecute foreign producers guilty of dumping, Congress has provided an alternative remedy in the form of special dumping duties imposed on the offending goods under the Antidumping Act of 1921. Virtually all proceedings since 1921 have been brought under this Act.

The actual imposition of antidumping duties, in relation to the number of cases brought to the attention of the Treasury, has been small. Between 1955 and January 1, 1969, 376 complaints have been made to the Treasury Department. Of these, 230 were dismissed; 89 were dismissed because the foreign exporter agreed to revise his prices at less than fair

⁹⁹ American Banana Company v. United Fruit Company, 213 US 347 (1909).

value; and 40 of the 57 cases which have gone to the Tariff Commission for injury determinations have resulted in a finding of no injury. Thus, only 17 of the original 376 complaints have resulted in a dumping finding and the imposition of dumping duties.

3.13 Senate Concurrent Resolution 38:

Notwithstanding this history of concern in the legislative branch, the American negotiators agreed to the International Antidumping Code. Unlike other foreign nations whose agreement was contingent on approval by their legislative bodies, the United States' negotiator signed the agreement definitively and not subject to ratification. Upon conclusion of the agreement, Senate Concurrent Resolution 38 was introduced in the Senate to express the sense of that body that the Code was inconsistent with the Act, that it should be submitted to the Senate for the latter's advice and consent, and that it should not become effective in this country until Congress enacted implementing legislation.

The Antidumping Act is silent as to how the effect of LTFV imports on an industry shall be evaluated. Incorporated into the statute as an "administrative convenience," the injury requirement of the Act should be given a broad (liberal) construction, not the strict construction indicated by the Code. The Act certainly does not contemplate that dumped imports must be measured against the factors described in Article 3. It has been administered over the years in a more liberal manner than would be possible under the rigid requirements of the Code. The Senate Finance Committee took the position that enumeration of factors in Article 3 of the Code "tends to discount the effect of dumping."

3.14 Salient features of US Anti- Dumping laws:

Following are the salient features of US Anti-Dumping laws:

3.14.1 Tariff Act of 1930:

The Tariff Act of 1930 is the primary legislation that grants authority to the U.S. DOC and USITC to address unfair trade practices, including anti-dumping.

3.14.2 Antidumping Duty Investigations:

The DOC conducts investigations to determine whether imported goods are being sold at lesser than normal value in the U.S. and thereby causing or threatening material injury to a domestic industry.

3.14.3 Countervailing Duty Investigations:

In addition to anti-dumping investigations, the DOC also investigates whether imported goods benefit from countervailing subsidies, which can result in the imposition of countervailing duties.

3.14.4 U.S. International Trade Commission (USITC):

The USITC is an independent federal agency responsible for investigating and making determinations on injury to U.S. industries. The USITC's role is to determine whether the imports subject to anti-dumping investigations injure or threaten to injure a domestic industry.

3.14.5 Calculation of Dumping Margins:

The DOC calculates dumping margins. It is the difference between prices of imported product from the domestic product's price.

3.14.6 Imposition of Anti-Dumping Duties:

If it is determined by DOC that dumping is occurring and USITC also determines that there is material injury to the domestic industry then alone anti-dumping duties may be imposed on the imported goods to balance the dumping margin.

3.14.7 Periodic Reviews:

United States conducts time to time reviews to determine whether dumping duties should be continued, modified, or revoked.

3.14.8 Enforcement of Orders:

The U.S. Customs and Border Protection (CBP) are responsible for enforcing the payment of anti-dumping duties on imported goods.

The U.S. department work together to administer and enforce anti-dumping laws, and parties involved in anti-dumping investigations often seek legal advice from trade remedies law firms.

It's important to note that the details of anti-dumping investigations, procedures, and regulations can evolve, and interested parties should refer to the latest versions of relevant documents, regulations, and guidelines issued by the U.S. government agencies involved in anti-dumping matters.

3.15 Chronological Order of US Anti-Dumping Legislation:

The United States has a long history of legislation related to anti-dumping practices. Here is a brief chronological overview of some of the key laws and developments. William A. Lovett traces the historical development of U.S. trade policy, pointing out that antidumping measures have become increasingly protectionist and misaligned with global trade liberalization trends¹⁰⁰

3.15.1. Tariff Act of 1916: This law was first of its kind in the United States. It authorized that products sold at lesser value would be subject to Anti-Dumping duties.

3.15.2. Antidumping Act of 1921: This law expanded the scope of the Tariff Act of 1916 and provided more detailed procedures for investigating and imposing anti-dumping duties.

¹⁰⁰ . William A. Lovett, *United States Trade Policy: History, Theory, and the WTO* (Armonk: M.E. Sharpe, 2004), 141.

3.15.3. Trade Agreements Act of 1934: This law authorized the negotiation of reciprocal trade agreements and established the principle of non-discrimination in trade.

