

New Anti - Dumping Theory of Cost Averages : A Solution to the Anti - Dumping War

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Abstract

The basic objective of the WTO anti - dumping agreement is to restrict “dumping” that leads to material injury to the domestic industry in the host country. Unbridled and protectionist use of anti - dumping duties has impacted the international trade negatively in the form of trade loss, trade restriction, trade deviation retaliations, hardship to the consumers on account of choice of variety, and price of the products. While WTO in general advocates for free trade, the concept of dumping appears contrary to the very purpose for which WTO was created. However, free trade should be fair trade also, and therefore, the concept of free trade should not lead to a situation where an established industry in the importing country collapses and dumping by foreign exporters results into monopolization of markets in due course.

Certain loopholes in the GATT/WTO agreement on anti - dumping are : No definition of like products, low prices charged for sales in the domestic markets are normally ignored to boost up the domestic sales price, investigating authorities typically follow accounting practices of the importing country, confusion of date of sale and exchange rates, fixation of dumping margin and circumvention lead to controversial practices and methodologies. Particularly, the “Zeroing Methodology” used by the industrialized countries in calculation of the dumping margin has further aggravated the situation. The fact remains that the anti - dumping actions are increasing substantially. During 1.1.1995 to 30.6.2014, total 4627 anti - dumping investigations were made throughout the world, and 2966 antidumping actions are in force. Base metals & articles (1328 cases) and chemical and allied products (928 cases) are the most targeted sectors facing anti - dumping actions worldwide. India has imposed 529 measures and is also facing 104 anti - dumping measures on its products. The U.S. has imposed 326 measures and is facing 157 anti - dumping measures. Out of the 106 disputes pending in DSB on anti - dumping, the U.S. is involved in 57 cases, and India is involved in 17 cases. Trading countries are almost engaged in a trade war and anti - dumping measures are being challenged at the WTO frequently, but no solution has been found so far to restrict the anti - dumping war. The present paper presented a workable solution in the form of a proposed theory - The New Anti - Dumping Theory of Cost Averages or NATOCA.

Keywords: WTO, antidumping, trade war, NATOCA, workable solution, DSB

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WTO's emergence in 1995 resulted in reduction of tariffs, but member countries shifted to the other option, the use of non-tariff barriers. In particular, the anti - dumping laws are considered to be widely abused by the protectionists as a non-tariff trade barrier to restrict the imports and protect their domestic industry from competition. In the early stages of the twentieth century, the developed countries used the anti - dumping duty as a trade weapon to protect their domestic industry (Eastern Book Company, 2004), but now, the developing countries like India, China, Brazil, South Africa, Turkey, Russia, and Mexico have started using anti - dumping duty to protect their domestic/infant industries from the dumping of cheaper products. Distortive

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practices like zeroing methodology for calculating anti-dumping duty on imported goods have further aggravated this problem. In many cases, the WTO dispute settlement body has declared this practice inconsistent with WTO rules and has advised the user countries to stop these practices or face penalties from the aggrieved countries.

The number of anti-dumping investigations have increased manifold in the last 8 years. Until 2005, there were only 1401 (Brown, 2005) dumping investigations throughout the world, however, the number of anti-dumping initiations increased to 4627 by June 2014 (Anti-dumping initiations: By reporting member - 01/01/1995 - 30/06/2014, n.d.). Out of these investigations, 2966 cases resulted in imposition of anti-dumping measures (Anti-dumping measures: By reporting member 01/01/1995 - 30/06/2014, n.d.). As depicted in the Tables 1 and 2, 10 countries led by India and USA were responsible for 3364 investigations (Anti-dumping initiations: By reporting member 01/01/1995 - 30/06/2014, n. d.) and 2168 measures (Anti-dumping measures: Reporting member vs exporter 01/01/1995 - 30/06/2014, n. d.). India investigated 715 anti-dumping cases and the U.S. investigated 521 cases out of the 4627 anti-dumping investigations and imposed 529 and 326 anti-dumping measures respectively out of the total 2966 measures during January 1995 to June 2014. India alone investigated 161 cases of anti-dumping against China, and 99 anti-dumping measures are in force against Chinese products (Anti-dumping initiations: Reporting member vs exporter 01/01/1995 - 30/06/2014, n.d.).

