ANTI-DUMPING MEASURES AND COUNTERVAILING DUTIES: PROTECTION OF DOMESTIC INDUSTRY IN INTERNATIONAL TRADE

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ABSTRACT

The expansion of international trade has brought significant economic benefits while also exposing domestic industries to unfair trade practices, such as dumping and subsidised imports. This article analyses anti-dumping measures and countervailing duties within the framework of international trade law and the Indian legal system. It examines the legal principles governing the imposition of these measures, the procedural safeguards prescribed under World Trade Organization agreements, the statutory framework in India, and the role of the Directorate General of Trade Remedies in administering trade remedy investigations. The study further evaluates leading judicial and WTO decisions to assess the effectiveness of these mechanisms in protecting domestic industries while ensuring compliance with the principles of transparency, proportionality, and non-discrimination embedded in the multilateral trading system. By critically analysing the interaction between international obligations and domestic implementation, this article seeks to evaluate whether existing trade remedy mechanisms adequately reconcile the objectives of free trade with the legitimate need to protect domestic industries from unfair international competition.

Keywords: Anti-Dumping Measures, Countervailing Duties, World Trade Organization, Directorate General of Trade Remedies, Customs Tariff Act 1975, Domestic Industry Protection

1. INTRODUCTION

The expansion of international trade has been one of the defining features of the global economy, fostering economic growth, technological advancement, and increased consumer choice. The progressive liberalization of trade under the General Agreement on Tariffs and Trade (GATT) and, subsequently, the establishment of the World Trade Organization (WTO) have significantly reduced tariff barriers and encouraged greater integration of national economies. While trade liberalization has generated substantial economic benefits, it has also intensified competitive pressures on domestic industries, exposing them to unfair trade practices such as dumping and subsidized imports.[1]

To address these challenges, the multilateral trading system recognizes specific trade remedies that permit WTO Members to respond to unfair trade practices while maintaining the broader commitment to free and fair trade. Among these remedies, anti-dumping measures and countervailing duties occupy a central position.

The present study undertakes a doctrinal analysis of anti-dumping measures and countervailing duties within the framework of international trade law and the Indian legal system, examining the legal principles, procedural safeguards, statutory framework, and institutional mechanisms governing these trade remedies.

2. OBJECTIVES

1. To examine the legal framework governing anti-dumping measures and countervailing duties under international trade law, particularly the WTO regime.

2. To analyse the domestic legal framework in India relating to anti-dumping measures and countervailing duties, including the statutory provisions and institutional mechanisms.

3. To evaluate the effectiveness of these trade remedy mechanisms in protecting domestic industries from unfair trade practices.

[1] World Trade Organization, *Understanding the WTO: Anti-Dumping, Subsidies, Safeguards*, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm (last visited 28 July 2026).

4. To identify the challenges and limitations in the implementation of anti-dumping measures and countervailing duties.

5. To suggest recommendations for strengthening the trade remedy framework in India while ensuring compliance with international obligations.

3. CONCEPT OF DUMPING IN INTERNATIONAL TRADE

In legal terms, dumping occurs when a product is exported from one country to another at a price lower than its normal value. Article 2.1 of the Anti-Dumping Agreement provides that a product is considered dumped if its export price is less than the comparable price of the like product in the ordinary course of trade in the exporting country's domestic market. In simple terms, dumping is a form of international price discrimination in which the same product is sold at different prices in different markets.[2]

International trade law does not prohibit exporters from selling goods at lower prices merely because they are more efficient or have lower production costs. Lower prices resulting from technological advancement, economies of scale, innovation, or competitive efficiency are considered legitimate. Dumping becomes legally significant only when the lower export price causes or threatens to cause material injury to the domestic industry of the importing country.

Thus, WTO law seeks to balance encouraging free trade with preventing unfair trade practices.[3]

3.1 TYPES OF DUMPING

Dumping is generally classified into three principal categories based on its purpose and duration:

- **Persistent Dumping** refers to the continuous practice of selling the same product at different prices in domestic and foreign markets over a prolonged period. This usually occurs because of differences in demand conditions, consumer purchasing power, or market structures in different countries. It is the most common form of dumping and is

[2] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, art. 2.1 [3]
[3] General Agreement on Tariffs and Trade 1994, art. VI; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, arts. 2, 3.

primarily a result of commercial pricing strategies rather than an intention to eliminate competition.[4]

- **Predatory Dumping** occurs when an exporter deliberately sells goods at extremely low prices to drive domestic competitors out of the market. Once competition is substantially weakened or eliminated, the exporter may increase prices and recover the losses incurred during the initial period. Although predatory dumping is frequently discussed in economic theory, it is relatively uncommon in practice due to the significant financial resources required to sustain prolonged losses.

