

Anti Dumping Regulations
A Boon or Bane

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Executive Summary

Over the past few years, antidumping duty is being increasingly used as a tool to rectify the market distortions that have resulted from liberalization of international trade. Several newly industrialised countries like Japan, Korea, Taiwan and now China have been accused of dumping their products in the international market with the main objective of ensuring better market penetration so that in the long term, they may realise better margins once their competitors exit the marketplace.

Although India hasn't been too heavily accused of dumping products in the foreign market, it has been subject to heavy dumping from other countries and is in fact the largest user of antidumping measures¹ in the world (between 1995 and 2004) in terms of absolute numbers of definitive measures imposed. While there can be no clear cut decision on whether antidumping duty on a product brings overall benefits to the economy as a whole, there can be no doubt that excessive use of antidumping duty is bound to be harmful to the economy in the long run.

So the question that arises is what exactly is excessive use? On one hand, it has been proven that in some (genuine) cases, antidumping protection is in fact quite a practical option if domestic industries of the importing country are to survive. On the other, one may argue that for a developing country like India, which has adequate natural resources, semiskilled and unskilled labour, are these protectionary measures required? Infrastructure is improving rapidly. As such, one would expect that the manufacturing sector should be able to compete well with industries in other parts of the world. So why have so many antidumping cases been approved during last fifteen years. What has caused the sudden rise in the number of anti dumping cases? Is it mere protectionism on behalf of few strong entrepreneurs or is the economy benefiting on the whole?

This paper reviews the rationale for imposing anti dumping duty, the procedures for application, criteria for imposing a duty, justifications for the regulation and repercussions of the duty. Finally it examines whether the economy is actually

¹ Directorate General Trade of the European Commission

benefiting from the protection or whether it is actually an impediment to growth in the post reforms era.

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Introduction

Dumping, is a pricing practice where a firm charges a lower price for exporting goods than it does for the same goods sold domestically. It is said to be the most common form of price discrimination in international trade. Dumping can only occur at places where imperfect competition and where the markets are segmented in a way such that domestic residents cannot easily purchase goods intended for export. It is a subtle measure of protection which comes under the non-tariff barriers and is product and source specific. Antidumping duties were initiated with the intention of nullifying the effect of the market distortions created due to unfair trade practices adopted by aggressive exports. They are meant to be remedial and not punitive in nature.

Although dumping does benefit the consumers of the importing country in the short run, it is harmful to the domestic producers as their products are unable to compete with the artificially low prices imposed by the imported goods. As a method of protection to the domestic industries, anti dumping duties are thus levied on the exporting country which has been accused of dumping goods in another country. As the antidumping duty is only meant to provide protection to the domestic firms in the initial stages, as per the international laws, the antidumping legislations may last for a maximum period of five years.

Antidumping measures are of two kinds: ²

Antidumping duty: This is imposed at the time of imports, in addition to other customs duties. The purpose of antidumping duty is to raise the price of the commodity when introduced in the market of the importing country.

Price undertaking: If the exporter himself undertakes to raise the price of the product then the importing country can consider it and accept it instead of imposing antidumping duty.

Historical perspective of Anti- dumping

It is commonly perceived that anti dumping legislations have been enforced only in the past twenty years, after it was internationally discussed in the Doha ministerial

² Rai Sheela, Dumping and Antidumping. Accessed online on 10 July 2006 at <http://www.centad.org/relatedinfo13.asp>

conference. However, research reveals that the first anti-dumping statutory provisions in any jurisdiction was received by the Royal Assent in Canada on the 10th of August 1904³, with the provisions coming into force retroactively on the 8th of June 1904. The measures implemented in 1904 formed part of the amendments to the Customs Tariff Act of 1897. The second case then followed consecutively with New Zealand filing its first anti dumping case in 1905 followed by Australia in 1906.

The items for which the anti dumping legislation was applied ranged from false teeth to machinery and equipment intended for exclusive use in alluvial gold mining. The application of the duty was limited to goods which were produced in Canada; and provisions were made for the exemption of goods from the special duty if the domestic supply conditions were found to be inadequate. Further, no injury test was conducted to determine the dumping margin. Instead, special duty was set at the difference between the selling price in Canada and the "fair market value", where the latter was identified with the value of the goods for purpose of application of the ad valorem tariff.