Also, out of the 106 cases of anti-dumping disputes referred to the Dispute Settlement Body (DSB) for reconciliation, the U.S. was involved in 57 cases either as a defendant or complainant, and in the same way, India was involved in 17 cases (Fried, n.d.). These figures depict how the anti-dumping measures have impacted the international trade and its emergence as a major trade barrier. The supporters of free trade have tried to ban the anti-dumping law four times, and all four times, the use of anti-dumping law has been affirmed by the negotiations (Lindsey & Ikenson, 2002) during : (a) the negotiations of the GATT in 1947 ; (b) the Kennedy Round (1964 to 1967), when the anti-dumping code was produced ; (c) the Tokyo Round (1974 to 1977), when the anti-dumping code was adopted, and (d) the Uruguay Round (1986 to 1994), when the anti-dumping code, officially called the Agreement on Implementation of Article VI of the GATT-1994, was produced.

These events are an indication that majority of the WTO member countries are in favour of the anti-dumping duties. It also seems impossible that the WTO Anti-dumping Agreement will be phased out in the near future. However, some efforts at the bilateral level have been made towards phasing out the anti-dumping duty between countries, which may have claimed to be successful. For example, the 28 members of the European Union no longer engage in anti-dumping actions against each other. Similarly, Canada succeeded in phasing out the use of anti-dumping remedies in the Canada-Chile Free Trade Agreement (Government of Canada, 2013). It may not be possible to completely phase out the Anti-dumping Agreement, but certainly, there is a possibility of rationalizing the Anti-dumping Agreement and laws adopted by the members, particularly the duty calculation method and other WTO inconsistent practices used by member countries to restrict the imports. Some efforts are really required to be made to reduce anti-dumping actions and minimize their negative impacts on international trade.

Dumping

Generally, a product is considered to be dumped when it is sold in the host country at “less than fair value or below cost,” and this sale at lower prices results in material injury to the domestic industry in the host country (Directorate General of Anti-Dumping & Allied Duties, Ministry of Commerce, n.d.). If the purpose of dumping is to knock the exporter's competitors in the importing country out of business, and then recover the dumped cost by higher prices once a monopoly is established, then this is predatory pricing. Occasionally, surplus of produce may also force an exporter to dump its product that may lead to intermittent dumping.

Now, the question is, what type of dumping should be subject to anti-dumping laws? Anti-dumping laws in the developed countries do not primarily act against predatory pricing. They act against international price discrimination and sales below cost, regardless of whether the sales are predatory or not. It is also worth noting that when a country exports the goods, it reduces the supplies in its own country, which may lead to high prices in the home country as either the demand remains the same or may increase in due course. This way, one can recover

the losses of exporting at low prices, as high prices in the domestic market will compensate one's losses. On the other hand, an exporter facing high anti - dumping duties on its product might reduce its exports to that particular country and increase its home-market sales. Consequently, the price of its product in the importing country will rise, reducing competitive pressure on producers in that country, while the price of its product in its home country falls due to increased supplies in the home market. Alternatively, if it is a significant market for the exporter, one may relocate the production facilities in that particular country to avoid anti - dumping actions and cost of production as well. Critiques on technical issues see fault in applied methodologies and the fairness for involved parties. Although there are still disputes on whether anti - dumping laws are necessary or not, and how to improve them, it is undisputable that recently, the use of anti - dumping actions and distortive practices have become very popular in international trade.

Economic Viewpoint of Dumping

From the economic angle, dumping is sustainable only upon the existence of the following three necessary conditions (Thai, 2003) :

- (1)** An exporter's home market and the importing country's market are segregated to restrict the merchandise flow between them,
- (2)** An exporter has sufficient market power to influence the price of merchandise in its home market,
- (3)** An exporter faces a relatively more elastic demand curve for merchandise in the importing country's market, and a relatively less elastic demand curve for like merchandise in its home market.