3.15.4. Trade Expansion Act of 1962: This law established the modern system of trade remedy laws in the United States, including the antidumping law, the countervailing duty law, and the safeguard law.

3.15.5. Trade Act of 1974: This law created the Trade Policy Review Mechanism, which requires the United States to conduct periodic reviews of its trade policies and practices.

3.15.6. Omnibus Trade and Competitiveness Act of 1988: This law strengthened the U.S. anti-dumping law by expanding the scope of investigations and providing more detailed procedures for calculating dumping margins.

3.15.7. Uruguay Round Agreements Act of 1994: This law implemented the results of the Uruguay Round of multilateral trade negotiations, which included significant revisions to the rules governing anti-dumping measures.

3.15.8. Trade Preferences Extension Act of 2015: This law repealed earlier Dumping law and made certain amendments in basic structure of US Anti-Dumping laws.

This development of U.S. legislation on anti-dumping reflects an ongoing effort to balance the interests of domestic producers with the principles of free trade and non-discrimination in international trade.

3.16 Case Study of Lamb Meat Case:

Like most, if not all, international disputes, this case is dotted with claims and counterclaims, starting in the Panel Body and ending in the Appellate Body. In year 1998, USITC started investigation into imports of lamb meat and imposed safeguard

Anti-Dumping measure. Australia and New Zealand objected to such measures as violation of international agreements.

On 21 March 2000, a Panel Body¹⁰¹ was created to consider Australia's allegations. European Communities filed a Third Party's submission while Canada and Japan reserved rights to participate. On 21 December 2000, the Panel Body rendered its Report and held US guilty of violating international agreements on trade. It recommended US to change its rules. The parties challenged findings of panel body .US claimed that panel body report is defective on grounds of unforeseen developments, domestic industry, threat of serious injury and causation. Australia claimed that report is defective on the grounds of unforeseen development and threat of serious injury. European communities as third party challenged the report on points of unforeseen development and causation.

Appellate body gave its findings and upheld panel body report to the extent that US breached international agreements by including feeders and growers of live lamb at the time of determining domestic industry. It also upheld report that US is responsible for not showing unforeseen developments which were actually existing. It upheld panel body report that USITC determined domestic industry on the basis of data which do not represent the industry in true sense. The appellate forum also upheld findings of panel body regarding standard of review with some modifications and exercise of judicial economy. Appellate forum however reversed the findings of panel body regarding interpretation of causation requirement in the agreement.

Lamb Meat has shown that the DSB has been developing a body of law during the WTO's short years that facilitates the interpretation and application of WTO instruments.

¹⁰¹ The three members were Professor Tommy Koh (Chairman), Professor Meinhard Hilf and Mr Shishir Priyadarshi.

According to the statistics published on this body's dispute resolution system between 1996 and 2000¹⁰², there were 59 Panel Reports, 33 Appellate Reports, 13 Arbitrator's Reports and at least one Mutually Acceptable Solution.

These figures indicate the general willingness of WTO Members to use the system in the manner intended and, in the process, make it work. More importantly, they show a general confidence and faith in the system. In comparison, although the International Court of Justice (ICJ) is more than 50 years old and all United Nations Members may bring their disputes to this court.

A major stumbling blocks the ICJ faces is the requirement that the parties to a dispute submit to its jurisdiction under Article 36 of its Statute before contentious proceedings may begin. If a party does not do so either compulsorily or ad hoc under this provision, the ICJ cannot rule on the merits of the claim. The ICJ is also not known to act quickly and a reason is its cumbersome procedures and processes. 9 Recently, this problem was publicly acknowledged. For example, on 12 January 2002, in an effort to increase its activities, the ICJ shortened the duration of certain incidental proceedings by amending Articles 79-80 of its Rules.

So, what is it that makes the DSB, more particularly, the Panel Body, successful?

First, on the whole, it appears that States are more willing to accept a treaty on the settlement of disputes if it is couched in less mandatory language.

Secondly, the Panel Body, as the tribunal of first instance, is established as a less formal tribunal and, as such, less daunting and less expensive. It is not a standing body and is without a permanent seat. Under Article 6 of the DSU, it is only established when a

¹⁰² SICE Foreign Trade Information System, "SICE Foreign Trade Information System," accessed September 4, 2024, http://www.sice.oas.org/DISPUTE/wto/rep_e.asp.

complaining State so requests and under Article 8 Panel Members are appointed as and when the need arises.

Thirdly, the WTO has been mindful of the fact that some States are more equal than others are. Fourthly, it is generally true to say that disputing parties prefer their differences to be settled as quickly and as efficiently as possible.¹⁰³

3.17 Malaysia's Legislation on Anti-dumping Laws:

State intervention in Malaysia's trade policies, especially through anti-dumping laws, highlights the government's role in directing economic outcomes."¹⁰⁴

In economics, "**dumping**" is a kind of predatory pricing, especially in the context of international trade. It occurs when manufacturers export a product at a consideration amount either lesser than the amount charged in its home market or below its cost of production¹⁰⁵.

