VISION: Journal of Indian Taxation
Vol. 5(2), Jul-Dec 2018, pp. 104-112
DOI: 10.17492/vision.v5i2.14519
www.journalpressindia.com/vjit

Anti-Dumping Duties and Trade Remedial Measures: The Case of Dumping of Chinese Goods in India

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ABSTRACT

While China is an important trading partner for India, the increasing imports from China have taken its toll on our manufacturing sector. Many of these imports amount to dumping with goods being sold in the foreign market at a price below the domestic selling price. The deluge of Chinese imports in the Indian market is wiping out many domestic industries and is a cause for serious concern. The quality of these products is often questionable and there is an urgent need to educate and encourage people about the importance of quality products and promote buying of Indian goods. To deal with the detrimental effects of dumping in the Indian market, the government of India has employed measures such as anti-dumping duties and anti-subsidy duties. These measures are not meant to ensure general economic protection to domestic industry per se but are imposed only to ensure a level playing field for the domestic industry to mitigate the injury caused to them due to unfair practices of dumping or subsidization.

***Keywords**: Dumping; Anti-Dumping Duty; Subsidies; Manufacturing; India; China.*

1.0 Dumping: An Introduction

It is a practice of selling goods in a foreign country at a price below their domestic selling price, after allowing for differences due to transportation expenses, tariffs, and other cost justifications. Many governments view the activity as an unfair competitive practice and frequently expose those engaged in dumping to the imposition of an antidumping duty. This generally unfavourable view of the practice stems from the monopoly precondition which underlies it. Economic theory specifies that in order for a producer to discriminate in the pricing of identical goods between markets (or classes of consumers) some element of monopoly power must be present; otherwise, the producer is merely a price-taker forced to adopt the uniform competitive price determined in the overall marketplace.

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1.1 Conditions for dumping

For successful international dumping, the following conditions need to be satisfied.

1. The home and foreign markets are sufficiently separated to prevent arbitrage by foreign buyers in such a way that the cheap dumped goods cannot be resold by foreign buyers in the original market at a price which undercuts the domestic monopoly price.
2. There exists less competition in the home market than the foreign market, making foreign customers more responsive to an individual producer's price changes than domestic customers. Under these circumstances, the incentive for a producer to engage in international dumping is explained by the broader concept and theory of third-degree price discrimination, of which dumping is really a special case.

A producer interested in maximising profits given these conditions should price goods in different geographical locations so that the marginal revenue received from the last unit of those goods sold is equal in all locations, and at the same time equal to the overall marginal cost of production of those goods. If it is assumed that there is no difference in costs between markets and the revenue the producer receives from selling an additional unit of goods in the foreign market exceeds that received from the last unit sold in the home market, it is more profitable to lower the foreign price in order to sell another unit there and to raise the domestic price in order to sell a unit less at home. The incentive to re-price continues until the marginal revenues from each market are equilibrated to each other as well as to marginal cost of production. Where foreign market demand facing the producer is more responsive to price changes than domestic market demand, and where arbitrage cannot occur, this profit-maximising formula will ultimately result in a situation where the producer is motivated to price goods in the foreign market cheaper than at home.

Dumping duty is an additional import duty imposed to offset the effect of dumping which is found to materially injure the domestic industry.

2.0 Dumping of Chinese Goods in India

It is a well-known fact a large number of low priced shoddy/spurious products are coming from China to India. China is a very important trading partner for India. India has deep trade relations with China since the official resumption of trade with it in 1978. With China's accession to World Trade Organization (WTO) in December, 2001, our bilateral trade received a further impetus.

The increasing imports from China have taken its toll on our manufacturing sector. The Chinese goods have compelled many industrial units especially MSMEs to either operate at below its capacity or these have been forced to shut down. This has adversely affected local employment. The surge in imports from China has been on account of cheaper price it offers for a product. Though the quality of these products is often questionable but lack of awareness of Indian consumers have created a market for these products in India. There is an urgent need to educate and encourage the people about the importance of quality products and promote buying of Indian goods.