Dumping may be beneficial for consumers as they get the benefit of comparative advantage in prices and choice of variety of products. On the contrary, anti - dumping duty is a protection for the domestic industry and a burden on consumers because foreign exporters add the anti - dumping duty in their selling price, which is ultimately paid by the consumers. Thus, the burden of anti - dumping duty is on the consumers and not on the foreign exporters. Revenue generated by the govt. on account of collection of anti - dumping duty is also indirectly a tax or levy paid by the national consumers. So, for the foreign exporter, there is nothing to lose until it maintains the prices at the level of the domestic industry price. Thus, the foreign exporter has a fair chance to increase the market share in less competitive markets. In case the price undertaking is accepted from the foreign exporter, it is double the loss as the host country's govt. loses the revenue, and the consumers pay the increased price for the imported product because the foreign exporter undertakes to maintain its price at the domestic level.

Why do Exporters Dump their Products?

There may be several reasons for an exporter to dump its products in a foreign market - for example, the intention of predatory dumping. Is it possible for a foreign exporter to establish a monopoly in the host country to drive the domestic producers and other foreign competitors out of the market? In a closed market, it may be possible up to some extent to drain out the financial resources of competitors by a low-price race, but this scenario is not possible in a non-closed market, as the exporter will face a new wave of foreign competitors who will replace the driven out domestic competitors. So, it is unlikely that the predator could launch a competition on such a big scale.

Unexpected surplus of produce or a decline of demand could also force producers to sell goods below cost. As long as the producer prices its goods above the variable costs, the revenue in excess of its variable costs will defray a portion of its fixed costs. Thus, the producer suffers lower losses than it would by halting production (in which case, it would suffer losses equal to its full fixed costs) to recoup a portion of its sunk cost. This situation is more clearly seen where the product is specifically customized for the importing market. So, it is very difficult for a producer to dump its goods in a foreign market, and in many cases, the dumping occurs due to many reasons other

than an unfair intention of the producer to oust its competitors from the market. The other reasons for dumping may be the pressure of economies of scale and high competition in the domestic market. It is also seen that the same products are subjected to anti - dumping actions order both at home (against imports) and abroad (against exports). For example, the steel pipes exported from India to U.S. are subject to anti - dumping duty and India has also imposed anti - dumping duty on import of steel pipes from the U.S. This fact raises a question about the real reason of anti - dumping ; how can industries being injured by unfairly priced imports cause injury to the same industry, in another country, at the same time, by unfairly priced exports?

Supporters and Critics of Dumping and Anti - Dumping Duty

There are critics and supporters of dumping and anti - dumping duty the world over. Supporters say that dumping is basically harmless as it poses competition in the market, and they believe in the theory of 'survival of the fittest'. By putting the consumers' interest above that of the domestic industry, they assume that the net gain for the country upon accepting dumping outweighs the cost for the producers to change into a new business when they cannot compete with the dumped goods. However, the critics of dumping have a completely different opinion. They say, dumping results in material injury to the domestic industry by way of loss of market share, reduction in production and profitability job losses, and decrease in the power of the industry to raise capital from the market. Moreover, it becomes more dangerous a situation when the intent of dumping is to monopolize the markets in the future. This will be harmful to all - the consumers, the domestic industry, and the nation as well (Sawakami, 2001).

Anti - Dumping Laws

Anti - dumping laws existed in the developed countries like Canada and the USA since the beginning of the twentieth century and even earlier in Europe, however, these laws were sparingly used. But in the recent times, the number of anti - dumping cases rose manifold, particularly after the emergence of WTO in 1995. The main reason for a surge in the anti - dumping cases seems to be the reduction in tariff rates under the GATT by member countries and announcement of bound rates (World Trade Organisation, n.d.), where the maximum limit of tariff is fixed, and countries were left with the easier option of the use of non-tariff barriers like anti - dumping duty and duty safeguards. Particularly, the use of anti - dumping measures by member countries has become a real threat in the international trade. The last two and half decades have seen dramatic changes in terms of :

- (1) The number of anti - dumping initiations and anti - dumping measures in force,
- (2) The number of anti - dumping users, and
- (3) The number of countries and industries that have become the targets of anti - dumping.

India has emerged as one of the top users of anti - dumping measures followed by the U.S. India accounts for only 2% of the global exports, but it is facing 104 anti - dumping measures out of the total 2966 measures imposed worldwide (Kaushik & Sharma, 2014). Furthermore, out of the 4627 anti - dumping investigations worldwide from January 1995 to June 2014, India was responsible for 715 investigations and imposition of 529 anti - dumping measures. Similarly, the U.S. was responsible for 521 investigations and 326 anti - dumping measures for the same period, leading to considerable restrictions and loss of trade (WTO Anti - dumping Gateway, 2014). The U.S. is also facing 157 anti - dumping actions on its products followed by India, with 104 anti - dumping measures in force, mainly from the European Union, Canada, U.S., and China. All these actions are potentially harmful to international trade.