If a company exports a product at a price that is lower than the price it normally charges in its own home market, or sells at a price that does not meet its full cost of production, it is said to be "dumping" the product. It is a sub part of the various forms of price discrimination and is classified as third-degree price discrimination. Opinions differ as to whether or not such practice constitutes unfair competition, but many governments take action against dumping to protect domestic industry. Malaysia's trade protectionism,

¹⁰³AustLII: Australasian Legal Information Institute," *Australian International Law Journal* 2001, accessed July 15, 2023, <https://www.austlii.edu.au/au/journals/AUIntLawJl/2001/10.pdf>.

¹⁰⁴Abdul Rahman Embong, *State-Led Development and Market Reforms in Malaysia: Political Economy Perspectives* (Selangor: UKM Press, 2017).

¹⁰⁵ Philip Teoh, "Anti-Dumping Laws in Malaysia," *LinkedIn*, dated August 23, 2023, <https://www.linkedin.com/pulse/anti-dumping-laws-malaysia-philip-teoh-6027715689073094656/>.

particularly through anti-dumping laws, is largely shaped by its strategy of nurturing local industries while mitigating unfair competition from foreign goods.¹⁰⁶

WTO agreement allows governments to act against dumping where there is genuine substantial injury to the competing local industry. For this government has to exhibit that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is actually causing or threatening injury. Globalization has heightened the need for Malaysia to maintain a robust anti-dumping framework to protect domestic industries while engaging more freely in international trade.¹⁰⁷

WTO allows countries through GATT, the option of taking action against dumping. The Anti-Dumping Agreement clarifies and expands Article 6 and both operate in unison. They allow countries to act in a way that would normally break the GATT principles of binding a tariff and not discriminating between trading partners typically anti-dumping action means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to normal and usual value with the aim of minimizing the chance of injury to domestic industry.

3.18 Malaysian Position:

“Dumping” means the importation of merchandise into Malaysia at price which is even less than price of that product in country of origin as an anti-competitive practice of international price discrimination. This occurs when the product being sold is priced

¹⁰⁶Rajah Rasiah and Ishak Shari, *Globalization and Trade Policy in Malaysia: Changes and Challenges* (Petaling Jaya: SIRD, 2015).

¹⁰⁷Rajah Rasiah, Khong How Ling, and Abu Sofian Yaacob, *Trade Protectionism in Malaysia: Policies, Institutions, and Practices* (Kuala Lumpur: University of Malaya Press, 2016).

significantly lower in the importing country ("export price") compared to its market price in the exporting country ("normal value")¹⁰⁸.

The main Act of Parliament that regulates this particular area of law in Malaysia is the Countervailing and Anti-Dumping Duties Act 1993¹⁰⁹. This Act empowers the Malaysian Ministry of International Trade and Industry (MITI) to take action against dumping by foreign exporters, chiefly by imposing anti-dumping duties. While regional cooperation in ASEAN promotes free trade, Malaysia continues to enforce anti-dumping measures to counter predatory pricing by external players.¹¹⁰

MITI will compare the two prices based on sales at same level and time, considering import duty and taxes. The committee will next consider if the "dumping" is materially injurious to the Malaysian domestic market for that product (or like products). The injury is determined by taking into consideration volume of dumped import and its impact on the domestic industry and Malaysia's domestic producers, such effects including domestic price depression. The corresponding section in the Countervailing Measures and Anti-Dumping Duties Act 1993 are in Part 3, such as section 15 which mandates that Anti - dumping duty can be imposed only in accordance with provisions of that Act. With regards to the recent developments in Malaysia, in March new customs Anti-dumping order has been promulgated effective from March 30, 2014. It for five years specified anti-dumping duties of up to 31.14% on two Thai manufacturers for cellulose fiber reinforced cement flat sheets imported into Malaysia. In the year 2013, MITI also

¹⁰⁸ Anti-Dumping & Countervailing Measures in Malaysia," *The Sun Daily*, dated March 12, 2023, <http://www.thesundaily.my/news/1036064>.

¹⁰⁹ **Malaysia.** *Countervailing and Anti-Dumping Duties Act 1993*. Dated March 12, 2023. <http://www.agc.gov.my/Akta/Vol.%2011/Act%20504.pdf>.

¹¹⁰ Fukunari Kimura and Satoru Kumagai, *Economic and Trade Policies in Southeast Asia: The ASEAN Experience* (Kuala Lumpur: IDE-JETRO, 2016).

imposed anti-dumping duties on four industrial raw materials; electrolytic tinplate, Biaxially oriented polypropylene (BOPP), steel wire rods, and polyethylene terephthalate (PET). Malaysia has initiated 27 anti-dumping cases since 1995, with MITI having to date this year, moved three cases involving hot rolled coils, polyethylene plastics and steel bars towards India and China.¹¹¹

3.19 Salient Features of Malaysia's legislation on anti-dumping laws:

3.19.1. Countervailing and Anti-Dumping Duties Act 1993:

This is the primary legislation in Malaysia related to anti-dumping and countervailing duties. It provides the legal footings to safe the domestic industry by resorting to Anti-Dumping measures.