The difference however, between pre- and post-1980 antidumping policy was that in the past, most antidumping complaints did not result in the imposition of import duties. Today's antidumping cases are much more likely to be successful. This change has been brought largely because of the formation and widespread acceptance of the WTO in the proceedings of international trade.

Why do firms dump? The economics behind it

Dumping occurs when firms start using price discrimination as a strategy for profit maximisation. The conditions mandatory for dumping to take place are

- Presence of an imperfect market where price discrimination between markets is possible. (Because in imperfect market firms are price setters not price takers).
- Segmented markets where there is no arbitrage easily possible between markets.

³ Cuiiriak Dan, Anti-dumping at 100 Years and Counting: A Canadian Perspective. Access online on 14 July at <http://www.fordschool.umich.edu/rsie/Conferences/ADSym/Ciuriak.pdf>

Only if the above two conditions are satisfied is it profitable for the exporting firm to engage in dumping. For any firm, price discrimination in favour of exports is more common because the share of exports is usually lesser than the domestic demand.

In the export market, individual firms have lesser monopoly power and hence choose to keep prices lower in foreign markets while charging higher prices for domestic markets. This can also be explained through the price elasticity of demand for goods. In areas where the demand is price inelastic, producers tend to charge a higher price. This is said to be the case in domestic markets. In foreign markets, price elasticity of demand is elastic and hence prices are low. Thus, if there is high elasticity on export sales than on domestic sales, firms will dump.

Anti Dumping Duty – Need and Relevance

Trade is increasingly being seen as a means of achieving economic development.

Ricardo's theory of comparative advantages clearly predicts that only trade liberalisation will ensure more efficient use of all resources which would help underdeveloped and developing countries free themselves from the shackles of poverty. Genuine Trade Liberalisation is possible only if more and more economies participate in free trade rather than keep protecting their markets.

But free trade also implies distortion and exploitation. Free trade, which is *unfair* could undermine and distort competitive and well-functioning markets, leading to inefficiencies. Putting in place a system by which countries can punish such activity with duties to counteract these unfair trade practices, (similar to allowing countervailing duties on export subsidies) seems reasonable. Some of these protectionary measures available to developing countries are:

Tariffs

Tariff, which is the simplest form of protection, is a tax levied on goods when they are imported. Tariffs are either specific (i.e. fixed amount per unit of the commodity) or ad valorem (which are taxes levied as a fraction of the total value of the imports). In either case, tariff results in a higher price of the commodity for consumers of the importing country. It also means higher revenue for the government. Recently, the use

of tariffs has reduced significantly, as countries now prefer to use non-tariff barriers. The effect of tariffs depends upon the price elasticities of the imported commodities

Quotas

Quotas are quantitative limits placed on the importation of specified commodities⁴ for a specified period of time. An import quota is typically set below the free trade level of imports, in which case it is called a binding quota. If a quota is set at or above the free trade level of imports then it is referred to as a non-binding quota. Goods that are illegal within a country effectively have a quota set equal to zero.

Safeguard measures

Safeguard measures are temporary restrictions on the imports of certain products. The purpose of safeguard measures is to protect a specific domestic industry from an increase in imports of any product which is causing, (or threatening to cause) serious injury to the industry.

Anti- dumping measures

This is a form of tariff and is hence treated under the customs tariff act. Anti dumping duties are charges levied against the exporting country for selling their price lower than the normal price in another country. The main difference between anti dumping and the other measures is that anti dumping is not retaliatory.

Antidumping Measures: The Preferred option

Anti dumping duties have been gaining more importance in recent times simply because, it has been observed to be the best form of protection. Unlike quotas or safeguard measures, anti dumping duties are not retaliatory. They are industry, time and product specific and hence are said to create lesser distorting effects as compared to other forms of protection.