The Table 1 shows the details of the anti - dumping investigations conducted by the top 10 countries. These 10 countries were responsible for 3447 investigations out of the total 4627 cases investigated during January 1995 to

Table 1. Anti - Dumping Investigations Initiated by Top 10 Countries from 1.1.1995 to 30.06.2014

Country	1995 -2005	2006 - June 2014	Total
India	428	287	715
USA	368	153	521
EU	327	130	457
Argentina	204	110	314
Brazil	182	181	363
Australia	122	156	278
South Africa	198	36	228
China	133	82	215
Canada	134	52	186
Turkey	101	69	170
Total top 10 countries	2197	1256	3447
Total WTO Members	1401	3230	4627

Source: Calculated from WTO Anti - dumping Gateway (2014)

Table 2. Anti - Dumping Measures: By Top 10 Countries and Total Countries (Reporting Member) from 01.01.1995 to 30.06.2014

Reporting Members	Measures
India	529
U.S.A.	326
European Union	298
Argentina	221
Brazil	174
China	174
Turkey	158
South Africa	132
Canada	119
Australia	111
Total of top ten countries	2242
Total WTO members	2966

Source: Calculated from WTO Anti - dumping Gateway (2014)

June 2014, which is over 74% of the total investigations carried during this period. Put together, India and the U.S. were responsible for 1236 investigations out of the total 4627 investigations, which means that these two countries undertook over 26% of the total investigations.

The Table 2 shows the anti - dumping measures imposed by the top 10 countries, including India and the U.S. It can be inferred from the Table 2 that out of the total 2894 anti - dumping measures imposed between 1.1.1995 to 30.06.2014, the 10 countries listed in the Table 2 took 2242 measures, that is, 75.3% of the total measures. India and USA put together accounted for 855 measures, that is, 29% of the measures imposed out of the total 2966 measures imposed worldwide (WTO Antidumping Gateway, 2014).

The Table 3 shows the sector wise initiations of anti - dumping investigations conducted worldwide. The most targeted sector is base metals and articles, with 1328 investigations out of the total 4627 investigations carried out worldwide, that is, a little over 28%, followed by products of chemicals and allied industries, with 928

**Table 3. Sector Wise Distribution of Anti - Dumping Initiations by
Exporting Country from 1.1.1995 to 30.06.2014**

HS SECTION NAME	All Countries
I. Live animals and products	58
II. Vegetable products	56
III Animal and vegetable fats, oils, and waxes	14
IV. Prepared food stuff, beverages; spirits, vinegar, tobacco	65
V. Mineral products	75
VI. Products of the chemical and allied industries	928
VII. Resins; plastics and articles; rubber and articles	614
VIII. Hides; skins and articles; saddlery and travel goods	5
IX. Wood; cork and articles; basket ware	98
X. Paper, paperboards, and articles	228
XI. Textiles and articles	343
XII. Footwear, headgear; feathers; flowers, fans	32
XIII. Articles of stones, plaster, ceramic prod, glass	192
XIV. Pearls, precious stones, and metals	1
XV. Base metals and articles	1328
XVI. Machinery and electrical equipment	400
XVII. Vehicles, aircrafts, and vessels	48
XVIII Instruments. clocks; recorders and reproducers	51
XX. Misc. Manufactured articles	91
TOTAL:	4627

Source: Calculated from WTO Anti - dumping Gateway (2014)

investigations (almost 20%) (Antidumping Sectoral : Distribution of initiations by reporting member 1.1.1995 – 30.6.2014, n.d).

The Table 4 shows that the most targeted sector for anti - dumping measures is base metals and articles with 881 measures, followed by products of the chemical and allied industries, with 624 cases. Resins, plastics & articles, and rubber & articles with 379 investigations, and textiles and articles with 250 cases are the sectors that attracted most of the anti - dumping measures. It is also interesting to note that four of the top 10 antidumping users (India, United States, Brazil, and Germany) also fell victim to the protectionism of other countries and appear in the top 10 targets in the same period. Among others, Canada, Mexico, United Kingdom, and France are among the top 20 targets (Anti-dumping initiations: By exporter 01/01/1995 - 30/06/2014, n.d. ; WTO Anti - dumping Gateway, 2014).