- **Sporadic Dumping** is a temporary practice adopted when producers dispose of surplus inventories in foreign markets at prices below their normal value. It generally occurs during periods of excess production or a sudden decline in domestic demand. The objective is to clear excess stock rather than establish long-term dominance in the importing country's market.[5]

3.2 ANTI-DUMPING MEASURES

Anti-dumping measures are among the most important trade remedies recognized under the WTO framework. They are designed to protect domestic industries from injury caused by dumped imports while ensuring that international trade remains fair and competitive. The primary objective of anti-dumping measures is not to prohibit imports or shield domestic industries from fair competition. Rather, they seek to restore a level playing field by offsetting the unfair advantage gained through dumping. The WTO therefore permits anti-dumping duties only after a fair and transparent investigation establishes the existence of dumping, material injury to the domestic industry, and a causal relationship between the two. This ensures that anti-dumping measures are remedial rather than punitive in nature.[6]

3.3 COUNTERVAILING DUTIES

Countervailing duties (CVDs) are trade remedies imposed by an importing country to offset the adverse effects of subsidies granted by the government of an exporting country. Unlike antidumping duties, which address unfair pricing by exporters, countervailing duties are

[4] Raj Bhala, *International Trade Law: A Comprehensive E-Textbook* 6th edn (Carolina Academic Press 2023)
[5] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, arts. 2, 3
[6] *Ibid.*, arts. 1, 2, 3, 5

directed against unfair advantages arising from government financial assistance. A subsidy may take various forms, including direct financial contributions, tax exemptions, low-interest loans, grants, price support, or the provision of goods and services at preferential rates by a government or public body.[7]

Countervailing duties are intended to neutralize the benefits derived from unfair subsidies and restore fair competition in the domestic market. However, the WTO does not permit the automatic imposition of such duties. Before a countervailing duty can be levied, the investigating authority must establish the existence of a specific subsidy, demonstrate that the domestic industry has suffered material injury, and prove a causal relationship between the subsidized imports and the injury sustained.[8]

3.4 COMPARATIVE ANALYSIS OF ANTI-DUMPING MEASURES AND COUNTERVAILING DUTIES

Basis of Comparison	**Anti-Dumping Measures**	**Countervailing Duties**
Purpose	To offset injury caused by dumped imports sold below their normal value	To offset injury caused by subsidized imports benefiting from government assistance
Legal Basis	Article VI of GATT 1994 and the WTO Anti-Dumping Agreement	Article VI of GATT 1994 and the WTO SCM Agreement
Cause of Action	Unfair pricing (dumping)	Government subsidies that distort trade
Requirement for Imposition	Proof of dumping, material injury, and causal link	Proof of a specific subsidy, material injury, and causal link

[7] Agreement on Subsidies and Countervailing Measures, arts. 1, 10
[8] *Ibid*, arts. 1, 2, 15, 19

Focus of Investigation	Whether the export price is lower than the normal value	Whether a specific subsidy confers a benefit on the exporter
Duty Imposed	Anti-dumping duty equal to or less than the dumping margin	Countervailing duty equivalent to the subsidy benefiting the exporter
Relevant Indian Law	Section 9A of the Customs Tariff Act, 1975	Section 9 of the Customs Tariff Act, 1975

4. INTERNATIONAL LEGAL FRAMEWORK

4.1 General Agreement on Tariffs and Trade (GATT) 1994

The legal basis for anti-dumping measures and countervailing duties is found in Article VI of the General Agreement on Tariffs and Trade (GATT) 1994. Article VI:1 provides that contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established domestic industry or materially retards the establishment of a domestic industry. Article VI:2 authorizes Members to levy an anti-dumping duty not exceeding the margin of dumping in respect of such products.[9]

Similarly, Article VI:3 recognizes that countervailing duties may be imposed on imported products that have received subsidies, provided that such subsidies cause or threaten to cause material injury to the domestic industry or materially retard the establishment of a domestic industry.[10]

4.2 Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement)

The Anti-Dumping Agreement elaborates upon the provisions of Article VI of GATT 1994 and provides detailed rules for the investigation and imposition of anti-dumping duties. Key provisions of the Agreement include:

[9] General Agreement on Tariffs and Trade 1994, art. VI:1
[10] *Ibid.*, art. VI:3

- **Article 1**: Sets out the principle that anti-dumping measures may be applied only under the circumstances provided for in the Agreement and in accordance with investigations conducted in accordance with its provisions.[11]

- **Article 2**: Defines dumping and establishes the methodology for determining normal value, export price, and the dumping margin. It provides that a product is considered dumped if its export price is less than the comparable price of the like product in the ordinary course of trade in the exporting country's domestic market.[12]

- **Article 3**: Sets out the rules for determining injury to the domestic industry, including the examination of factors such as volume and price effects of dumped imports, and the consequent impact on domestic producers.[13]

- **Article 5**: Establishes the procedure for the initiation and conduct of anti-dumping investigations.[14]

- **Article 6**: Provides for the conduct of investigations, including the rights of interested parties to present evidence and be heard.[15]

- **Article 7**: Governs the application of provisional measures.[16]

- **Article 8**: Provides for price undertakings as an alternative to anti-dumping duties.[17]

- **Article 9**: Deals with the imposition and collection of anti-dumping duties.[18]

- **Article 11**: Provides for the duration and review of anti-dumping duties, including the principle that duties should ordinarily expire after five years unless a review establishes that their removal would likely result in the continuation or recurrence of dumping and injury.[19]

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[11] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, art. 1
[12] *Ibid.*, art. 2
[13] *Ibid*, art. 3
[14] *Ibid.*, art. 5
[15] *Ibid.*, art. 6
[16] *Ibid.*, art. 7
[17] *Ibid.*, art. 8
[18] *Ibid.*, art. 9
[19] *Ibid.*, art. 11

4.3 Agreement on Subsidies and Countervailing Measures (SCM Agreement)

The SCM Agreement provides the legal framework for countervailing duties and regulates the use of subsidies. Key provisions include:

- **Article 1**: Defines a subsidy as a financial contribution by a government or any public body that confers a benefit.[20]
- **Article 2**: Establishes the principle of specificity, requiring that subsidies be specific to an enterprise or industry for countervailing action to be taken.[21]
- **Article 3**: Prohibits export subsidies and import substitution subsidies.[22]
- **Articles 5 and 6**: Define actionable subsidies and adverse effects.[23]
- **Articles 11-13**: Govern the initiation and conduct of countervailing duty investigations.[24]
- **Article 15**: Sets out the rules for determining injury to the domestic industry.[25]
- **Article 19**: Provides for the imposition of countervailing duties.[26]
- **Article 21**: Provides for the duration and review of countervailing duties.[27]

5 DOMESTIC LEGAL FRAMEWORK IN INDIA

5.1 Constitutional Framework

The Constitution of India, under the Union List (List I) of the Seventh Schedule, empowers the Parliament to legislate on matters relating to customs duties, import and export, and foreign trade.[28] The Customs Tariff Act, 1975, enacted under this constitutional authority, provides the

[20] Agreement on Subsidies and Countervailing Measures, art. 1.
[21] *Ibid.*, art. 2
[22] *Ibid.*, art. 3
[23] *Ibid.*, arts. 5, 6
[24] *Ibid.*, arts. 11, 12, 13
[25] *Ibid.*, art. 15
[26] *Ibid.*, art. 19
[27] *Ibid.*, art. 21
[28] Constitution of India, Seventh Schedule, List I (Union List), entries 41, 42, 43

statutory basis for imposing anti-dumping and countervailing duties.

5.2 Customs Tariff Act, 1975

The Customs Tariff Act, 1975 is the principal legislation governing anti-dumping and countervailing duties in India. Key provisions include:

- **Section 9**: Empowers the Central Government to impose countervailing duties on subsidized imports that cause or threaten to cause material injury to the domestic industry. The duty shall not exceed the amount of subsidy determined to exist.[29]

- **Section 9A**: Empowers the Central Government to impose anti-dumping duties on dumped articles that cause or threaten to cause material injury to the domestic industry. The duty shall not exceed the margin of dumping determined.[30]

- **Section 9B**: Provides for the imposition of anti-dumping or countervailing duties where the importation of goods at dumped or subsidized prices has injured or is likely to injure the domestic industry.[31]

- **Section 9C**: Provides for the establishment of an appellate mechanism for appeals against orders of the Designated Authority.[32]

- **Section 9D**: Provides for the principles governing the calculation of normal value, export price, and margin of dumping.[33]