Justifications for antidumping duty

In free trade, firms are allowed to charge different rates in different markets. The result would be that firms would charge lower prices in foreign markets and higher prices in domestic markets, leading to material injury to the domestic producers. Had

⁴ Baxter R.E, Davis Evan, 1988, The Penguin Dictionary of Economics

price discrimination taken place by a monopoly firm within one economy, the government would have intervened to stop consumer exploitation by enforcing an act similar to the MRTP act, in India.

Hence, in the international context, it is the antidumping duty that protects the domestic producers initially and consumers in the long run. The duty is justified because in case of many industries the start up period is long and start-up costs are also high. Once these firms are forced out of the market as a result of dumping by exporters, it is very difficult for them to restart when the same exporters raise prices. Usually, the intentions of charging such low prices to foreign consumers is to be able to wipe out the domestic industries and eventually acquiring monopoly power in the foreign market (i.e. using predatory pricing). Thus it is on this ground that the anti dumping duties have been justified. The main intension is to protect the domestic industries.

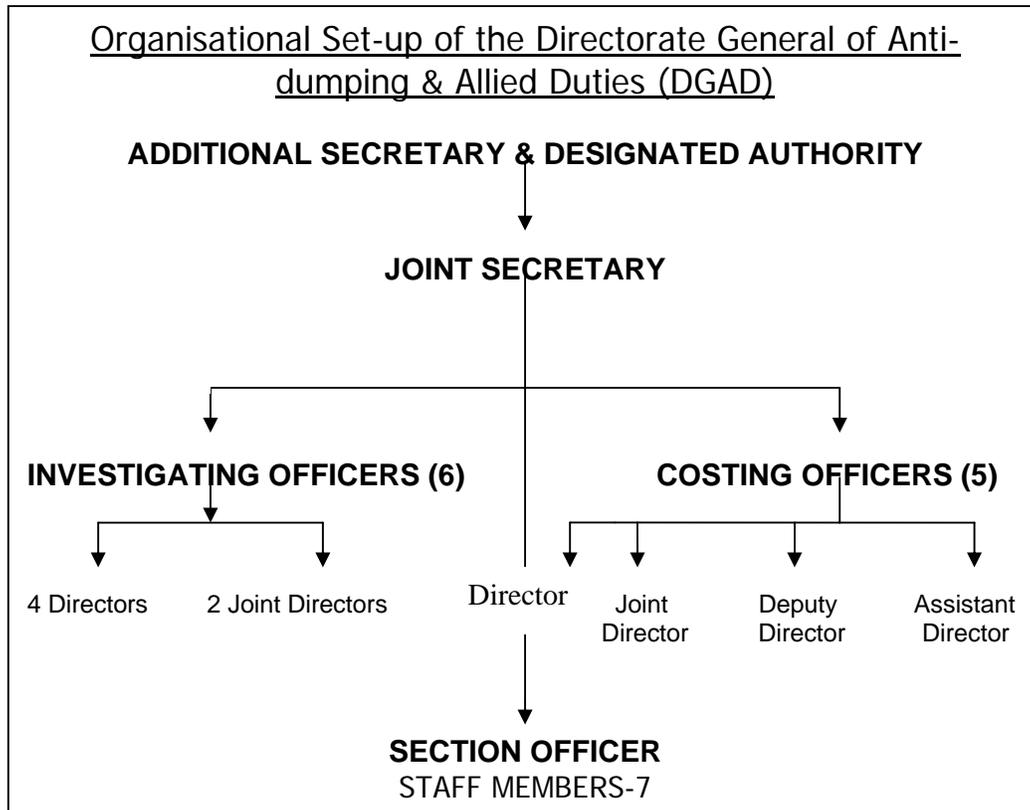
India and Anti dumping

Which are the acts and laws that govern dumping?

The first Indian Anti-dumping legislation came into existence in 1985 when the Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1985 were notified. Section 9 of the Customs Tariff Act, 1975 empowers the central government to impose anti-dumping duty. The manner and procedure of anti- dumping investigations and the appointment of designated authority, are governed by the anti-dumping rules. These rules contain the operational provisions and confirm to the WTO agreement on anti-dumping.

