THE "PUBLIC INTEREST TEST" IN INDIAN ANTI-DUMPING LAW: DISCREPANCY BETWEEN THE DGTR & THE MINISTRY OF FINANCE

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ABSTRACT

India's anti-dumping regime functions through a dual-authority framework: the **Directorate General of Trade Remedies** ("DGTR") investigates and recommends anti-dumping duties, while the **Ministry of Finance** ("MoF") decides whether to impose them. This structure has produced a widening gap in how "**public interest**" is interpreted. The DGTR's economic analysis focuses on protecting the domestic industry. At the same time, the MoF adopts a broader macroeconomic and political approach. Often rejecting DGTR recommendations on public-interest grounds. This divergence has generated uncertainty, undermined transparency, and raised constitutional and WTO-compliance questions. This article critically examines the origins and legal foundations of the public interest test. It contrasts the DGTR's and MoF's methodologies and compares India's framework with those of the European Union and the United States. It proposes a structured reform agenda to codify public-interest criteria and institutionalise consultation between the two bodies, ensuring a balance between domestic protection, consumer welfare, and broader economic stability.

1. Introduction

Anti-dumping measures constitute modern international economic law's most frequently used trade remedy. They provide a structured mechanism for a country to defend its domestic industries against the unfair pricing practices of foreign exporters who sell products at prices lower than their "normal value," that is, below the price prevailing in the exporting country's domestic market or cost of production.[1] Dumping per se is not prohibited under the World Trade Organisation ("WTO") framework; however, when it causes material injury to a domestic industry, WTO Members are permitted to impose anti-dumping duties to neutralise the injury.[2]

The legal foundation for this authority is found in the ***Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994***, commonly referred to as the *WTO Anti-Dumping Agreement* ("ADA").[3] The ADA harmonises procedural safeguards for investigations and ensures that such measures are applied only upon proof of dumping, injury, and causal link. It also embeds a principle of discretion in Article 9.1, allowing each Member to decide "whether or not to impose an anti-dumping duty."[4] This provision reflects a key policy judgment that anti-dumping measures must also consider broader public and economic interests.

India's domestic legal regime mirrors this duality between law and policy. The statutory framework is primarily contained in Sections 9A and 9B of the ***Customs Tariff Act, 1975*** ("CTA")[5] and operationalised through the ***Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995*** ("1995 Rules").[6] Under these provisions, the process unfolds in two stages. First, the DGTR, an attached office of the Ministry of Commerce and Industry, undertakes an investigation to determine the existence of dumping, material injury to the domestic industry, and the causal relationship between the two. Upon reaching affirmative findings, the DGTR

[1] World Trade Organization, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter ADA].
[2] *Id.* Art. 1.
[3] *Id.* Art. 6.
[4] *Id.* Art. 9.1.
[5] Customs Tariff Act, No. 51 of 1975, §§ 9A–9B (India).
[6] Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (India).

recommends imposing an appropriate duty.[7]

The second stage involves the MoF, specifically its Department of Revenue, which is empowered under Section 9A (1) of the CTA to impose anti-dumping duties by issuing a notification in the *Official Gazette*.[8] The wording of Section 9A (1) that the Central Government "*may impose*" is significant. It vests discretion in the executive to decide, even after a positive finding by the DGTR, whether the imposition of duty is warranted in the *public interest*.[9]

Within this discretionary space, the concept of the "***public interest test***" has evolved. The test itself is not statutorily defined, nor are its parameters codified in the 1995 Rules. It originates from administrative practice and the permissive nature of Section 9A read with Article 9.1 of the ADA. Over the years, this open-ended discretion has led to interpretive divergence between the DGTR and the MoF. The DGTR, with its quasi-judicial mandate, tends to treat public interest as an economic evaluation focusing on whether duties will restore fair competition without disproportionately burdening downstream industries or consumers.[10] In contrast, the MoF employs a macroeconomic and policy-oriented approach, considering inflation, consumer prices, fiscal implications, and strategic policy objectives.[11]

While such dualism may appear balanced in theory, it has produced practical incoherence. Since 2020, the MoF has increasingly exercised its discretion to reject DGTR recommendations, often through terse notifications citing "public interest." From 2020 to mid-2023, the MoF rejected most of the DGTR's recommendations; 74 out of approximately 130 recommendations were rejected (more than a 50% rejection rate), which stood in stark contrast to the pre-2019 norm, where rejections were rare.[12] In many of these cases, the MoF issued a memorandum without providing any detailed reasoning or quantitative assessment, raising concerns about arbitrariness.