2.1 Why are Chinese goods more competitive than Indian goods?

Chinese competitiveness is mainly the outcome of the efforts and support of the Chinese Government. China is not recognized by WTO as a market economy mainly because of the lack of transparency in its trade policy. A large number of companies which are dominant player in exports are Government- controlled enterprises.

While China has been long accused of manipulating its currency to maintain export competitiveness, it has also been found guilty of unfair trade practices like export subsidies that are in contravention to WTO regulations. The Committee was given to understand that Chinese Government gives export rebate to the tune of 17 percent to their exporters.

Further, regional provinces in China extend incentives and rebates on the tax structure and are competing with each other to attract industries in their region and also promoting exports by extending sizeable incentives (even on software downloads and logistics compensation for long distance freight) which makes Chinese products cost effective. China accounts for the maximum number of anti-dumping duty/countervailing duty investigations around the world.

Apart from WTO non-compliant trade measures, Chinese competitiveness is also led by an enabling policy environment wherein the Government has made considerable interventions in ensuring that all the factors of production (land, labour, capital) are available at the cheapest cost to its manufacturers. The lending rates in China are very industry-friendly while in India, the banks charge one of the highest lending rates from the industry. Our industry is borrowing anywhere between 11 and 14 percent while the Chinese are getting loans at 6 percent.

Chinese manufacturers are producing different qualities according to demand including cheap, but poor quality, products also. Such poor quality products are available at lower prices in Indian markets.

3.0 Adverse Consequences of Dumping of Chinese Goods into Indian Market

Ever-increasing Chinese imports have played a negative role for the domestic industry in India. Industries that have been adversely affected by the import of Chinese goods are labour- intensive. These industries have traditionally been large employment generators in India (e.g. textiles) or are likely to become so (e.g. solar industry).

Downsizing or closing down of units in India will affect tax collections and impinge upon the Make in India programme. Further, the closure of industry will also stress the banking sector which already is reeling under the burden of huge NPAs. In addition to revenue and employment, low-quality Chinese imports also have an adverse impact on the environment. For instance, import of impure chemicals affects the environment, and results in low quality agrochemicals (pesticides) thus affecting Indian farmers. Poor quality toys, colours, firecrackers, statues of gods and goddesses, etc. from China, are health hazards in Indian household. Further, import dependence on China in some of the key products like bulk drugs on which our pharmaceutical industry is heavily dependent is quite worrisome.

The deluge of Chinese imports in the Indian market is wiping out many domestic industries and is a cause for serious concern. The methods adopted for dumping cheap Chinese goods in the Indian market include under-invoicing of goods, entry of prohibited Chinese goods by mis-declaration and outright smuggling.

India can ill afford such a situation. In fact, the problem of Chinese dumping is a matter of concern across the globe.

4.0 Anti-dumping and Other Trade Remedial Measures

India has an elaborate and robust legal framework and institutional set up to protect its environment, life and health of its people, plants and animals. All goods imported into India are subject to domestic laws, rules, orders, regulations, technical specifications, environment and safety norms that are notified from time-to-time.

Both India and China are members of the WTO, therefore no restrictions can be imposed on trade if the same is WTO-compliant, i.e. there is no violation of domestic rules and regulations. However, in case the Government considers any measure as inconsistent with the WTO agreement and impacting India’s trade interest, the matter is taken up at appropriate forum including the bilateral and multilateral forums (WTO Committee).

India does not have any bilateral trade agreement with China giving it preferential treatment. China has been accorded Most Favoured Nation (MFN) status[1] as envisaged for WTO Members States. The applicable rates of duties are thus charged on imports from China. Except approximately five hundred tariff lines which are either restricted or prohibited for import, all other goods are free for import, subject to these meeting/fulfilling other statutory requirements/stipulated conditions.

In addition, trade defence measures like anti-dumping duty and countervailing duty, safeguard measures are available to industries to seek remedies under the prescribed WTO provisions.