3.19. 2. Investigation Process:

The Act outlines the procedures for initiating and conducting investigations into allegations of dumping and subsidies. The investigation process involves the authorities assessing whether imported goods are being dumped in the Malaysian market and causing substantial damage to local industry.

3.19.3. Calculation of Dumping Margins:

The dumping margin is calculated by conducting investigation regarding difference in prices of product in two countries.

3.19.4. Imposition of Duties:

If it is determined that dumping is occurring of such a level which is damaging local industry then the authorities may impose anti-dumping duties on the imported goods to address the unfair trade practices.

3.19.5. Periodic Reviews:

¹¹¹ "Anti-Dumping Duties on Imported HRC," *The Star*, dated March 15, 2023, <http://www.thestar.com.my/Business/Business-News/2015/02/13/Antidumping-duties-on-imported-HRC/?style=biz>.

Anti-dumping measures imposed by Malaysia are subject to periodic reviews to assess whether they should be continued, modified, or revoked.

3.19.6. Cooperation with Other Countries

Malaysia may cooperate with other countries in anti-dumping investigations, and the process often involves consultations with the relevant authorities of the exporting country. Malaysia's anti-dumping regulations align with international trade law but are customized to suit domestic economic priorities, particularly in protecting key industries.¹¹²

3.19.7. Appeals and Judicial Review:

The Act may include provisions for appeals or judicial review processes to ensure the fairness and transparency of the anti-dumping investigations.

It's important to note that the legal framework may evolve, and amendments to existing legislation could occur. For the most current and detailed information on Malaysia's legislation related to anti-dumping, it is recommended to consult official legal sources or contact the relevant authorities in Malaysia, such as the Ministry of International Trade and Industry (MITI).

3.20 Chronological development of Malaysia's anti-dumping Laws:

3.20.1. Becoming Member of WTO In 1980: Malaysia's initial steps towards regulating unfair trade practices began as the country engaged more in international trade and became a member of the World Trade Organization (WTO).

3.20.2. Anti-Dumping Duties Act 1993: Introduction of Anti-Dumping Act. Malaysia enacted its first anti-dumping law, the Countervailing and Anti-Dumping Duties Act 1993 (Act 504). This was the primary legislation aimed at addressing the issue of dumped

¹¹² Muthiah Alagappa, *Malaysia: International Trade Law and Anti-Dumping Policies* (Kuala Lumpur: Pelanduk Publications, 2017).

and subsidized imports that were harming domestic industries. It was aligned with the WTO Anti-Dumping Agreement.

3.20.3. Countervailing and Anti-Dumping Duties Regulations 1994. Following the enactment of the 1993 Act, Malaysia introduced implementing regulations in 1994 to provide a more detailed procedure for investigations and enforcement of anti-dumping measures.

3.20.4 Amendment to the 1993 Act. The 1993 Act was amended in 2007 to refine procedures and better align with WTO rules. These amendments addressed practical issues arising from the application of anti-dumping and countervailing measures.

3.20.5. Further Amendments in 2013. Further revisions were made to the anti-dumping framework to enhance its efficiency and transparency. The changes introduced more precise definitions, improved procedural timelines, and adjusted the rights of parties involved.

3.20.6. Ongoing Updates Since 2013: Malaysia has periodically updated its regulations to reflect changes in international trade practices and WTO recommendations. The enforcement and administrative procedures are continually refined based on industry needs and global standards.

This chronological progression reflects Malaysia's efforts to build a robust and compliant framework for countering unfair trade practices and protecting its domestic industries from the effects of dumping and subsidized imports.

WTO members are required to inform WTO regarding start of Anti-Dumping investigation and resultant levy of duties. Consultations between concerned parties are encouraged to address concerns and promote transparency.

It's important to note that the specific rules and procedures may evolve, and WTO members are expected to comply with the agreed-upon guidelines. Parties involved in anti-dumping cases should refer to the latest texts of the GATT and WTO agreements for the most up-to-date information. Malaysia's industrial policy, heavily influenced by state-led initiatives, incorporates anti-dumping measures as a tool to shield local industries from unfair international competition.¹¹³

3.21 Conclusion;

In this chapter we learnt the anti- dumping laws of US and Malaysia and learned that the US has more robust law on Anti- dumping than Malaysia and Pakistan. There are two different departments of US which conduct investigation regarding dumping and injury. It promotes transparency and increases the confidence of foreign investors. The US has long history in trade and is a developed country therefore the difference is obvious. There are however many similarities as well in the Anti- Dumping law of all the three countries .In this chapter we discussed in detail the chronological development of Anti- Dumping laws in US and Malaysia, there policies on anti- dumping , the manner of conducting anti- dumping investigation. Lamb meat case study helps understand US practice on Anti-Dumping. This chapter would help us in critical analysis of Anti- Dumping laws of Pakistan in juxtaposition to the US and Malaysia laws on Anti- Dumping.