This recurring pattern of unexplained rejections has significant legal and institutional implications. From a rule-of-law perspective, it undermines the principle of reasoned

[7] *Id.* r. 17.
[8] *Id.* r. 18.
[9] Customs Tariff Act § 9A (1).
[10] Directorate General of Trade Remedies, *Final Findings on Viscose Staple Fibre from Indonesia and China PR* (2020).
[11] *Reliance Industries Ltd. v. Designated Authority*, (2006) 10 S.C.C. 368 (India).
[12] TriLegal, Shifting Trends in Anti-Dumping Duties: Back to Normal?, TriLegal Quarterly Roundup, Issue 13.

administrative decision-making, which the Supreme Court of India has recognised as integral to **Article 14** of the Constitution.[13] From a trade-law standpoint, it jeopardises India's compliance with the transparency obligations under **Articles 6** and **12** of the WTO ADA, which require publication of findings and disclosure of reasoning.[14]

The consequences extend beyond legal doctrine. For domestic industries, especially small and medium enterprises, the unpredictability of MoF decisions disincentivises the filing of anti-dumping petitions, eroding confidence in the efficacy of trade remedies. The absence of transparent criteria for foreign exporters generates regulatory uncertainty, making compliance and market participation difficult. Scholars and practitioners have thus criticised India's regime as "a tale of two authorities, one technical, the other political, operating without a common vocabulary of public interest."[15] This article seeks to unpack and reconcile this institutional dissonance.

2. Legal & Institutional Framework of India's Anti-Dumping Regime

India's anti-dumping regime derives from both international obligations and domestic legislative design. The foundation lies in the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("WTO Anti-Dumping Agreement" or "ADA"), which India adopted upon joining the WTO in 1995.[16] The ADA harmonises global standards for identifying and countering dumping, which is defined as exporting goods below their normal value when such exports cause injury to a domestic industry.

Article 9.1 of the ADA vests discretion in member governments to determine whether to impose duties even after affirmative findings.[17] This clause introduced flexibility, allowing states to assess domestic economic and policy factors, a precursor to what later evolved as the "public interest" principle in national systems.

To implement these obligations, India amended the *CTA* and framed the *1995 Rules*.[18] Section

[13] *Kranti Assocs. v. Masood Ahmed Khan*, (2010) 9 S.C.C. 496, ¶ 47 (India).
[14] ADA art. 6.12; see also World Trade Organization, *Handbook on Anti-Dumping Investigations* 121 (2017).
[15] Archana Subramanian, The "Public" in the "Public Interest Test": Rethinking the Parameters of the Public Interest Test in India, 35 Nat'l L. Sch. India Rev. 226, 229 (2024).
[16] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1868 U.N.T.S. 3.
[17] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 9.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter ADA].
[18] Customs Tariff Act, No. 51 of 1975, §§ 9A–9B (India); Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (India).

9A of the CTA authorises the Central Government to impose anti-dumping duties on imported articles sold below their normal value if such imports injure domestic producers.[19] Sections 9AA and 9C further provide for refund and appellate review. The 1995 Rules prescribe procedural details for investigation and determination.[20] Collectively, these provisions constitute the domestic legal foundation of India's anti-dumping law.

2.1 Institutional Design: DGTR and the Ministry of Finance

India's anti-dumping framework is unique in dividing functions between two authorities: the DGTR and the MoF.

The DGTR, created in 2018 by merging three existing trade-remedy bodies, functions as the "designated authority" under Rule 3 of the 1995 Rules.[21] It operates as a quasi-judicial body under the Ministry of Commerce and Industry, empowered to determine (a) the existence of dumping, (b) the occurrence of material injury to domestic producers, and (c) the causal link between dumping and injury.[22] It follows a transparent, evidence-based process consistent with WTO standards. Rule 6 requires notice to interested parties, access to non-confidential records, and opportunities for oral hearings.[23]

After completing its analysis, the DGTR issues a "final finding" under Rule 17, recommending the duty level necessary to eliminate injury.[24] The recommendation is technical and advisory, not binding. The MoF, through the Department of Revenue, retains exclusive authority under Rule 18 and Section 9A (1) of the CTA to accept, modify, or reject the recommendation.[25] The provision's phrasing "the Central Government *may impose*" is crucial: it confers discretion to decline duties if they conflict with broader public or economic interests.[26]

This dual structure reflects an intended balance: the DGTR provides technical expertise, while the MoF ensures alignment with fiscal and macroeconomic policy. Yet, over time, this bifurcation has produced friction, as the two institutions apply divergent understandings of

[19] Customs Tariff Act § 9A(1).
[20] *Id.* § 9AA; 1995 Rules, r. 3.
[21] Ministry of Commerce & Indus., Notification No. 22/18/2018, Establishment of Directorate General of Trade Remedies (May 2018).
[22] 1995 Rules, supra note 19, rr. 5–11.
[23] *Id.* r. 6(6).
[24] *Id.* r. 17(1).
[25] *Id.* r. 18.
[26] Customs Tariff Act § 9A(1).