The trade remedial measures available to the trade and industry of the WTO member countries permissible under the WTO Agreement comprise of the following:

- Anti-dumping measures.
- Anti-subsidy measures (also known as countervailing measures).
- Safeguard measures (tariff).
- Safeguard measures (quantitative restrictions).

4.1 Anti-dumping and anti-subsidy measures

These measures fall under the purview of Directorate General of Anti-Dumping and Allied Duties (DGAD). Hence, anti-dumping duty investigations are carried out by DGAD. After detailed investigations, preliminary/final findings are issued by DGAD based on which, Department of Revenue imposes provisional/definitive anti-dumping duties.

Anti-subsidy duties [countervailing duties (CVDs] are import duties imposed to neutralize the negative effects of subsidies. They are imposed after an investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country. CVD investigations are carried out by DGAD

DGAD conducts anti-dumping and CVD investigations on the basis of a duly substantiated application filed by the domestic industry alleging dumping or subsidization of goods into the country causing injury to the domestic industry. The proceedings are carried out in accordance with the relevant rules which are fully aligned and harmonious with WTO Agreement. These investigations are quasi-judicial in nature which are to be completed and final findings to be issued within 12 months from the date of initiation unless extended by another 6 months by the Government of India. To ensure timely completion of investigation, time lines for various stages of investigation have been laid down by the designated authority.

Above measures are not meant to ensure general economic protection to domestic industry per se but are imposed only to ensure a level playing field for the domestic industry to mitigate the injury caused to them due to unfair practices of dumping or subsidization. These measures are levied initially for a period up to 5 years.

5.0 Impact of Chinese Goods on Indian Industry: Highlights of the Report of the Department Related Parliamentary Standing Committee on Commerce Presented to the Parliament on July 26, 2018

a) India has been showing negative balance of trade in its bilateral trade with China. The trade deficit with China at US$ 63 billion in 2017-18 constituted more than 40 percent of India's total trade deficit.

b) During the period 2007-08 to 2017-18, there has been an increase in India’s exports to China by US$ 2.5 billion; the imports, however, increased by US$ 50 billion during this period.

c) On enquiring about the status of trade remedial measures taken against China, the Committee was informed that India has highest number of anti-dumping investigations initiated against China. As on 27.12.2017, DGAD has initiated 864 anti-dumping investigations over 375 products since January, 1994. China is involved in anti-dumping investigations for 214 products. In comparison, there are 86 anti-dumping cases initiated against EU, 64 cases against South Korea, 62 cases against Taiwan and 41 cases each against Japan and USA.

d) The Committee noted that as on April 18, 2018, definitive anti-dumping duty was in force on 144 products out of which 102 products pertained to China. Further, 24 more cases on imports from China were initiated.

e) The Committee also noted that currently, countervailing duty was in force on two products from China and one countervailing duty investigation against China was under progress. The DGAD also carried two anti-circumvention investigations during last three years.

f) The Committee thus noted that China faces the major chunk of anti-dumping investigations which is a clear indication that Chinese goods are causing unfair trade disruption. The Committee during its deliberation with industry noted that present state of anti-dumping investigations against the Chinese goods was not the actual reflection of the problem of unfair trade being faced by Indian Industry, especially, MSME Sector. The problem runs deep and all the industries affected by the dumping are not able to reach DGAD on account of high cost involved in moving the application. It was informed that the application process for initiating anti-dumping and other trade defence measures was a costly affair and not easily affordable for the SMEs. It was also pointed out that the investigation being undertaken by DGAD are protracted and by the time the duty is notified, the injury caused to the domestic industry leaves it weak and bleeding forever.

g) The Committee appreciates that there is a move towards shortening the time period of completing the investigations in 270 days from the present 365 days and reduce the period from 90 days to 30 days for Tax Research Unit in Department of Revenue to accept and issue the Notification. The Committee feels that this period may further be reduced to 180 days and 15 days respectively so that damages to domestic industry may be contained in right earnest.