The data presented in the Table 3 and Table 4 were taken from the semi-annual reports of WTO Members to the Committee on Anti-Dumping Practices and cover the period from January 1995 - June 2014. The tables are based on information from members having submitted semi-annual reports for the relevant periods, and are incomplete to the extent that the members have not submitted the reports, or have submitted incomplete reports. For the purpose of these tables, each initiation and measure reported covers one product imported from one country. “Country” in each case refers to country or customs territory. In a nut-shell, anti - dumping duties have proven more harmful to the international trade compared to the tariffs and there does not seem any end to this issue in the near future as most of the WTO members are in favour of the continuity of anti - dumping laws. So, what can be the solution ?

Table 4. Sector Wise Distribution of Anti - Dumping Measures by Exporting Country from 1.1.1995 to 30.06.2014

HS SECTION NAME	All Countries
I. Live animals and products	28
II. Vegetable products	37
III Animal and vegetable fats, oils and waxes	02
IV. Prepared food stuff, beverages; spirits, vinegar, tobacco	35
V. Mineral products	50
VI. Products of the chemical and allied industries	624
VII. Resins; plastics and articles; rubber and articles	379
VIII. Hides; skins and articles; saddlery and travel goods	2
IX. Wood; cork and articles; basket ware	51
X. Paper, paperboards, and articles	125
XI. Textiles and articles	250
XII. Footwear, headgear; feathers; flowers, fans	23
XIII. Articles of stones, plaster, ceramic prod, glass	108
XIV. Pearls, precious stones, and metals	0
XV. Base metals and articles	881
XVI. Machinery and electrical equipment	244
XVII. Vehicles, aircrafts, and vessels	29
XVIII Instruments. clocks; recorders and reproducers	34
XX. Misc. Manufactured articles	64
TOTAL:	2966

Source: Calculated from WTO Anti - dumping Gateway (2014)

Table 5. Cost-Plus Calculation of Product Cost (in US \$)

Price components	Domestic Company	Foreign Exporter
Factory price	7.50	5.00
Domestic freight	.70	.70
Sub total	8.20	5.70
Export documentation		.50
Sub total		6.20
Ocean freight and insurance		1.20
Subtotal		7.40
Import duty (10% of landed cost)		.74
Subtotal		8.14
Wholesaler markup (10 %)	.82	
Sub total	9.02	
Importer/distributor markup		2.36
Sub total		10.50
Retail markup (50 %)	4.50	5.25
Final consumer price	13.52	15.75

NOTE: The assumption and basis of Cost Plus calculation for the product covers all the costs being allowed under the implementation of Article- VI of GATT/WTO Anti - dumping Agreement.

The New Anti - Dumping Theory of Cost Averages (NATOCA)

The New Anti - Dumping Theory of Cost Averages (NATOCA) provides a workable solution to the anti - dumping war. What is the New Antidumping Theory of Cost Averages, and how it is different from the present method of calculating the anti - dumping duty/margin ? The same is explained below (please also refer to End Notes 1 - 5) :

It is based upon the approach of common welfare of the stakeholders, that is, consumers, domestic industry, govts., and the foreign exporters. It provides a relief to all. The present anti - dumping practices seem to be more favourable to the domestic industry and meet out a "step motherly" treatment to the consumers, as ultimately, it is the consumers who bear the burden of the anti - dumping duties in their country. The anti - dumping duty imposed on a product by the government is passed to the consumers by the exporter in the form of an increased price. So, it is entirely a wrong notion that the anti - dumping duty is paid by the foreign exporters.