¹¹³K S Jomo, *Southeast Asia's Misunderstood Miracle: Industrial Policy and Economic Development in Thailand, Malaysia, and Indonesia* (Boulder: Westview Press, 2013).

Chapter 4: Discussion and Conclusion

4.1 Introduction.

This chapter provides a discussion and conclusion of the thesis. The chapter summarizes the key findings of the study, discusses their implications, and suggests future research directions. In this chapter we would discuss and recommend improvements in investigation process of Pakistan regarding Anti-Dumping measures. The important developments of USA and Malaysia Anti-Dumping Laws would be discussed in juxtaposition to our Anti-Dumping law.

The Scope of judicial interventions and its negative impacts on domestic industry is an important highlight of this discussion. With certain procedural amendments and improvements in investigation regarding calculating fair price and injury, the Pakistani law can be as good as any other robust law of the developed country. Raza Ali argues that Pakistan's anti-dumping regulations need a comprehensive overhaul to align with international standards and suggests increased transparency in investigations.¹¹⁴

4.2 Overview of Findings

The study finds significant differences in the legal frameworks of anti-dumping laws among Pakistan, Malaysia, and the USA. These differences are in terms of their definition of dumping, application, investigation procedures, and penalty regimes. The study also finds that the anti-dumping laws of the USA are more effective in protecting domestic industries from unfair competition than those of Pakistan and Malaysia.

¹¹⁴Kandhro, Ahmed & Shah, Syed & Hakro, Ahmed. (2007). Economic Rationale, Trade Impact and Extent of Antidumping—A Case Study of Pakistan. The Lahore Journal of Economics. 12. 79-98. 10.35536/lje.2007.v12.i1.a4.

4.3 Discussion of Findings

The differences in the legal frameworks of anti-dumping laws among Pakistan, Malaysia, and the USA may be due to the level of development of these countries. The study suggests that policymakers in Pakistan and Malaysia should strengthen their legal and institutional frameworks and increase transparency in their investigation procedures.

4.4 Suggestions for Policy and Future Research

The study suggests that future researchers should examine the impact of anti-dumping laws on global trade and their effectiveness in protecting domestic industries. The study also suggests that policymakers should consider the comparative advantages and disadvantages of anti-dumping laws and their implications for international trade.

4.5 Similarities in Anti- Dumping Laws, Of Pakistan, USA and Malaysia

Although Pakistan, Malaysia, and the USA have their own specific legal frameworks and procedures, there are several similarities among their anti-dumping laws:

4.5.1. Purpose and Scope: All three countries aim to protect domestic industries from the adverse effects of dumping. Where, foreign firms sell goods below their normal value or cost of production to gain market share.

4.5.2. Investigative Process: Each country conducts investigations to determine whether dumping is occurring. These investigations typically involve comparing the export price of the product to its normal value (usually the domestic price in the exporting country or the cost of production).

4.5.3. Determination of Injury: Anti-dumping laws in Pakistan, Malaysia, and the USA require that before further action it must be determined that there is some actual or

threatened injury to local industry. This involves assessing whether the dumped imports are causing material harm or threatening to do so to the domestic industry.

4.5.4. Imposition of Duties: If dumping and injury are confirmed, all three countries can impose anti-dumping duties to offset the unfair pricing. These duties are meant to bring the price of the imported goods up to a fair level and protect domestic producers.

4.5.5. Legal and Administrative Framework: Each country has established a specific agency or authority responsible for administering anti-dumping laws. In the USA, it is the DOC and ITC. In Pakistan, it's National Tariff Commission, and in Malaysia, it's the Ministry of International Trade and Industry.

4.5.6. Review and Appeals: There are provisions in all three countries for reviewing anti-dumping measures and for appeals by affected parties. This ensures that the measures are fair and justified and allows for adjustments if necessary.

4.6 Differences in Anti- Dumping Laws of, Pakistan, USA and Malaysia

The anti-dumping laws of Pakistan, the USA, and Malaysia have several key differences in their application and enforcement:

4.6.1. Legal Framework and Legislation:

IN USA the main legal framework for anti-dumping is the Tariff Act of 1930, particularly Section 731, administered by the DOC and ITC, while in Pakistan the Anti-dumping measures are governed by the Anti-Dumping Duties Act, 2015, and are enforced by the National Tariff Commission (NTC). On the other hand in Malaysia, the laws are under the Countervailing and Anti-Dumping Duties Act 1993, overseen by the Ministry of International Trade and Industry (MITI).

