KLUWER LAW INTERNATIONAL

## World Trade Organization Agreement on Anti-dumping

## A GATT/WTO and Indian Jurisprudence

K.D. Raju B.Sc, LL.B, LL.M, M.Phil, PhD Assistant Professor of Law Indian Institute of Technology Kharagpur



Law & Business

AUSTIN

BOSTON

CHICAGO NEW YOF

NEW YORK THE NETHERLANDS

I BOST

## Table of Contents

List of Abbreviations List of Figures, Flow Charts and Tables .				
Table of GATT Panel CasesTable of Indian CasesTable of WTO Cases				
Abo Ack	eword out the Author nowledgements roduction	xxxv xxxvii xxxix xli		
	upter 1 Concept and History of Anti dumning	1		
1.1	Concept and History of Anti-dumping Introduction	<b>1</b>		
1.1	'Dumping': The Concept .' '	4		
1.4	1.2.1 Definition of Dumping	4		
	1.2.2 Rationale for Dumping	6		
1.3	Various Schools of Thought on Anti-Dumping Duties	7		
1.5	1.3.1 Unfair Trade	8		
	1.3.2 Special Protection	8		
	1.3.3 Strategic Weapon	8 8		
	1.3.4 Different Kinds of Dumping	9		
	1.3.4.1 Sporadic Dumping	9		
	1.3.4.2 Intermittent Dumping	9		
	1.3.4.3 Persistent or Continuous Dumping	10		
	1.3.4.4 Other Categories of Dumping '	10		
1.4	History of Anti-dumping Legislations	12		
	1.4.1 GATT Round of Anti-dumping Negotiations	13		
	1.4.2 Kennedy Round (1962-1967)	15		
	1.4.3 Tokyo Round (1973-1979)	17		
	1.4.4 The Uruguay Round (1986-1994)	20		

1.5		mics of Anti-dumping Initiations in the	00
1.6	First L Conclu	Decade of the WTO .	23 25
Chap	ter 2		
	Nuts an	d Bolts of the WTO Anti-dumping Agreement	35
2.1	Introdu	uction	35
2.2	Deterr	nination of Dumping	36
2.3	Deterr	nination of Injury and Causal Relationship	39
2.4		of Injury	40
2.5	Like F	• •	41
2.6		tion of Domestic Industry	42
2.7		on of an Investigation	42
2.8		nimis Dumping Margin and the Rejection of Application	43
2.9		lures in Investigation	44
2.10	Facts .	Available Provision	44
2.11		ional Measures I '	45
2.12		Undertaking	45
2.13		Duty Rule	45
2.14		ition and Collection of Anti-dumping Duties	46
2.15		spective and Prospective Collection of Duties	46
2.16		uctivity	47
2.17		t Review of Anti-dumping Duties and Price Undertakings	47
2.18		Notice	48
2.19		al Review	48
2.20		al and Differential Treatment of Developing Countries	49
2.21	-	te Settlement in GATT and WTO	49
2.22		Provisions	51
2.23	Concl	usion	51
	oter 3	on of the Dumping Margin "	53
3.1		view of Article 2	53 54
3.2		t Price	56
3.3		al Value	58
5.5	3.3.1		58
	3.3.2	'99.5 per cent' or the 'Arm's Length Test'	59
3.4		nate Methods for Determining Normal Value	61
5.1	3.4.1	Constructed Normal Value	61
	3.4.2	Other Options for Calculating the Factors	63
	3.4.3	Constructed Normal Value Used for Calculation	05
	01110	of Administrative, Selling, General Costs and Profit	64
	3.4.4	Sales in the 'Ordinary Course of Trade' and	51
		'Sales Below Cost'	66
	3.4.5	'Weighted Average' Calculation of Normal Value and Data	20
		from 'Other Exporters or Producer' in Article 2.2.2(ii)	68
3.5	Fair C	Comparison of Export Price in Article 2.4	71