The New Anti - Dumping Theory of Cost Averages reduces the burden of anti - dumping duty to 50%, and the benefit of this reduction straightaway goes to the consumers, as now, they will be paying only 50% of the anti - dumping duty and only that will be added in the price of the product. Furthermore, they will have a preference over the product they choose to buy. The foreign exporters will also get the benefit of comparative advantage as only 50% of the anti - dumping duty burden is added in the price of their products, and they will be able to sell more quantity on lower prices. The domestic industry will still be getting a reasonable protection as the anti - dumping duty will remain in force against the dumping exporters - this will take care of predatory dumping. In the same way, it also provides an opportunity to the domestic industry to become more competitive in the international market by improving upon its so called inefficiency, curtailing its overheads, and increasing its productivity (The domestic industry must understand that the protection through anti - dumping duty is for a specified period, and ultimately, they have to face the international competition.). The government will also get some revenue to its exchequer and the added advantage of international trade promotion from the country. It is to be understood clearly that international trade is not only for the correction of balance of payment, but it is also a major source of international peace promotion. The Table 5 shows the cost-plus calculation of the product cost by a domestic company and a foreign exporter whose products are subject to dumping.

We hypothesize that a foreign exporter dumps their product at \$ 10 per unit in the host country, and this sale at a price lower than the normal value in the host country results in a material injury to the domestic industry in the host country, and the domestic industry will request the designated authority to investigate into the case of dumping. We calculate the dumping margin as per the current practice/ method, and we will also find out the dumping margin under the proposed New Anti - Dumping Theory of Cost Averages (NATOCA) to reach a conclusion as to how NATOCA is beneficial to all the stakeholders. The calculation is depicted in the Box 1.

The dumping margin of \$1.76 per unit is 50% of the dumping margin of \$3.52, calculated according to the current practice/method followed. Moreover, the new normal price and the price of the exporter, that is, export price plus dumping margin are at the same level of \$11.76 per unit, and provide a level playing field to the domestic industry and the foreign exporter. This situation also fulfills the obligation under the WTO Anti - Dumping Agreement. The dumping margin calculated as per NATOCA must be recovered from the dumping exporter/s as the anti - dumping duty, irrespective of de-minimis.

Benefits of the New Anti - Dumping Theory of Cost Averages (NATOCA)

- (1)** It will lead to welfare of the consumers as they will have a choice in the variety of products and will pay a lower price for the products as the burden of anti - dumping duty will be reduced to 50%.
- (2)** The exporters will also gain in business by maintaining the price of their products at a competitive level in the host country.
- (3)** Reasonable protection will be in place for the domestic industry as well, and there will be no fear of predatory dumping as the dumping exporter will still be paying the anti - dumping duty.

Box 1

Dumping Margin under the Current Method is: Normal Value – Export Price = Dumping Margin

Normal Value: \$ 13.52

Export Price: \$ 10

Dumping Margin should be: \$13.52 - \$10 = \$3.52 per unit

The dumping Margin is \$ 3.52 per unit, which is more than the de-minimis (more than 2% of export price in India). **So, the antidumping duty will be charged from this exporter in India at the rate of US\$ 3.52 per unit or as per the lesser duty rule.**

Calculation of Dumping Margin for the same case under the proposed new theory - NATOCA - that works independently of the rule of de-minimis, that is,

$$\frac{\text{Normal Value} + \text{Export Price}}{2} = \frac{\$13.52 + \$10}{2} = \frac{\$23.52}{2} = \$11.76$$

which is, New Normal Price - Export Price

Dumping margin under NATOCA will be: \$11.76 - \$10 = \$1.76 per unit

- (4) It provides an opportunity to the domestic industry to become more competitive in the market by providing quality products, cuts its overheads, and increases the productivity to remain in the competitive market as anti - dumping protection is for a specific period only.
- (5) The govt. will also continue getting some revenue from the dumping companies, but it is not the objective of the govts. to generate revenue through anti - dumping duty. Their primary responsibility is to see the welfare of the consumers and the domestic industry and to give a fair chance to the foreign exporters to sell their products in the host country as WTO members.
- (6) The burden of the anti - dumping authorities will get reduced as they need not go for the cumbersome procedures of investigating, preliminary findings, final findings, recommending the anti - dumping duty, and attending the cases in C-STAT and courts.
- (7) It will eliminate the possibility of distortions in calculating the anti - dumping margin.
- (8) The work of the Dispute Settlement Body (DSB) of WTO will also be reduced as hardly any case will go to DSB once the New Anti - Dumping Theory of Cost Averages is mutually implemented by the members of the WTO.
- (9) It will help promote international peace through promotion of international trade.
- (10) NATOCA is a very simple and straight forward theory and does not allow any kind of distortions.