The Directorate General of Anti-Dumping & Allied Duties (DGAD) was constituted in April 1998. It is located in New Delhi. Since then, all anti dumping cases in India have been handled by DGAD. Today, the DGAD is headed by the Designated Authority of the level of Additional Secretary to the Government of India who is assisted by a Joint Secretary and a Director. Besides, there are eleven Investigating and Costing Officers

to conduct investigations. The Directorate is serviced by one Section headed by a Section Officer.



Procedural formalities for applying for anti dumping duties

Applications for anti- dumping protection can be made by or on behalf of the concerned domestic industry to the Designated Authority (officer of level of Additional Secretary to the Government of India who heads the DGAD) in the Dept. of Commerce for an investigation into alleged dumping of a product into India. As per the regulations set by the DGAD, an application for protection can be made either by an individual petitioner (domestic producer) commanding 25% of the production capacity of the entire market or by a group of producers who collectively hold 50% of the total market capacity. However, a domestic producer who is related to the exporter or importer of the dumped article or is himself an importer thereof may not be treated as part of the domestic industry even if he files or supports an anti-dumping petition.

Any industry is subject to protection if and only if there is sufficient evidence furnished by the petitioner/s regarding;

- i. Dumping of goods in question;
- ii. Injury to the domestic industry; and
- iii. A causal link between the dumped imports and alleged injury to the domestic industry.

Broadly, injury may be analysed in terms of the volume effect and price effect of the dumped imports. The parameters by which injury to the domestic industry is to be assessed in the anti dumping proceedings are such economic indicators having a bearing upon the state of industry as the magnitude of dumping, and the decline in sales, selling price, profits, market share, production, utilisation of capacity etc. Existence of dumping can be estimated by calculating the dumping margin which is the difference between the Normal Value of the like article and the export Price of the product under consideration.

$$\text{Dumping margin} = \text{normal value} - \text{export price}$$

The normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country or territory while the export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

Various stages of the investigation process

1) Preliminary Screening

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation.



Within 5 days from the date of receipt DA examines accuracy and adequacy provided in the application. If it is sufficient, a public notice is issued initiating an investigation.



The Authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection to all interested parties on request after receipt of the responses.

G. ACCESS TO INFORMATION.



Within 60-70 days from the date of initiation, DA makes a preliminary finding if appropriate



After 60 days from the date of initiation, provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the DA.



Interested parties who participate in the investigations can request the Designated Authority for an opportunity to present the relevant information orally.



Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final findings.

F. Oral Evidence & Public Hearing:

The interested parties submit their response to the disclosure and the final position of the Authority taken therein. The Authority examines these final submissions of the parties and comes out with final findings.

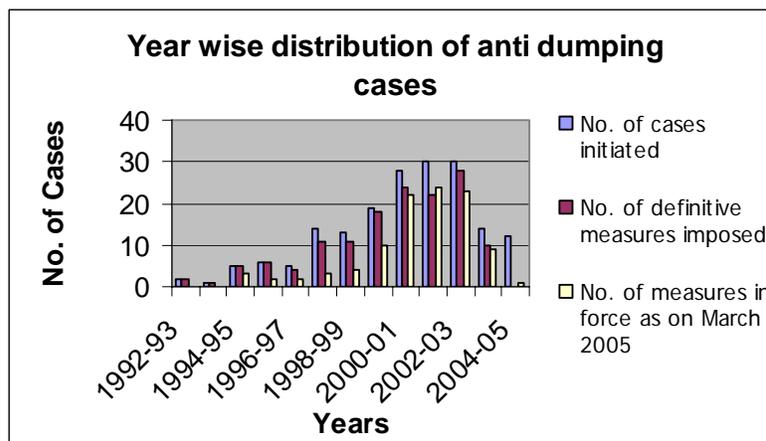
G. Disclosure of information:

H. Final Determination:

Anti Dumping Cases in India

The first anti-dumping investigation in India was initiated in 1992. During the period from 1992 to 2005, the DGAD received large number of applications for initiating anti-dumping investigations. After examination of these applications, anti-dumping investigations were initiated in 188 cases involving 35 countries/territories (considering 25 EC countries as single territory). The countries prominently figuring in anti-dumping investigations are China PR, EU, Chinese Taipei, Korea RP, Japan, USA, Singapore, Indonesia, Thailand and Russia. Figure 1 below, shows the increase in the number of cases initiated in for anti dumping protection. Although there has been a decline in the number of cases initiated in the year 2004-05, as compared to other countries, the number of cases initiated in India per year is still quite large. There have been no definitive measures imposed for the year 2004-05 as at the time of the compilation of the data only the primary proceedings had been done and further proceedings were going on.