"public interest."

2.2 DGTR's Quasi-Judicial Methodology

The DGTR's investigations adhere closely to WTO principles of transparency and due process. It evaluates injury through parameters such as production, sales, profits, employment, and capacity utilisation.[27] Dumping margins are calculated by comparing export prices with normal values in the exporter's domestic market.[28] Injury analysis under Rule 11 encompasses both actual and potential threats to the domestic industry.[29]

Traditionally, the DGTR confined its role to determining dumping and injury. However, in recent years, it has incorporated limited public-interest considerations in its findings. For example, in *Final Findings on Viscose Staple Fibre from Indonesia and China PR* (2020), the DGTR examined whether domestic capacity was sufficient to meet demand and whether duties might adversely affect downstream users.[30] This marked a shift toward a more welfare-sensitive approach, acknowledging that trade remedies influence broader segments of the economy.

Nevertheless, the DGTR's consideration of public interest remains discretionary and lacks statutory backing. The 1995 Rules do not define public interest or prescribe parameters for its evaluation, leaving the DGTR's analysis ad hoc.

2.3 The Ministry of Finance's Discretionary Authority

The MoF plays a distinct, policy-oriented role in the final stage of anti-dumping implementation. As the fiscal authority, it evaluates broader national concerns such as inflation, price stability, revenue implications, and foreign policy.[31] The Supreme Court in ***Reliance Industries Ltd. v. Designated Authority*** held that the government "is not bound to impose anti-dumping duty merely because the Designated Authority has made a recommendation," affirming the MoF's independent discretion.[32]

[27] Directorate Gen. of Trade Remedies, Handbook of Anti-Dumping Procedures 42 (2022).
[28] ADA art. 2.
[29] 1995 Rules, supra note 19, r. 11.
[30] Directorate Gen. of Trade Remedies, Final Findings on Viscose Staple Fibre from Indonesia and China PR (2020).
[31] Ministry of Finance, *Press Release on Anti-Dumping Duties and Inflationary Impacts* (2022).
[32] Reliance Indus. Ltd. v. Designated Auth., (2006) 10 S.C.C. 368, ¶ 30 (India).

However, the MoF's decisions frequently lack transparency. Since 2020, there has been a notable rise in rejections or lapses of DGTR recommendations, often justified as being "in public interest" without explanation. Empirical research indicates that between 2020 and 2023, almost half of DGTR's affirmative findings were rejected or not implemented.[33] For example, the MoF has declined duties to prevent inflation, protect downstream sectors, or maintain diplomatic ties, yet without providing quantified reasoning or detailed findings.

This pattern has raised concerns regarding administrative accountability. The absence of a detailed justification contradicts the constitutional obligation under **Article 14** for reasoned, non-arbitrary decision-making. It also undermines predictability for industries relying on DGTR's quasi-judicial determinations.

2.4 Absence of Codified Public Interest Criteria and WTO Context

The core institutional tension arises from the lack of codified criteria for "public interest." Neither the CTA nor the 1995 Rules provide a definition or outlines the methodology for its assessment. Consequently, the DGTR and the MoF apply divergent standards. For the DGTR, public interest denotes an economic efficiency analysis of whether the duty would restore fair competition without imposing excessive costs on downstream consumers.[34] For the MoF, it signifies a broad macroeconomic balancing of inflation, fiscal priorities, and political considerations.

WTO law does not compel members to apply a formal public-interest test, but it emphasises transparency. Article 6.12 of the ADA mandates that authorities allow interested parties, including consumer and industrial user associations, to present relevant data.[35] Article 12.2 requires the publication of findings and reasons for imposing or not imposing duties.[36] Furthermore, the "lesser duty rule" under Article 9.1 embodies a principle of proportionality: duties should not exceed the level necessary to remove injury.[37] While India has adopted the substantive standard of proportionality through DGTR's analysis, its institutional design, splitting investigation and policy enforcement, dilutes procedural coherence.

[33] TriLegal, supra note 12.
[34] Archana Subramanian, *The "Public" in the "Public Interest Test": Rethinking the Parameters of the Public Interest Test in India*, 35 Nat'l L. Sch. India Rev. 226, 233 (2024).
[35] ADA art. 6.12.
[36] Id. art. 12.2.
[37] Id. art. 9.1.

India's opaque notifications arguably fall short of WTO transparency expectations. The absence of reasoned orders risks undermining India's credibility before the WTO Dispute Settlement Body, particularly under Article 18.4 of the ADA, which requires members to maintain consistent domestic implementation of WTO rules.