Principles of the New Anti - Dumping Theory of Cost Averages (NATOCA)

✚ The New Anti - Dumping Theory of Cost Averages works irrespective of de-minimis condition and protects the domestic industry from all kinds of dumping.

- ✍ It disallows the weighted average method (WAM) for calculating the dumping margin as the anti - dumping duties calculated under WAM result into losses to some exporters and gains for others.
- ✍ With the anti - dumping duty being selective and discriminatory, measures need to be calculated separately for each foreign exporter and anti - dumping duty rates may differ on a case to case basis.
- ✍ The market economy condition must prevail in the trading market, and subsidies of all kinds should be negated as per the WTO Agreement on Anti - dumping while calculating the normal value or fair value.
- ✍ It encourages a fair comparison of costs based on quality and usability of like products.
- ✍ It does not allow carteling among the domestic industry or the foreign exporters of the product.
- ✍ Supply of goods/products should be on a continuous basis.
- ✍ There should be no commercial sanctions or political pressures against the host country for imposition or non-imposition or discontinuance of the anti - dumping measure.
- ✍ There should be an integrated system to assess the impact of foreign exchange fluctuations, if any, and the same must be reviewed on a quarterly basis and adjusted in the cost of the product for the purpose of fair comparison of prices for the exporter and that of the domestic industry.

Conclusion

Excessive use of anti - dumping duties not only has negative impacts on international trade in monetary terms, but also affects the international relations negatively. The objective of the different methodologies used by the member countries of WTO is to increase the dumping margin or to prove the dumping, even if the dumping margin is negative or below de-minims. Use of these WTO inconsistent practices has led to targeting of the specific products/countries. The ultimate result is either trade restriction, trade diversion, trade dispute, or strained relations between the trading countries. The objective of international trade is not only doing gainful business by using the trade barriers and restricting the imports, but also promoting peace in the world through fair and ethical trading.

Anti-dumping has resulted in extensive trade barriers to international trade development. The objective of free trade of WTO must include the fair trade practices clause, and also, the countries should be honest enough while implementing their anti - dumping laws. Developed countries had adopted, used, evaluated, and streamlined their anti - dumping laws much before the establishment of WTO. However, the developing and less-developed countries are still in the process of understanding the pros and cons of the WTO Anti - dumping Agreement. It is just a beginning for us, and we need to develop the required kind of infrastructure and skilled manpower at the govt. /country level, create awareness about the impacts of this agreement, and train our people to get expertise in the area of anti - dumping laws.

Universities and business schools have felt their responsibility and are including the anti - dumping laws as a subject in their courses. However, most of them are still in the process of capacity and capability building on the subject. Cooperation with each other through seminars/ conferences and arranging training programmes on the subject may be quite useful to understand, evaluate, and deal with the problem of dumping and anti - dumping duties. The adoption of the proposed New Anti - dumping Theory of Cost Averages (NATOCA) for calculation of the dumping margin and universal anti - dumping laws by the WTO and its members, promotion of regional economic integration like European Union, ASEAN, and NAFTA are the possible solutions to the anti - dumping war. WTO must re-look into the loopholes of its Anti - dumping Agreement in the next Ministerial Conference to be held in Nairobi (Kenya) in December 2015 and put all its efforts and expertise to impress upon the member countries for consensus and adoption of universal anti - dumping laws by modifying the current Anti - dumping Agreement in the interest of international trade.

Research Implications

The research study is novel idea and original work. The study would have a significant impact on the literature of anti - dumping laws and their practices in international trade. Most of the studies on the subject have only revealed the negative impacts of the anti - dumping laws on the international trade practices, but hardly suggested a solution to the anti - dumping war. The present research study has come out with a firm solution and suggests how the replacement of the current method of calculating the dumping margin with the proposed New Anti - dumping Theory of Cost Averages (NATOCA) will not only reduce the burden of anti - dumping on the consumers/end-users, but will also help in reducing the retaliations, trade disputes, and court cases associated with anti - dumping. As pointed out earlier, the proposed theory will benefit the domestic industry, and will also bring welfare to all other stakeholders in international trade, that is, consumers, end users of the imported products, foreign exporters, and governments. As an offshoot, implementation of NATOCA will also help to promote international peace through international trade.