h) The anti-dumping framework suffers from lax implementation. The unscrupulous elements are able to import the Chinese goods by circumventing the goods put under anti-dumping framework through misclassification of products. This mis-declaration while importing the goods which otherwise have been put under anti-dumping measures nullify the whole effort to protect the domestic industry from unfair trade practices.

i) The Committee finds that while anti-dumping measures are being evaded on the one hand proving it to be ineffective; on the other hand, there is a general reluctance on the part of the Government to review the effectiveness of anti dumping measures undertaken by it. Rather there is no provision to carry out any impact assessment of the anti-dumping duty /countervailing duty imposed by DGAD.

j) The Committee expresses its deep concern over lax implementation of law since it makes the problem to persist and domestic industry suffers in the form of shutdown of the units and loss of employment. One estimate suggests that due to the dumping of Chinese solar panel there is a loss of nearly two lakh jobs as nearly half of our domestic industry capacity remains idle. This is something that the Committee finds shocking. It strongly recommends the Department to address the problem of poor implementation of DGAD findings on dumping and subsidy of Chinese goods.

k) The Committee was further informed that the problem of flooding of Chinese goods goes beyond mere dumping. The unscrupulous imports from China is also on account of influx of under-invoiced Chinese goods, goods brought in through misdeclaration and outright smuggling. These illegalities have its share of adverse effect on Indian Industry. There is a real challenge to maintain a very fine balance between trade facilitation and enforcement.

l) During the year 2017-18, total anti-dumping duty (ADD) of Rs. 1268 crores was collected, out of this Anti-dumping Duty of Rs. 798 crore was collected from the goods imported from China, which is 63 percent of total ADD collection.

m) It discovered that since many Chinese goods like toys are not subject to mandatory quality standards, the Indian market is flooded with poor quality toys many of which contain harmful chemicals and materials. Similarly, it was informed that the Indian market is flooded with poor quality made in China LED bulbs. It was brought to the notice of the Committee that as per one study, 50-70 percent light bulbs and fixtures are spurious and sub- standard and these are predominantly Chinese products.

n) The Committee found that many factors have gone into making China a competitive producer of goods and pose as an aggressive trading nation globally. While the companies in China enjoy the benefit of huge physical infrastructural and logistic advantage, easy access to low-interest finance, economy in scale of production, integration to global value chain, control and supply of raw materials, skilled workforce, etc. which make them competitive, the Chinese industry has also been benefitted by opaque government interventions to boost low cost production, manipulated currency (though there has been an appreciation in the value of Chinese currency in recent past) to make Chinese export competitive, handing out of WTO non-compliant export subsidies, provisioning of special incentives to boost exports, IP misappropriation, etc. The effect of this legitimate and illegitimate support has helped China create huge inventory of products and dump their products globally. The Committee finds that India has been an easy dumping ground for Chinese goods on 50 account of low price of Chinese goods, poor enforcement and porous border both at sea and land.

o) There has been huge outrage globally to illegitimate Chinese trade practices and injury being caused to the local industry by dumping of Chinese goods and ever rising trade deficit. The concerns have been so deep that the United States has issued two Executive Orders to address the problem of rising trade deficit with China.

p) While the United States and the European Union have been quite aggressive and agitated over the erosion of their domestic industry and loss of employment, the Committee feels that Government should be more proactive in taking trade defence measures as provided by WTO and imposition of other trade restrictions on import of such Chinese goods which have caused erosion of our manufacturing capacity.

q) The impact of Chinese imports has been such that India is threatened to become a country of importers and traders with domestic factories either cutting down their 52 production or shutting down completely.

r) Refund of IGST on exports need to be cured at the earliest. Further, low-interest loans still continue to elude the industry.

Endnotes

1. **Most Favoured Nation (MFN) Clause:** MFN clause is at the heart of modern commercial diplomacy. Under it, parties give each other all of the concessions which they give to any other country. The nomenclature is somewhat misleading as it sounds like a promise of preferential treatment. Instead, it is a promise that *no other country* will be given preferential treatment. In other words, the partner will receive treatment no less favourable than that given to any other country.