5.3 Customs Tariff Rules, 1995

The procedural aspects of anti-dumping and countervailing duty investigations are governed by:

- **Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995**:

[29] Customs Tariff Act, 1975 (Act No. 51 of 1975), s. 9
[30] *Ibid.*, s. 9A
[31] *Ibid.*, s. 9B
[32] *Ibid.*, s. 9C
[33] *Ibid.*, s. 9D

These Rules prescribe the procedure for initiating investigations, collecting evidence, determining injury, conducting hearings, and recommending anti-dumping duties.[34]

- **Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995**: These Rules prescribe the procedure for conducting countervailing duty investigations.[35]

5.4 Directorate General of Trade Remedies (DGTR)

The Directorate General of Trade Remedies (DGTR), functioning under the Ministry of Commerce and Industry, is the designated authority responsible for conducting anti-dumping, countervailing duty, and safeguard investigations in India. Established in 2018 through the merger of the Directorate General of Anti-Dumping and Allied Duties (DGAD) and the Directorate General of Safeguards (DGS), the DGTR serves as India's principal trade remedy authority.[36]

The DGTR initiates investigations upon receiving a properly documented application from or on behalf of the domestic industry. During the investigation, it examines evidence submitted by domestic producers, exporters, importers, and other interested parties to determine whether the statutory requirements for imposing trade remedies have been satisfied. If dumping or subsidization and material injury are established, the DGTR recommends the appropriate duty to the Central Government.[37]

6. CASE LAWS

6.1 Reliance Industries Ltd. v. Designated Authority

In *Reliance Industries Ltd. v. Designated Authority*, the court examined the scope of the powers exercised by the Designated Authority while conducting anti-dumping investigations. The decision emphasized that investigations must be based on objective evidence and that all

[34] Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, G.S.R. 356(E), 16 May 1995

[35] Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, G.S.R. 355(E), 16 May 1995

[36] Ministry of Commerce and Industry, Government of India, Notification No. 1/1/2018-DGTR, 8 May 2018 (establishing the Directorate General of Trade Remedies)

[37] Directorate General of Trade Remedies, Ministry of Commerce and Industry, Government of India

interested parties should be given a fair opportunity to present their case. The court reiterated that anti-dumping duties cannot be imposed arbitrarily and must strictly comply with the statutory requirements prescribed under the Customs Tariff Act, 1975 and the Anti-Dumping Rules, 1995.[38]

6.2 Commissioner of Customs v. G.M. Exports

In *Commissioner of Customs v. G.M. Exports*, the Supreme Court considered issues relating to the levy and collection of anti-dumping duties under the Customs Tariff Act, 1975. The Court observed that anti-dumping duties are remedial rather than punitive in nature and are intended to protect domestic industries from unfair trade practices. It further held that the imposition of such duties must conform to the statutory framework and should not be applied in a manner inconsistent with the law.[39]

6.3 Jindal Poly Film Ltd. v. Designated Authority

In *Jindal Poly Film Ltd. v. Designated Authority*, the Delhi High Court dealt with the determination of injury and the methodology adopted by the Designated Authority during antidumping investigations. The Court emphasized that findings relating to injury and causation must be supported by credible evidence and reasoned analysis. It also reaffirmed that judicial review does not extend to substituting the court's opinion for that of the expert authority but is confined to examining the legality, fairness, and procedural correctness of the investigation.[40]

7. FINDINGS

Based on the foregoing analysis, the following findings emerge:

1. **Strong International Legal Framework**: The WTO provides a comprehensive legal framework for anti-dumping measures and countervailing duties through the GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement. These agreements establish clear principles and procedures for the imposition of trade remedies, ensuring that they are applied in a fair and transparent manner.

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[38] *Reliance Industries Ltd. v. Designated Authority*, (2006) 10 SCC 368
[39] *Commissioner of Customs v. G.M. Exports*, (2016) 1 S.C.C. 91
[40] *Jindal Poly Film Ltd. v. Designated Authority*, 2018 SCC OnLine Del 11395 (Delhi High Court)

2. **Robust Domestic Legal Framework**: India has established a comprehensive legal framework through the Customs Tariff Act, 1975, the Anti-Dumping Rules, 1995, and the Countervailing Duty Rules, 1995. These provisions substantially reflect the principles contained in the WTO Agreements.

3. **Active Use of Trade Remedies**: India has emerged as one of the most active users of trade remedy measures among WTO Members, particularly in sectors such as steel, chemicals, pharmaceuticals, electronics, and renewable energy products.