Limitations of the Study and Scope for Further Research

The present research paper does not claim itself to be the sole exhaustive repository of anti - dumping laws or of GATT/WTO Anti - dumping Agreement as a whole. It is mainly confined to pointing out some of the loopholes of the GATT/WTO Anti - dumping Agreement and their misuse by the member countries, like the use of distortive and WTO inconsistent methods by the member countries in calculating of the anti - dumping margin and unilateral imposition of anti - dumping duties to restrict the imports from a particular country. These practices are resulting in trade disputes. The research proposes a New Anti - Dumping Theory of Cost Averages (NATOCA) to replace the current methodology as a solution to the anti - dumping war. The cost - benefit analysis of anti - dumping actions to a nation, role of political economy in imposition or non – imposition of anti - dumping duties, promotion of international peace through trade are the topics for future research in this area.

End Notes

(1) NATOCA has been developed by the first author of the paper (K. R. Kaushik) and copyright has been registered vide registration No. L/58964/2014 dt. 9.7.2014 in favour of the author by Registrar of Copyrights, Department of Higher Education, Govt. of India.

(2) The conceptual support behind the proposed theory is that the first author has been handling the anti - dumping issues for the last 12 years. He has closely observed various aspects of the anti - dumping applications, investigation processes, and implementation problems faced by the DGAD/Applicants/Defendants. In India itself, a lot of cases are filed with C-STAT and courts challenging the decision of DGAD ; anti-dumping disputes are also being referred to the dispute settlement body of WTO for reconciliation. All these actions are potentially harmful for trade and lead to a lot of wastage of time and money. The major issue always remains the dumping margin or the anti-dumping duty. Both the domestic industry and exporters trade for profit. The concept behind the proposed NATOCA is to make the domestic industry more competitive by cutting its overheads as the anti - dumping protection will not be available for ever. On the other hand, the exporters should not be allowed to create a situation where the domestic industry collapses due to low prices of exported products and monopolize the host-country market in due course. The concept of NATOCA is to create a win- win situation for all the stakeholders of international trade.

The present method of calculating the anti - dumping duty mostly favours the domestic industry as it gets protection through anti-dumping duty. However, this protection becomes a burden on the consumers and end users of the imported products/goods as they are the people who finally pay this duty.

The proposed theory (NATOCA) takes care of all the stakeholders of international trade as the burden of anti-dumping duty get reduced straightaway by 50%, which means consumers /end users will pay a lesser price. Protection will remain for the domestic industry and the revenue will be generated for the governments. It will not only promote trade between countries, but will also promote peace in the world by reducing the number of trade disputes and lead to amicable trading relations among the various countries.

(3) The assumption and basis of cost-plus calculation for the product covers all the costs which are allowed to be included under the Implementation of Article-VI of Anti-dumping Agreement of GATT/WTO.

(4) The WTO approved prevalent formula for calculating the Dumping Margin is:

$$\text{Normal Value} - \text{Export Price} = \text{Dumping Margin.}$$

Normal value of a product unit is ₹ 50, and export price of a foreign product is ₹ 40 per product unit. Thus, the dumping margin will be ₹ 50 - ₹ 40 = ₹ 10, which will be charged from the dumping company per unit exported in India as anti-dumping duty.

NATOCA proposes a different method, where the price of the domestic manufacturer and that of the exporter are added and are then divided by 2 to arrive at the New Normal Price. For example:

$$\frac{\text{Normal Value (50)} + \text{Export Price (40)}}{2} = \frac{\text{₹ 50} + \text{₹ 40}}{2} = \text{₹ } \frac{90}{2} = \text{₹ 45 (New Normal Value)}$$

Now, the Dumping Margin will be: New Normal Value - Export Price: ₹ 45 - ₹ 40 = ₹ 5/- . The Dumping Margin of ₹ 5/- is equal to 50% of ₹ 10/- . So, the application of NATOCA has straight away reduced the anti - dumping margin to ₹ 5/-, that is, half of ₹ 10/- .

(5) The final dumping price would be Export Price + Dumping Margin under NATOCA. This way, the New Normal Value and the Export Price plus antidumping duty (both at ₹ 45/- per product unit) will be equal and provides a level playing field for both, the exporters and the domestic industry.

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