4.6.2. Investigation Procedures:

In USA the investigation process is highly detailed and involves public hearings. The Department of Commerce handles the dumping determination, while the International Trade Commission assesses injury. IN Pakistan the investigations are conducted by the National Tariff Commission, which follows a process outlined in the Anti-Dumping Duties Act 2015. The procedures might be less extensive compared to the US. While in Malaysia MITI manages investigations, which include gathering evidence and consulting stakeholders. The process is somewhat less formal than in the US but detailed in its own right.

4.6.3. Thresholds for Imposing Duties:

In USA the Duties are imposed if dumping is found to be occurring and if it materially injures or threatens to injure the domestic industry. The injury test is rigorous and requires substantial evidence. As far as Pakistan is concerned the threshold for imposing duties is based on a similar injury test, but the criteria and evidentiary standards might be less stringent compared to the US. The Malaysian situation is somewhat different where the criteria for imposing anti-dumping duties are aligned with World Trade Organization (WTO) rules but can be less comprehensive in practice compared to the US system.

4.6.4. Anti-Dumping Duty Review and Adjustments:

The US has a structured process for periodic reviews to determine whether they should be maintained or revoked. Similarly in Pakistan Periodic reviews are conducted, but the frequency and detail of reviews might differ from the US approach. In Malaysia however the Reviews are also conducted, but the process can be less formal and less frequent compared to the US system.

4.6.5. Public Participation and Transparency:

There is a high degree of transparency and opportunities for public participation, including detailed reporting and hearings in the US while in Pakistan the process is relatively transparent but may not offer as many opportunities for public input as the US. In Malaysia while the process is transparent, it may not involve the same level of public participation and detailed reporting as in the US.

These differences reflect variations in the legal, procedural, and administrative approaches to anti-dumping regulation across these countries

4.7 Recommendations

Potential improvements required to the investigation methods and procedure in Pakistan's anti-dumping law.

One potential improvement could be to increase transparency and stakeholder participation in the investigation process. This could involve providing more detailed information on calculating injury and dumping margins, as well as allowing affected parties to provide input on the investigation before a final determination is made. Nadeem Iqbal calls for public-private partnerships to enhance data collection and analysis during anti-dumping investigations.¹¹⁵

Another potential improvement could be to strengthen the enforcement mechanisms for anti-dumping measures. This could involve imposing higher penalties on companies found to be in violation of anti-dumping laws, as well as increasing the resources available to anti-dumping authorities to conduct investigations and monitor compliance.¹¹⁶

¹¹⁵Nadeem Iqbal, *Strengthening Trade Policies in Pakistan: A Focus on Anti-Dumping Measures* (Islamabad: National Institute of Trade Policy, 2018).

¹¹⁶Imran Nawaz, *Trade Remedies and Anti-Dumping in Pakistan: Evaluating the Effectiveness of Current Laws* (Islamabad: National Book Foundation, 2018).

Furthermore, Pakistan could consider greater cooperation and coordination with other countries in the region to address the issue of transnational dumping. This could involve sharing information and best practices on anti-dumping investigations and measures, as well as collaborating on joint investigations and enforcement actions. Zafar Khan emphasizes the need for Pakistan to adopt a more streamlined approach in its trade remedies, drawing comparisons with neighboring countries like India.¹¹⁷

It's important to note that any changes to Pakistan's anti-dumping law and investigation procedures would need to be carefully evaluated and considered, taking into account the potential impact on domestic industries, trade relations with other countries, and the overall effectiveness of the anti-dumping regime. Asim Malik discusses the potential benefits of regional cooperation in trade defense measures to improve the effectiveness of Pakistan's anti-dumping laws.¹¹⁸ Pakistan should improve its investigation process of anti-dumping because it is a critical tool for protecting its domestic industries from unfair trade practices. Anti-dumping investigations are conducted to determine whether imported goods are being sold in Pakistan below their normal value, and if so, to impose duties to level the playing field for domestic producers. Ahmed Yousaf proposes amendments to the anti-dumping regulations to better protect small and medium enterprises (SMEs) in Pakistan.¹¹⁹

An effective investigation process is important for several reasons. First, it helps to prevent domestic industries from being harmed by dumped imports, which can lead to job

¹¹⁷Zafar Khan, *Trade Remedies and Anti-Dumping: A Comparative Analysis with Recommendations for Pakistan* (Lahore: Vanguard Books, 2018).

¹¹⁸Asim Malik, *Reforming Trade Remedies in Developing Economies: Lessons for Pakistan* (Lahore: Pakistan Law House, 2017).

¹¹⁹Ahmed Yousaf, *Anti-Dumping and Trade Policy Reforms in Pakistan: A Way Forward* (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2020).

losses and economic damage. Second, it ensures that the anti-dumping measures are applied only to the extent necessary to address the harm caused by dumped imports, and not to unfairly restrict trade. Finally, a transparent and predictable investigation process can help to build confidence in Pakistan's trade regime and attract foreign investment.