4. **Institutional Mechanism**: The establishment of the Directorate General of Trade Remedies (DGTR) has strengthened India's trade remedy regime by providing a dedicated institutional mechanism for conducting investigations.

5. **Judicial Scrutiny**: Indian courts have played an important role in ensuring that trade remedy measures are imposed in accordance with the principles of procedural fairness, transparency, and natural justice.

6. **WTO Jurisprudence**: WTO dispute settlement decisions, such as EC — Bed Linen, United States — Hot-Rolled Steel, and United States — Countervailing Measures on Certain Products from China, have significantly influenced the interpretation and application of trade remedy rules.

7. **Challenges**: Despite these positive developments, challenges remain, including the misuse of trade remedies for protectionist purposes, complex investigations, burden of proof issues, and the growing complexity of global supply chains.

8. SUGGESTIONS

1. **Enhance Transparency in Investigations**: Investigating authorities should provide detailed reasoning for their findings and ensure that all interested parties have adequate opportunities to present evidence and respond to allegations. This would promote fairness and strengthen confidence in the trade remedy process.

2. **Ensure Timely Disposal of Investigations**: Delays in anti-dumping and countervailing duty investigations may adversely affect both domestic industries and importers. Efforts should be made to complete investigations within the prescribed time limits without compromising the quality of the inquiry.

3. **Strengthen the Capacity of the DGTR**: The Directorate General of Trade Remedies should be provided with adequate technical expertise, modern analytical tools, and sufficient resources to conduct efficient and objective investigations, particularly in cases involving complex global supply chains and emerging industries.

4. **Prevent Misuse of Trade Remedies**: Anti-dumping measures and countervailing duties should be imposed strictly in accordance with the requirements of the WTO Agreements. These measures should not be used as instruments of disguised protectionism but only to address genuine instances of unfair trade practices.

5. **Promote International Cooperation**: Greater cooperation among WTO Members through consultation, information sharing, and dispute settlement can reduce trade conflicts and encourage the consistent application of trade remedy rules across jurisdictions.

6. **Periodic Review of Domestic Laws**: India's trade remedy laws should be reviewed periodically to ensure that they remain consistent with developments in WTO jurisprudence, evolving international trade practices, and changes in global supply chains.

7. **Awareness and Support for Domestic Industries**: Small and medium enterprises should be provided with greater awareness and guidance regarding trade remedy mechanisms so that they can effectively seek protection against unfair trade practices where necessary.

8. **Strengthening Sunset Review Mechanisms**: The five-year sunset review provisions should be rigorously applied to ensure that anti-dumping and countervailing duties remain in force only for as long as genuinely necessary.

9. CONCLUSION

Anti-dumping measures and countervailing duties are essential components of the international trade remedy system, serving to protect domestic industries from unfair trade practices while preserving the principles of free and fair trade. Although both measures pursue the common objective of maintaining equitable competition, they address distinct concerns. Anti-dumping measures are directed against the practice of exporting goods at prices lower than their normal value, whereas countervailing duties are imposed to offset the adverse effects of subsidies granted by foreign governments.

The World Trade Organization (WTO), through the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), has established a comprehensive legal framework that balances the interests of domestic industries with the broader objective of trade liberalisation. These agreements ensure that trade remedy measures are imposed only after a transparent investigation establishes the existence of dumping or subsidization, material injury to the domestic industry, and a causal link between the two. The jurisprudence developed by the WTO dispute settlement system has further strengthened the interpretation and consistent application of these agreements.

India has incorporated these international obligations into its domestic legal framework through the Customs Tariff Act, 1975, the relevant Rules, and the institutional mechanism of the Directorate General of Trade Remedies (DGTR). Judicial decisions of Indian courts have also contributed to the development of trade remedy law by emphasising procedural fairness, objective investigation, and compliance with statutory requirements. At the same time, practical challenges such as the misuse of trade remedies for protectionist purposes, complex investigations, and the changing nature of global supply chains continue to test the effectiveness of the existing legal framework.

In an increasingly interconnected global economy, anti-dumping measures and countervailing duties must be applied with transparency, consistency, and strict adherence to WTO principles. These remedies should not function as barriers to legitimate international trade but as corrective mechanisms that restore fair competition and protect domestic industries from genuine instances of unfair trade practices. A balanced and rules-based approach will not only strengthen confidence in the multilateral trading system but also contribute to sustainable economic growth and the long-term stability of international trade.