2.5 Institutional Consequences

This duality of technical investigation and discretionary implementation has produced uncertainty across stakeholder groups. Domestic industries, especially small and medium enterprises, expend considerable resources pursuing DGTR petitions, only to see their efforts nullified at the MoF stage. Exporters and importers, conversely, face unpredictability in market access. The disjunction between the DGTR's quasi-judicial findings and the MoF's opaque veto has been described as "a systemic disconnect between legality and policy."[38]

Such unpredictability weakens the deterrent effect of anti-dumping laws and risks eroding India's reputation as a rule-based trading system. As Lakshmikumaran and Sridharan observe, "without a clear statutory articulation of public interest, discretion may easily shade into arbitrariness."[39] The resulting ambiguity demands a harmonised, codified, and transparent framework, one that balances the DGTR's technical rigour with the MoF's legitimate policy autonomy.

3. Doctrinal Evolution and Comparative Perspectives

The "public interest test" in anti-dumping law stems from a foundational tension between economic protectionism and consumer welfare. Anti-dumping measures are designed to restore fair competition, not to serve as punitive or protectionist tools.[40] However, because the imposition of duties can raise domestic prices, reduce supply, or affect downstream industries, governments must balance industrial protection with public welfare. This balancing act has crystallised as the public interest test, though its form and content differ widely across jurisdictions.

At the international level, the World Trade Organisation's *Anti-Dumping Agreement* ("ADA")

[38] TriLegal, supra note 12.
[39] Lakshmikumaran & Sridharan, Indian Anti-Dumping Law and Practice: A Monograph 112 (2015).
[40] Raj Bhala, Modern GATT Law: A Treatise on the General Agreement on Tariffs and Trade 192 (2d ed. 2013).

does not explicitly define or mandate a "public interest" test. Article 9.1 of the ADA merely states that "the decision whether or not to impose an anti-dumping duty is for the authorities of the importing Member," and that duties "should be less than the margin of dumping if such lesser duty would be adequate to remove the injury."[41] This provision embodies two key ideas: (1) Member discretion in final decision-making, and (2) the principle of proportionality, often termed the "lesser duty rule."[42] Together, these form the conceptual foundation for public interest analysis.

While the ADA leaves discretion to Members, it simultaneously imposes obligations of transparency and due process. Articles 6.12 and 12.2 require that all interested parties, including consumer organisations and downstream industries, be given an opportunity to present information and that authorities publish reasoned decisions.[43] Thus, even in the absence of a codified "public interest test," the WTO framework implicitly encourages transparent balancing between competing economic interests.

In India, this balancing has evolved informally. Section 9A (1) of the *Customs Tariff Act, 1975* grants the Central Government discretionary power to impose duties.[44] This discretion, read with Article 9.1 of the ADA, has been interpreted as encompassing the power to assess public interest. Yet the lack of statutory guidance has allowed two authorities, the DGTR and the MoF, to apply divergent and often inconsistent understandings of what constitutes "public interest."

Comparatively, jurisdictions like the European Union ("EU") and the United States ("U.S.") have evolved distinct institutional mechanisms to operationalise this test. Their approaches represent two contrasting paradigms: the EU's integrated and codified public interest model and the U.S.'s rule-bound, injury-centred model. Together, they illustrate the potential and pitfalls of balancing discretion and predictability in anti-dumping law.

3.1 The European Union: Codified Proportionality and Transparency

The European Union offers perhaps the most sophisticated model of a formalised public

[41] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 9.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter ADA].
[42] *Id.*
[43] *Id.* Art. 6.12, 12.2.
[44] Customs Tariff Act, No. 51 of 1975, § 9A (1) (India).

interest test. Article 21 of the EU Basic Anti-Dumping Regulation (Regulation (EU) 2016/1036) expressly provides that measures "shall not be applied where the authorities, on the basis of all information submitted, can clearly conclude that it is not in the Union interest to do so."[45] This "Union interest" test is mandatory and integrated into the investigation process; it is not an ex-post political assessment.

The European Commission, through the Directorate-General for Trade ("DG Trade"), evaluates whether imposing duties serves the collective interest of the EU. The inquiry includes the interests of (a) domestic producers, (b) importers and downstream industries, and (c) consumers.[46] Importantly, Article 21(2) of the Regulation mandates that all relevant economic factors, including supply shortages, price impacts, and employment, be considered. This ensures that public interest is measured through evidence-based criteria rather than political discretion.