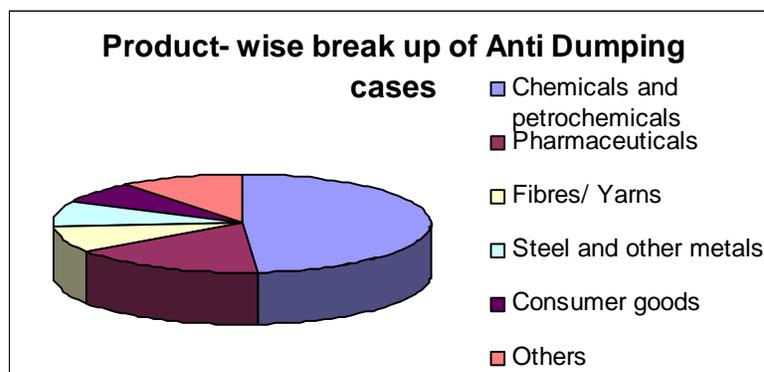
Figure 1



Source: <http://commerce.nic.in/dgad/annualreport/ch5.pdf>

The major product categories on which Anti-dumping duty has been levied are Chemicals & Petrochemicals, Pharmaceuticals, Fibres/Yarns, Steel and other Metals and Consumer Goods. Figure 2 below, shows the sectoral composition of the products on which anti dumping duties have been levied in India.

Figure 2



Source: <http://commerce.nic.in/dgad/annualreport/ch5.pdf>

As seen above, chemical industries are by far the greatest users of the anti dumping duty. Most of the applications for protection submitted by chemical industries have been undertaken by a few large firms who constitute a major part of the domestic market for the given commodity. In very few cases have several small firms come together to file an application. This itself may suggest that anti dumping cases in India have mostly been benefiting individual producers.

Costs of Anti Dumping Duty

It is evident that although the anti dumping duty was formulated as a means of putting an end to exploitation of domestic industries, it may create its own set of problems for the economy. Thus, it is important to realise that the implementation of the anti dumping duty does have positive as well as negative implications for society. The

positive implications are evident in the rationale of justification for anti dumping duties. The negative implications may be studied in terms of the economic, political and social cost of the duty.

Economic cost: The economic cost of anti dumping duties can be measured through the rise in the price of the commodity in question as a result of the implementation of the duty. This cost, would however be compensated by the gains received in the form of increased government tariffs which would then be distributed amongst the population.

Political cost: Although, strictly speaking, anti dumping duties are not retaliatory, in the long run, they do leave the country imposing the protectionary measures in a weak bargaining position. As members of the WTO, all countries ostensibly promote free trade and pledge to reduce tariff as well as non- tariff barriers. Excessive implementation of anti dumping duties only emphasises that the country in question is play spoilt sport.

Secondly, big firms which constitute a vast majority of the market share for a given product and which also have a strong lobbying power in the government; often misuse the anti dumping legislations. This may add to the political costs in the long run as the political process of formulating antidumping policies is influenced not just by notions of economic efficiency but probably to a greater extent by concepts of economic fairness.

Social costs: Social costs of anti dumping duty are only visible or felt several years after the duty has been enforced. For instance, forward and backward industries that could have been set up by exploiting the cheap imports wouldn't be possible with the implementation of the anti dumping duty. As a result, in the long run, the economy will loose out on the additional trade that could have resulted through the cheap imports.

Also as anti dumping duties are sector specific (for example in India, maximum of the anti dumping cases have been filed by chemical industries), the social cost in terms of lost employment would be more visible in these areas if any, where there is a concentration of chemical industries.