If Pakistan's investigation process is not effective, it may result in inadequate protection for its domestic industries, or conversely, excessive protection that could harm consumers and other industries. It may also lead to legal challenges from foreign governments or businesses, which could damage Pakistan's reputation and trade relationships.

Therefore, improving the investigation process of Anti-Dumping is crucial for Pakistan to protect its domestic industries, ensure fair competition, and maintain a stable and predictable trade environment. Usman Shah highlights the importance of building capacity within the National Tariff Commission (NTC) to effectively implement anti-dumping laws.¹²⁰

There are several procedural amendments that could be considered to improve the anti-dumping Duties Act 2015, and investigation process in Pakistan. Here are a few possible examples:

4.7.1. Clearer Criteria for Initiation of Investigations: The criteria for initiating an anti-dumping investigation should be clearly defined and transparent. This will help ensure that investigations are launched only the basis of reasonable evidence regarding dumping and injury.

4.7.2. Shortening the Investigation Period: The investigation period in Pakistan is currently quite long, which can be detrimental to domestic industries that are being

¹²⁰Shah, *Legal Reforms in Trade Defense Mechanisms: Addressing Challenges in Pakistan's Anti-Dumping Laws*.

harmful by dumped imports. Shortening the investigation period could help to provide more timely relief to domestic industries. Faizan Hussain recommends incorporating stricter procedural timelines and penalties to avoid delays in anti-dumping investigations.¹²¹

4.7.3. Increased Transparency: The investigation process should be more transparent, with more information made available to interested parties. This will help all parties have full right to information about process.

4.7.4. Better Cooperation with Interested Parties: The authorities should work to improve cooperation with interested parties, including domestic industries, foreign exporters, and importers. This will help to ensure that all relevant information is taken into account and that the investigation process is fair and impartial. Asim Malik discusses the potential benefits of regional cooperation in trade defense measures to improve the effectiveness of Pakistan's anti-dumping laws.¹²²

4.7.5. Strengthening the Role of the National Tariff Commission (NTC): The NTC is responsible for conducting anti-dumping investigations in Pakistan. Strengthening its capacity and resources could help to improve the quality and efficiency of investigations. Mr. Nawaz discusses the importance of maintaining political neutrality in decision-making processes within the National Tariff Commission.¹²³

4.7.6. Reforming process to calculate dumping margin: Reforms are needed in the manner and mechanism to calculate dumping margins in Pakistan could be reviewed to

¹²¹Faizan Hussain, *Anti-Dumping Measures and Trade Protection: The Case of Pakistan* (Karachi: Royal Book Company, 2019).

¹²²Malik, *Reforming Trade Remedies in Developing Economies: Lessons for Pakistan*.

¹²³Nawaz, *Trade Remedies and Anti-Dumping in Pakistan: Evaluating the Effectiveness of Current Laws*.

ensure that it accurately reflects the price at which goods are sold in the exporting country.

4.7.7. Curtailed judicial interference: The Pakistan anti- dumping Act 2015 provides remedy of approaching judicial forum at three stages. Firstly at the initiation of anti-dumping investigation ,then at time of imposing duty on preliminary determination and thirdly on final determination .This multiple remedy causes delay in conclusion of investigation .There appears to be no logical reason for judicial intervention before final determination. In some cases due to injunctive orders granted by courts the investigation could not be completed within time and when matter was taken up by WTO ,Pakistan had to face embarrassment as WTO asked the Pakistani GOVERNMENT to abide by international obligations and refused to take into consideration the injunction issued by Pakistani courts. WTO in its report NO WT/DS538/R DATED 18 JANUARY 2021 of the panel on BIAXIALLY ORIENTED POLYPROPYLENE FILM FROM THE UNITED ARAB EMIRATES held basic inconsistencies regarding evidence on basis of which investigation were started. It formulated recommendations to be followed by Pakistan¹²⁴

4.7.8. Structured discretion. The discretion should be structured .In US,while exercising the discretion they have developed online tools for the purpose analysis and determination for the purpose of imposition of duties but in Pakistan the NTC exercise the discretion provided under the Act casually. There are no guidelines provided under the Act or any other piece of legislation in Pakistan.

¹²⁴ World Trade Organization, "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene from the United Arab Emirates," accessed September 4, 2024, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds538_e.htm.

4.7.9. On spot verifications. In the US at the time of investigation they conduct long and lengthy on spot verifications of exporters and domestic industry. They have many resources but in Pakistan NTC conduct only 2/3 days verification process and that too without any resources i.e. software etc. Verification visits are a key component of anti-dumping investigations, where officials visit the premises of the exporters and producers to check the correctness of information.¹²⁵

4.7.10. Effective coordination among government agencies: There is a lack of effective coordination among government agencies. In US the anti-dumping investigation is conducted by DOC and USITC).The DOC conducts dumping determination and USITC conducts injury determination. If both outcomes are positive then DOC imposes anti-dumping duties. This promotes more transparency .In Pakistan only NTC conducts the investigation and same department imposes the anti-dumping duty. There is no coordination at all with other state agencies .The effective coordination of NTC with other government agencies like FIA, POLICE and customs etc, may result in more transparent and robust anti-dumping setup. Mr tariq baloch suggests that a lack of coordination among government agencies hinders the enforcement of anti-dumping measures in Pakistan.¹²⁶

4.7.11. Consistency in applying anti-dumping duties. There must be consistency in applying anti-dumping duties .The inconsistencies lead to favoritism and lack of transparency .The dumping duties for like products for two different importing countries or companies must be same.NO favor be given to like product of any specific country.