In practice, the European Commission invites written submissions from stakeholders and conducts public hearings.[47] The process is transparent and participatory. The Commission's final report must contain a detailed explanation of how the competing interests were weighed. Courts in the European Union, particularly the General Court, exercise judicial review to ensure procedural fairness. In ***Sinochem v. Council of the European Union***, the General Court held that the Commission must demonstrate that it considered all relevant factors and that failure to do so would constitute a "manifest error of assessment."[48]

The EU model exemplifies codified proportionality. Anti-dumping duties must not exceed what is necessary to remove injury, and they must not impose disproportionate costs on consumers or downstream users. The Commission routinely applies the "lesser duty rule," imposing duties lower than the full dumping margin when that suffices to remedy the injury.[49] This approach institutionalises the balancing of private and public interests within a single, transparent framework.

For India, the EU's model provides two key lessons. First, codification of the public interest

[45] Council Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on Protection Against Dumped Imports from Countries Not Members of the European Union, art. 21.
[46] *Id.* Art. 21 (2).
[47] Directorate-General for Trade, European Commission, Trade Defence Instruments: Handbook for Practitioners 77 (2020).
[48] Case T-97/95, Sinochem v. Council of the European Union, 2000 E.C.R. II-2521 (Gen. Ct.).
[49] EU Regulation 2016/1036, supra note 6, art. 9(4).

test fosters consistency and transparency. Second, integrating this analysis within the investigative phase prevents arbitrary post-investigation vetoes by political authorities. If the DGTR were required to apply an EU-style structured test, inviting submissions and publishing its reasoning, the MoF's discretion could be more narrowly and transparently exercised.

3.2 The United States: Rule-Bound Predictability and Limited Discretion

In contrast to the European Union's holistic model, the United States employs a rule-bound system that virtually excludes "public interest" considerations. The U.S. framework is governed by Title VII of the Tariff Act of 1930, as amended (19 U.S.C. § 1673 et seq.), and involves two distinct agencies: the Department of Commerce and the U.S. International Trade Commission ("USITC"). The Department of Commerce determines the existence and margin of dumping, while the USITC determines whether a domestic industry suffers material injury "by reason of" dumped imports.[50]

Once both determinations are affirmative, anti-dumping duties are imposed automatically by law. There is no provision allowing the President, Congress, or any executive authority to override these findings on "public interest" grounds.[51] Policy considerations such as inflation, consumer prices, or foreign relations are excluded from the anti-dumping framework. The focus remains strictly on injury and causation. Judicial review by the U.S. Court of International Trade is limited to verifying compliance with statutory procedures, not to evaluating policy or welfare effects.[52]

The rationale behind the U.S. approach is institutional predictability. By eliminating discretion in implementation, the system ensures certainty for domestic producers and foreign exporters alike. Once an affirmative determination is made, duties follow automatically, preserving the remedial rather than protectionist nature of the measure. However, the absence of a public-interest filter also creates rigidity. Duties may be imposed even when they harm downstream industries or consumers, as the law provides no mechanism for balancing broader economic welfare.[53]

[50] 19 U.S.C. §§ 1673–1677 (2022).
[51] *Id.* § 1673d(c).
[52] U.S. Steel Corp. v. United States, 621 F.3d 1351, 1358 (Fed. Cir. 2010).
[53] Ronald A. Cass & John D. Graham, *Trade Policy and the Public Interest*, 14 World Econ. Pol'y 21, 25 (2018).

While the U.S. model achieves consistency, it risks being overprotective. The lack of flexibility can lead to outcomes that prioritise producer interests at the expense of consumer welfare or economic efficiency. Still, its predictability contrasts sharply with India's opaque system, where discretionary MoF vetoes frequently overturn DGTR findings without explanation.

For India, the U.S. system highlights the virtues of rule-bound implementation. The DGTR's quasi-judicial process could be rendered more meaningful if its recommendations had presumptive finality, subject to narrowly defined policy exceptions. The MoF's discretion, if retained, should operate within publicly articulated parameters, akin to the limited presidential discretion that exists in U.S. safeguard investigations under Section 201 of the Trade Act of 1974.[54]

3.3 Comparative Synthesis and Lessons for India

A comparative reading of the EU and U.S. systems reveals two distinct regulatory philosophies. The EU emphasises *discretion with discipline, integrating public-interest assessment into the technical inquiry through codified procedures, transparency, and judicial review. The U.S. emphasises certainty through constraint, minimising discretion,* and treating anti-dumping duties as a matter of legal consequence once injury is established.

India, by contrast, has evolved into a hybrid system that combines the weaknesses of both. The DGTR performs technical analysis like the U.S. Department of Commerce, but its findings lack automaticity. The MoF exercises discretion similar to the EU's policy layer but without codified criteria, transparency, or judicial oversight. This structure produces unpredictability and perceived arbitrariness, undermining domestic credibility and WTO compliance.

For India to achieve coherence, two principles must be synthesised. India can borrow codification, transparency, and procedural participation from the EU, ensuring that public interest is evaluated through objective, evidence-based factors during DGTR investigations. From the U.S., India can adopt predictability by limiting post-investigation discretion and ensuring that DGTR's findings carry presumptive weight. The goal should not be to eliminate discretion but to discipline it within the bounds of transparency and proportionality.