The welfare cost of anti dumping duty can be assessed by comparing the loss of consumer welfare resulting from higher prices (i.e. decline in consumer surplus) with the gains in producer surplus. When considered over a period of time (not at a point of time as effects would be deferred) if the overall welfare loss through consumer surplus is greater it would be considered as a social cost to the society.

Critical Implications of the Anti Dumping

Based on all the above observations so far, we notice that the number of anti dumping cases in India has increased significantly and that chemical, petro- chemical and pharmaceutical industries have been the most frequent users of this protectionary measure. Whether society on the whole benefits by intense use of dumping is open to debate.

All the affirmative cases of anti dumping duty lead to ad valorem⁵ duties received by the government of the importing country and thus it is easy to assume that the economic welfare consequences of AD duties are identical to those of an import tariff. When either an anti dumping duty or tariff is imposed, it leads to a rise in the price of the commodity in question for the consumers of the importing country. Thus, the domestic producer (through protection) gains at the cost of the consumer. The government gets revenue which it then distributes over its population. So overall, the tariff or AD duty would be beneficial to the economy if:

$$\begin{array}{ccccc} \text{Gains to} & & \text{Tariff} & & \text{Loss to consumer} \\ \text{producer} & + & \text{revenue} & > & \text{from higher prices} \end{array}$$

Evidence suggests that foreign firms often respond to antidumping duties by raising their prices to the importing country because of the administrative review process. This reduces the calculated dumping margin and leads to lower future anti dumping duties for the firm. Thus, although the anti dumping duty was formed with the intension of removing market distortions, it may end up creating more.

⁵ Taxes levied as a fraction of the total value of the imports

Does that mean that the anti dumping legislation does more damage than it helps? The answer fortunately, is no. As per its intended function, anti dumping duty can actually help stimulate economic growth in an economy. Factors that determine whether or not the antidumping duty is actually beneficial relate to whether the product is a final or intermediate good and whether importing industry is capable of producing the good efficiently in the first place.

If the exporting country does have a strong comparative advantage in producing a particular commodity as compared to the domestic industry, it is the domestic industry which loses out if an antidumping duty is applied. However, as in most cases, the cost structure may not be substantially different for the domestic and overseas producer. This is where antidumping duty will make a substantial difference. In such a case, ADD must be applied selectively. Again, if the nature of the industry is such that importing the product may cause permanent injury to the domestic producer, ADD should be applied liberally. If however the industry is such that the dumping margin is very high but the industry itself is very nimble footed, it may be better to take full advantage of the cheaper input as a result of dumping.

It is also important to see if the product is an intermediate or a final product. In case of an industrial intermediate product which is an input to downstream industry antidumping duty will mean immediate additional cost. More care is needed in such a case in weighing advantages of protecting the particular industry against loading extra cost to the downstream industry.

In case of a consumer good however, the extra cost as a result of ADD may not have any negative economic implication but this will have social costs. Cost of living will go up and so will cost of doing business. This will have indirect negative effect on the economy but it is likely that the advantages of protecting the industry may outweigh the costs. Application of the antidumping duty may be justified in such a case.

What is also important is the level of development of the firm which has applied for protection. Often, in countries which have recently freed their economies from trade barriers, being suddenly exposed to intense competition from the rest of the world can

instantly drive a domestic firm out of business. Alternatively, for industries which have a long gestation period, initial protection is not only necessary, but also fair as per the WTO regulations.

Thus, the solution lies in applying stricter criteria for the enforcement of the antidumping duty either on behalf of the WTO or the Government of India. Another solution may be to apply a sliding scale of antidumping duties. i.e. in the initial year, antidumping duty will be applied as per the dumping margin calculated for the product. In the forthcoming years, the value of the duty can be gradually decreased so that at the end of five years, when the duty is no longer valid, the consumers don't feel the pinch.

Conclusion

The Antidumping Agreement was codified during the Tokyo Round of GATT negotiation (1973-79) to stop "predatory" pricing. It was thought that if such a protective tool is made available to a country, it may feel encouraged to trade freely. The underdeveloped economies have every reason to feel scared that the large scale manufacturers of the developed world will be able to flood the domestic markets with aggressive pricing. This is a very valid point and there can be no objection to antidumping duty applied on this basis.