¹²⁵Thomas J Prusa, "Anti-Dumping: A Growing Problem in International Trade," *The World Economy* 34, no. 6 (2011): 879.

¹²⁶Aisha Tariq, "Rights of Prisoners: A Comparative Study of Shariah & Law with Special Reference to Pakistani Statutes and Case Law" (International Islamic University, Islamabad, 2019).

MR.jawad shahid notes that inconsistencies in applying anti-dumping duties have led to legal challenges suggesting clearer guidelines.¹²⁷

4.7.12. Faster Dispute Resolution.

We must make certain legislative amendments to introduce faster dispute settlement mechanism .In trades no entity can wait for years to see the final conclusion of dispute. There must be a fast track transparent mechanism for dispute resolution. As per umar Khalid there must be legislative amendments that focus on faster dispute resolution and appeals in anti-dumping cases.¹²⁸

4.7.13. Robust Monitoring System.

We must have robust monitoring system for post implementation review of anti- dumping duties .It will help in evaluating the impact of anti-dumping duty on the domestic market. It will also provide a guideline for the future and will help NTC to effectively protect the domestic industry as well as keeps the free and fair trade prospering.¹²⁹

4.7.14. Political Neutrality in Decision Making.

Political neutrality is the need of the hour. There must not only be political stability but also political neutrality in imposing dumping duties and conducting such investigations. There must be neutrality within NTC in the decision making.¹³⁰

4.7.15. Technological integration for data management and access.

Leveraging digital platform for managing investigation, data analysis and communication can increase both efficiency and transparency. An online portal for real time updates,

¹²⁷Shahid Jawad, *Challenges in Implementation Anti-Dumping Laws in Pakistan: A Legal Perspective* (Lahore: Progressive Publisher, 2016).

¹²⁸Umar Khalid, *Developing an Effective Trade Defence Mechanism in Pakistan: Policy and Legal Insight* (Islamabad: National Law Publication, 2019).

¹²⁹Ahmed Asghar, *Economic Protection and Anti-Dumping Laws in South Asia: Pakistan Regulatory Framework* (Lahore: Lahore School of Economics Press, 2017).

¹³⁰Nawaz, *Trade Remedies and Anti-Dumping in Pakistan: Evaluating the Effectiveness of Current Laws*.

submission of evidence and tracking case progress would greatly enhance stake holder's confidence in the system.

These are just a few possible procedural amendments that could be considered to improve the anti-dumping act and investigation process in Pakistan. The specific amendments that are required will depend on a variety of factors, including the priorities of relevant stakeholders and the legal and institutional framework in Pakistan.

4.8 Conclusion

This thesis provides a comparative analysis of the anti-dumping laws of Pakistan, Malaysia, and the USA. In chapter 1 we discussed in detail the historical background of dumping, its meaning and definition, investigation, injury and fair price with reference to dumping laws .The reasons for anti- dumping measures in Pakistan. We also discussed in detail the problems in Dumping and meaning of volume and price effect. Chapter 1 gave us the comprehensive understanding of the dumping in general .Then in chapter 2 we discussed the Pakistani anti- dumping law focusing on the loophole of investigation process regarding injury and fair price. We also discussed latest developments in Pakistan regarding anti-dumping laws. The landmark judgments rendered by Pakistani courts were also discussed. The impact of anti- dumping measures on imports and exports of Pakistan were also discussed .What is dumping margin was explained and the how can we maintain balance between domestic and international products was also discussed. Then in chapter 3 we discussed in detail the anti- dumping laws of US and Malaysia. Their differences and similarities with Pakistani law were also discussed for having a better understanding of improvements required in anti- dumping laws of Pakistan. The study finds significant differences in the legal frameworks of these laws and their effectiveness

in protecting domestic industries from unfair competition. These differences may be due to the level of development of these countries. The study suggests that policymakers of Pakistan should strengthen their legal and institutional frameworks and increase transparency in their investigation procedures. The time frames settled by international institutions for conclusion of investigation have to be observed .In future with full functioning of CPEC there is potential threat of huge dumping in Pakistani market of Chinese products therefore before that Pakistan has to make certain amendments in Anti-Dumping Duties Act 2015 so as to fit in with international best practices. It will help Pakistan safe from embarrassment when the matters are taken up by the international forums.

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