In this calibrated model, "public interest" would cease to be an opaque political veto and

[54] Trade Act of 1974 § 201, 19 U.S.C. § 2253 (2022).

become an analytically defined, evidence-based standard, consistent with India's constitutional requirement of reasoned governance under Article 14 and its international obligations under Articles 6 and 12 of the ADA.[55]

4. The DGTR–MoF Discrepancy in Practice

The most persistent structural tension in India's anti-dumping regime lies in the inconsistent application of the public interest test by the DGTR and the MoF. While both operate within the same statutory framework, their institutional logics differ sharply: the DGTR acts as a quasi-judicial body grounded in evidence and trade economics, whereas the MoF functions as a policy-making arm concerned with fiscal, diplomatic, and political considerations. The absence of a codified standard has allowed these divergent approaches to coexist, creating uncertainty and friction in implementation.

In practice, the DGTR narrowly interprets the public interest principle, focusing on whether imposing anti-dumping duties will restore fair competition without imposing undue hardship on downstream users or consumers.[56] Its findings typically include limited economic modelling, examining cost pass-through effects and domestic capacity to meet demand. For instance, in its ***Final Findings on Single-Mode Optical Fibre***, the DGTR concluded that a surge in imports was causing serious injury to the domestic industry and recommended a **10% duty**.[57] The DGTR observed that the duty would not cause "significant cost escalation" for downstream users and would ensure the viability of domestic manufacturers.

However, the MoF rejected this recommendation. In April 2021, the government decided **not to impose the duty**, a decision it later informed the WTO. The rejection was framed entirely regarding macroeconomic policy, prioritising goals like digital connectivity over the DGTR's findings on injury and fair pricing. This decision, issued without detailed quantitative reasoning, highlights the disconnect between the DGTR's narrow, evidence-based trade remedy analysis and the MoF's broad, policy-driven discretion.[58]

A similar divergence occurred in *hot-rolled and cold-rolled flat stainless steel and glass fibre*

[55] *Kranti Assocs. v. Masood Ahmed Khan*, (2010) 9 S.C.C. 496, ¶ 47 (India).
[56] Directorate Gen. of Trade Remedies, Handbook of Anti-Dumping Procedures 56 (2022).
[57] Directorate General of Trade Remedies, *Final Findings in the Safeguard Investigation Concerning Imports of Single Mode Optical Fibre into India* (August 21, 2020).
[58] Archana Subramanian, "The 'Public' in the 'Public Interest Test': Rethinking the Parameters of the Public Interest Test in India," National Law School of India Review 35, no. 1 (2024).

products. In the *hot-rolled and cold-rolled stainless steel case, the DGTR found clear evidence of dumping and recommended duties to offset injury to the domestic industry. Similarly, in the glass fibre case, the DGTR found that imports were being dumped and causing material injury* and thus recommended duties. However, the MoF exercised its discretion and often rejected the recommendations for both products without providing detailed reasoning.

These decisions exhibit a pattern: DGTR's findings are grounded in data-driven injury assessments, while the MoF's vetoes invoke broad policy considerations, often without supporting evidence. Rather than serving as a balancing tool, the public interest test has become a post-investigation filter through which macroeconomic policy overrides technical findings. This undermines the predictability and integrity of India's trade-remedy system.

Empirical studies confirm this trend. Between 2020 and 2023, nearly half of DGTR's positive findings were rejected or allowed to lapse without notification.[59] This surge in policy-based reversals has led to declining industry confidence in the system. The process has become unpredictable and economically burdensome for domestic producers, particularly small and medium enterprises. The uncertainty also discourages foreign investment, as market participants cannot anticipate whether India will enforce its own anti-dumping determinations.

This lack of transparency also raises legal concerns. **Article 14** of the Indian Constitution requires reasoned, non-arbitrary administrative action.[60] The Supreme Court in ***Kranti Associates v. Masood Ahmed Khan*** held that the **duty to give reasons** is the "*heartbeat of fair decision-making*" and an essential component of natural justice.[61] Yet MoF's notification, consisting of a few lines invoking "***public interest***," fails this constitutional standard. It also risks non-compliance with Article 12.2 of the WTO Anti-Dumping Agreement ("ADA"), which requires Members to publish detailed findings and reasoning.[62]

Thus, the institutional divergence between DGTR and MoF is not merely procedural; it implicates constitutional legality, WTO compliance, and investor confidence. The "public interest" has effectively transformed from a principle of balance into a vehicle for

[59] TriLegal, supra note 12.
[60] India Const. art. 14.
[61] *Kranti Assocs. v. Masood Ahmed Khan*, (2010) 9 S.C.C. 496, ¶ 47 (India).
[62] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 arts. 6.12, 12.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter ADA].

administrative opacity.