However in reality, as has been observed through past cases that more often than not, anti dumping legislations are filed by firms who have strong power in the domestic country and hence are able to lobby the governments. Well organised industries, are able to manoeuvre their way and get the decision in their favour. This is even easier, if money can buy political influence as big firms have the financial muscle to bulldoze their way through the bureaucracy. These firms apply for antidumping protection merely because they feel threatened by foreign firms and in the process breed inefficiency. If we study the cases in India so far, we realise that the duties do seem to be in favour of

the dominant players. As large as 40 out of 64 cases on which final antidumping duties have a single petitioner⁶.

The negative effects of the anti dumping legislation can be visibly seen by studying the change in prices in the goods for which anti dumping protection has been approved. In India, anti dumping protection has been sought for chemical, petro- chemical and pharmaceutical products, fibres, yarns, steel and certain consumer goods. Correspondingly, between 1995-96 and 1999-2000, the average annual rates of price increases are 5.80 per cent for chemicals and petrochemicals, 3.98 per cent for steel, 9.4 per cent for basic chemicals and pharmaceuticals, and 7.94 per cent for consumer goods⁷. As all the aforesaid items are price elastic,⁸ Indian exporters as well as the general consumers suffer. Hence it can be said that the Indian economy has had to pay a very high price for the protection that received in the form of antidumping duties.

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⁶ Annual Administrative Report of the Directorate-General of Antidumping and Allied Duties, 2001

⁷ Economic Survey (2000-01).

⁸ A small change in price leads to a large change in demand

Annexure

Included below, is a copy of application forms bearing the information which is to be provided by the firm to designated authority while applying for antidumping protection.

Table 1: Injury Information on Domestic Industry

Particulars	Year 1		Year 2		Period of Investigation	
	Qty	Value	Qty	Value	Qty	Value
1. Imports						
* From the subject country(ies)						
*Other country(ies)						
2. Installed capacity						
3. Production						
4. Capacity utilization						
5. Captive consumption						
6. Indigenous sale						
7. Export sale						
8. Opening stock						
9. Closing stock						
10. Cost of sales						
11. Profit / Loss						
12. Investments						
13. Networth						
14. Capital investment for expansion						
15. Employment (Manpower strength)						
16. Demand (1+5+6)						
17. Market Share*						
18. Any other factor						

Source: <http://commerce.nic.in/Guide.pdf>

Table 2: Country wise landed value

Particulars	Year 1		Year 2		Period of Investigation	
	Qty	Value	Qty	Value	Qty	Value
1. Avg. FOB price (US \$)						
2. Charges after FOB and before CIF						
(i). Freight						

(ii). Insurance					
(iii). Other charges					
3. Avg. CIF price (US \$)					
4. Avg. Exchange Rate					
5. Avg. CIF Price (Rs.)					
6. Landing charges					
7. Avg. Assessable value					
8. Custom clearance & Handling Charges					
9. Custom Duty					
i Basic					
ii Auxiliary					
iii Countervailing Duty					
10. Landed Value of Imported Product					
11. Avg. Selling Price of Indigenous product					
(i) Including excise duty					
(ii) Excluding excise duty					

Source: <http://commerce.nic.in/Guide.pdf>

Table 3: Statement of raw materials and packing materials- consumption and reconciliation

	Particulars		Opening Stock		closing stock		Consumption	
	Qty	Rate	Qty	Rate	Qty	Rate	Qty	Rate
	Value		Value		Value		Value	
Raw material								
Packing materials								
Total								

Source: <http://commerce.nic.in/Guide.pdf>

Table 4: Statement of sales relations

<u>Year Sold</u>	<u>Quantity Sales(Rs)</u>	<u>Gross commission</u>	<u>Discounts/duty</u>	<u>Excise realisation</u>	<u>Net Sales realisation per unit</u>	<u>Net sales</u>
Year 1						
Year 2						
Year 3						

POI						
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Source: <http://commerce.nic.in/Guide.pdf>