Table	of Ca	ntents	ix	
	3.5.1 Practice of Zeroing'in Article 2.4.2		74	
	3.5.2 'Multiple Averaging' in Article 2.4.2		85	
3.6	Conclusion		87	
Chap	ter 4			
•••	y, Threat of Material Injury Test and Causa		99	
4.1	Introduction		99	
4.2 4.3	GATT Jurisprudence on Injury Test Injury Test in the ADA		100 102	
4.3 4.4	Determination of Injury in the United States 'Captive Production'			
	and 'Positive Evidence' Provision		104	
4.5	Effect of Volume of Dumped Imports in Dete	ermination of Injury 1	108	
4.6	'Positive Evidence' and 'Objective Examination' in Injury			
. –	Determination		10	
4.7	'Cumulation'under Article 3.3		112	
4.8	Mandatory or Illustrative Nature of the List of under Article 3.4		114	
4.9	Article 3.5 of the ADA: Causal Link		114	
4.10	Interpretation of Article 3.7 of the ADA: 'Th		121	
4.11	Conclusion		123	
Chap	ter 5			
	edural Issues in Anti-dumping Cases		127	
5.1	Initiation and Subsequent Investigation of Du	1 0	127	
5.2	Article 5.3 of the Anti-dumping Agreement:		128	
5.3 5.4	Domestic Industry Support De minimis Threshold		130 132	
5. <del>4</del> 5.5	Article 9.4 of the ADA: Calculation of 'AH (		132	
5.6	Retroactivity		135	
5.7	Relationship with Agreement on DSU and A		137	
5.8	Non-compliance Issues		139	
5.9	United States-Anti-dumping Act of 1916		140	
5.10	Byrd Amendment		143	
5.11	Conclusion		150	
	oter 6 Standard of Review under the Anti-dumpin	g Agreement	153	
6.1	Introduction •		153	
6.2	GATT Standard of Review: A Historical Per		153	
6.3	ADA Standard of Review		156	
6.4	Dispute Settlement Body Jurisprudence		159	
6.5	Relationship with other Articles of the ADA		160	
	<ul><li>6.5.1 Standard of Review in Article 2.2.2 d</li><li>6.5.2 Article 3 and 17.6 of the ADA</li></ul>		160 162	
6.6	Article 17.6 of the ADA: 'Permissible Interp		162	
6.7 .			166	
6.8	General Application of Article 17.6 of the A		170	
6.9	Conclusion		175	

Chapte		Jamas an Anti Jumaina	241	
	Procedur	dence on Anti-dumping	<b>241</b> 242	
10.1			242 245	
		Appeal . Refund of Duty .	243 246	
10.2		n of Domestic Industry • .	240 247	
10.2		n of Like Article'	251	
10.3		ation of Injury	256	
10.4		d Causal Link .	250 257	
10.5	5 5		262	
10.0				
10.8	Normal Value Facts Available Provision: Transparency versus Confidentiality			
10.9	Period of Investigation			
10.10	Sunset. R		279 282	
10.11		oercion in Investigations	284	
10.12		nping Law versus Competition Law '	285	
10.13		nt of Non-market Economy	289	
10.14	Circumv	•	291	
10.15	Conclusi	on	293	
Chapt	er 11			
Future	e Direction	ns in Anti-dumping	295	
11.1	Flawed F	Rationale	295	
11.2	Confusin	g Definition of Dumping .	296	
11.3	No Caus	al Link between Injury and Dumping	298	
11.4	Procedur	al Issues	300	
1.1.5	Standard	of Review	301	
11.6		vailable Provision'	303	
117	Special a	and Differential Treatment Provisions	303	
11.8	The Role	e of Panel and AB in Anti-dumping Cases	304	
11.9	Indian E	xperience	305	
11.10	Procedur	al Issues ,	306	
11.11		on of Domestic Industry	306	
11.12		nation of Injury	307	
11.13	Calculat	ion of Dumping Margin	308	
11.14	Transpar	ency	308	
11.15 Competition I		tion Law versus Anti-dumping Law	309 310	
11.16	Recommendations			
	11.16.1	Reviewing the Definition of Dumping Margin (Article 2)	3.10	
	11.16.2	Specifying Rules to Calculate Constilicted Normal Value	310	
	11.16.3	Restraining the Use of 'Exceptional Price Comparison		
		Method' in.Article 2.4.2	311	
	11.16.4	Prohibiting'Zeroing' .'	312	
	11.16.5	Limiting the Use of Cumulative Assessment of Injury	312	
	11.16.6	Prohibiting the Factor of Captive Production and		

Selective Examination of Domestic Market31311.16.7Curtail Discretionary Power in Injury Test313