4.1 Judicial and Policy Implications

The judiciary's treatment of this institutional divide has been cautious, often deferring to executive discretion. In ***Reliance Industries Ltd. v. Designated Authority***, the Supreme Court upheld the MoF's power to accept or reject DGTR recommendations, observing that "the Central Government is not bound to impose anti-dumping duty merely because the Designated Authority has made a recommendation."[63] The Court justified this discretion as a necessary policy safeguard, recognising the MoF's broader fiscal and economic responsibilities. However, it did not address whether such discretion must be exercised transparently or with recorded reasoning.

In ***Alembic Ltd. v. Union of India***, the Gujarat High Court entrenched this deference, holding that the MoF's decision to impose or not impose duties is a matter of policy involving public interest considerations beyond the Designated Authority's technical findings on dumping and injury, and thus beyond judicial review provided it is not arbitrary or violative of procedural norms.[64] While this judgment upholds the separation of powers, it inadvertently allows the MoF to exercise unreviewed discretion. Courts have left a critical accountability vacuum by treating public interest as a non-justiciable policy domain.

The cumulative effect is a systemic imbalance. The DGTR's quasi-judicial process ensures procedural rigour and stakeholder participation, but its determinations lack finality. Conversely, the MoF's discretion is unfettered by evidentiary or procedural constraints. This imbalance weakens India's compliance with both constitutional and WTO standards.

From a policy standpoint, the current framework undermines the credibility of India's trade remedies. Domestic industries view anti-dumping proceedings as costly and uncertain, given the high probability of MoF rejections. For foreign exporters and trade partners, India's opaque decision-making creates unpredictability in tariff policy. Moreover, repeated rejections erode the DGTR's institutional authority, reducing it to an advisory body rather than an effective investigative agency.

[63] *Reliance Indus. Ltd. v. Designated Auth*., (2006) 10 S.C.C. 368, ¶ 30 (India).
[64] *Alembic Ltd. v. Union of Indi*a, 2013 (291) E.L.T. 327.

Scholars have described this dual-authority model as "a fractured regime where technical legality meets political economy."[65] The absence of procedural guardrails invites arbitrary outcomes and distorts the anti-dumping law's intent to correct unfair trade practices while maintaining a fair competitive environment.

To restore coherence, reform is needed on two fronts. First, MoF's discretion must be made transparent and reasoned. A mandatory requirement to publish written justifications supported by data would align with constitutional principles and WTO obligations. Second, an inter-ministerial consultation mechanism should be institutionalised to ensure that public-interest considerations are integrated during DGTR investigations rather than invoked post facto.[66] Such a system would transform the adversarial dynamic into a coordinated decision-making process, aligning India's trade-remedy framework with international best practices.

Ultimately, the MoF's discretion should not serve as a veto on quasi-judicial findings but as a structured mechanism of policy balance exercised within defined, transparent limits. Only then can India achieve the twin objectives of protecting domestic industries and upholding the integrity of its trade-remedy regime.

5. Towards Coherence: Reforming the Public Interest Framework

The current structure demands urgent reform to reconcile executive discretion with transparency and the rule of law. Three core reforms are proposed.

5.1 Codifying the Public Interest Test

A coherent reform of India's anti-dumping regime must begin with codifying the public interest test. Neither the Customs Tariff Act of *1975* nor the 1995 Anti-Dumping Rules define the term "public interest," leaving it open to subjective interpretation.[67] Codification would introduce transparency, predictability, and consistency features characteristic of the European Union ("EU") model under Article 21 of its Basic Anti-Dumping Regulation.[68]

A statutory amendment could insert a new rule mandating the DGTR to evaluate the public

[65] Archana Subramanian, supra note 58.
[66] Lakshmikumaran & Sridharan, Indian Anti-Dumping Law and Practice: A Monograph 120 (2015).
[67] Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (India).
[68] Council Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016, art. 21.

interest as part of its investigation. The rule should set out key parameters, including the potential impact on downstream industries, consumer prices, inflation, and domestic supply conditions.[69] Such criteria would ensure that the assessment is evidence-based rather than discretionary. The DGTR could be directed to invite submissions from consumer bodies, industrial users, and relevant ministries, mirroring the EU's participatory procedure.[70]

By formalising this evaluation within the DGTR's quasi-judicial process, the Central Government's subsequent discretion under Section 9A (1) of the *Customs Tariff Act* would be more informed and less arbitrary. The aim is not to eliminate discretion but to anchor it in transparent, objective reasoning.

5.2 Ensuring Reasoned Decision-Making and Accountability

The second reform imperative concerns MoF decision-making. The MoF's power to accept or reject DGTR recommendations must be exercised through reasoned and published orders. Current practice, where rejections are issued with a terse notification invoking "public interest," violates the constitutional requirement of reasoned governance under **Article 14**.[71] The Supreme Court **in *Kranti Associates v. Masood Ahmed Khan*** affirmed that the duty to give reasons is a fundamental element of fair administration.[72]

A rule should therefore require the MoF to publish a brief but reasoned order whenever it departs from the DGTR's findings. Such orders should reference the specific data or policy considerations underpinning the decision, whether inflationary pressures, consumer welfare, or supply shortages. This would bring India's system in line with Article 12.2 of the WTO Anti-Dumping Agreement ("ADA"), which obliges Members to disclose the reasons for imposing or declining duties.[73]

Institutional accountability could be further enhanced by mandating the publication of an annual "Trade Remedies Report," summarising all DGTR recommendations, MoF actions, and

[69] Archana Subramanian, The "Public" in the "Public Interest Test": Rethinking the Parameters of the Public Interest Test in India, 35 Nat'l L. Sch. India Rev. 226, 235 (2024).
[70] Directorate-General for Trade, European Commission, Trade Defence Instruments: Handbook for Practitioners 77 (2020).
[71] India Const. art. 14.
[72] Kranti Assocs. v. Masood Ahmed Khan, (2010) 9 S.C.C. 496, ¶ 47 (India).
[73] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 art. 12.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201.

reasons for acceptance or rejection.[74] This transparency would encourage consistency, facilitate judicial oversight, and align India's practice with international norms of administrative openness.

5.3 Institutional Coordination and Proportionality

The final reform concerns coordination between the DGTR and the MoF. Presently, the two bodies operate in silos, leading to policy reversals and stakeholder uncertainty. Establishing a formal inter-ministerial consultation mechanism would ensure that macroeconomic factors are considered during, not after, DGTR investigations. The mechanism could involve the Ministries of Commerce, Finance, and Industry, which would jointly deliberate on potential public-interest implications before final recommendations are issued.[75]

Such coordination would prevent post-hoc rejections and promote policy coherence. It would also align with the "lesser duty rule" principle under Article 9.1 of the ADA, ensuring that duties imposed are proportionate to the injury suffered.[76] The proportionality approach, imposing only what is necessary to remedy injury, resonates with constitutional doctrines articulated in ***Modern Dental College v. State of Madhya Pradesh***, where the Supreme Court emphasised balancing means and ends as a test of reasonableness.[77]

If implemented, these reforms would transform India's opaque system into one grounded in transparency, accountability, and coordination. The DGTR's evidence-based analysis and the MoF's policy discretion would operate complementarily rather than in conflict. Codification, reasoned orders, and institutional dialogue would ensure that the "public interest test" functions as a principled standard, not an arbitrary veto.

Conclusion

The evolution of India's anti-dumping framework reveals a persistent tension between technical legality and policy discretion. The DGTR, guided by statutory and WTO-based methodology, conducts detailed investigations to determine dumping, injury, and causation. Yet the MoF, exercising broad discretion under Section 9A (1) of the *Customs Tariff Act, 1975*,

[74] Trilegal, Shifting Trends in Anti-Dumping Duties: Back to Normal, Trade & Competition L. Rev. (2023).
[75] Ministry of Commerce & Indus., Proposed Reforms in Trade Remedies Administration (2023).
[76] Agreement on Implementation of Article VI of GATT 1994 art. 9.1.
[77] Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh, (2016) 7 S.C.C. 353, ¶ 59 (India).

frequently overrides these findings on grounds of "public interest" without adequate reasoning or transparency. This dichotomy between quasi-judicial expertise and political discretion has transformed the public interest test into an uncertain and opaque policy tool.

Comparative experience underscores the need for structural reform. The European Union demonstrates that codification and procedural transparency can coexist with flexibility, while the United States exemplifies the virtues of rule-bound predictability. India must synthesise these strengths: codify public interest parameters, ensure reasoned and reviewable MoF orders, and institutionalise coordination between investigative and policy-making authorities.

Such reforms would uphold the constitutional mandate of non-arbitrary decision-making under Article 14 and align India's practice with its international obligations under Articles 6 and 12 of the WTO Anti-Dumping Agreement. They would also enhance India's trade-remedy regime's legitimacy and predictability, reassuring domestic industries and international partners that anti-dumping measures are administered within a rule-based framework.

The public interest test should be a transparent mechanism for balancing protection with welfare. Not as a political veto over technical determinations. A codified, reasoned, and consultative framework would ensure that India's trade remedies protect its industries while respecting the broader imperatives of fairness, proportionality, and the rule of law.