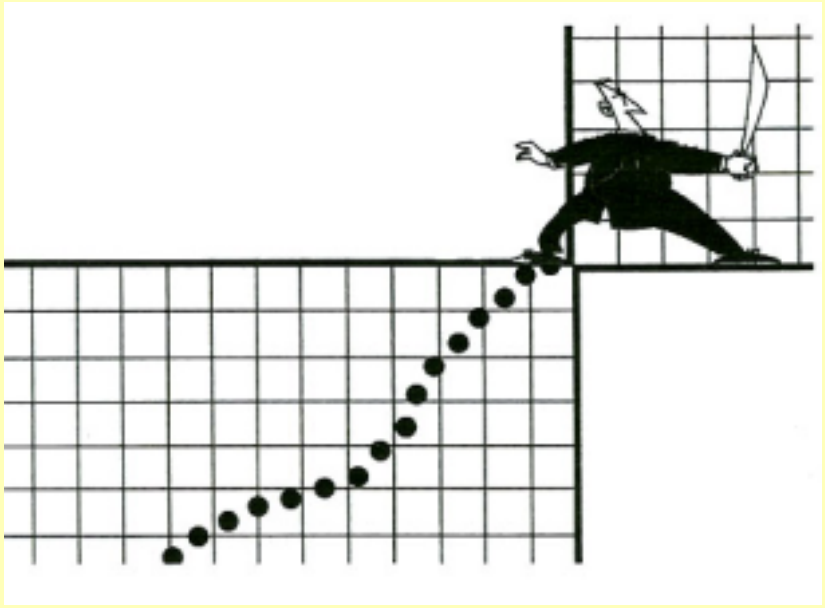
Trade Remedial Measures

Frequently Asked Questions



CUTS Centre for International Trade, Economics & Environment

CUTS International

Monographs on Globalisation and India
– Myths and Realities, #8

0426

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Preface

This is the eighth monograph in the series titled "Globalisation and India – *Myths and Realities"* launched by CUTS in September 2001. This series is intended to serve the purpose of awareness generation among the civil society representatives, business community and government officials (especially at the sub national level) on economic issues in general and World Trade Organisation (WTO) in particular.

This document is on trade remedial measures, on those which are well recognised in the multilateral trading regime. They are anti-dumping, countervailing duties and safeguard measures.

The basic purpose of trade remedial measures is to protect the domestic industry from unfairly priced imports. However, many have argued that in the name of protecting domestic industry from such imports trade remedial measures extend illegitimate protection. The use of these measures causes more harm than good to the economy of the country imposing such a measure. Therefore, according to some, these measures should be scrapped.

But, whether we like it or not trade remedial measures are realities of international trade. These are strong weapons that every country wants to posses. Therefore, pragmatism demands that our discussions about trade remedial measures should focus on how best to reduce the friction caused to trade by their use rather than adopting an unrealistic approach of scrapping it altogether.

Trade remedial measures are not a homogenous group. A careful examination of the above-stated three trade remedial measures reveals that the use of anti-dumping is much ahead of the other two. In fact, looking at the trend of imposition of anti-dumping measures it can safely be said that such measures have become a synonym to trade remedial measures. Over the years its use has increased exponentially. Developed and developing countries alike are imposing such measures. The Doha Development Agenda of the WTO also talks about removing distortions in the use of trade remedial measures, especially anti-dumping.

Given this, one significant development that merits attention is reported decline in the total number of anti-dumping initiations from 1st July to 31st December 2003 from the corresponding period of 2002. However, this decline does not signify much. Countries continue to impose AD measures for protectionist purposes. The recent attempts by US to impose AD duties on frozen and canned warm water shrimp imports from India, Vietnam, China, Brazil and Thailand is a case in point.

Since, US could not stop the import of shrimp products from these countries through the environmental route (shrimp-turtle case), it has decided to choose the dumping course. It is estimated that AD duties in the range of 100 to 130 percent would be imposed. Apart, from the high AD duties, the legal cost of fighting this dispute for the affected parties would also be phenomenal.

It has often been found that there is no dearth of literature on AD. But there is certainly a shortage of literature on the other two trade remedial measures, i.e. countervailing duties and safeguard measures. Moreover, consolidated information about all the three trade remedial measures is difficult to find at one place.

This monograph provides all the relevant information about the most frequently asked questions on trade remedial measures. It covers basic issues as to what are the conditions under which trade remedial measures are imposed, what are the trends, the duration of imposition of these measures, the special and differential treatment pertaining to trade remedial measures, the protectionist debate, etc.

Jaipur, India

Bipul Chatterjee
Director

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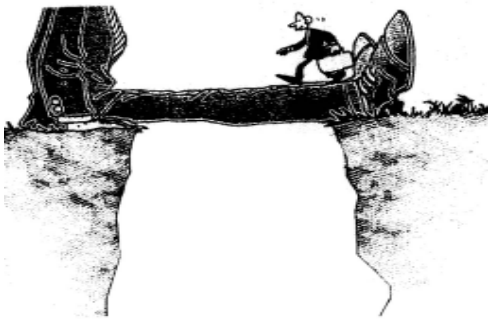

What are trade remedial measures?

Trade remedial measures are measures adopted by an importing country to protect the domestic industries from unfair trade practices or from unfair competition. Unfair competition may arise by virtue of cheap imports. Three trade remedial measures are well recognised in the multilateral trading system. These are anti-dumping, countervailing and safeguard measures. The origin of these measures stems from the fact that every sovereign country has the right to protect its domestic industry from those imports that illegitimately hamper or injure its growth. The pursuit of free trade does not mean that countries should abdicate their sovereign right to protect their domestic industries.

These are the concerns that justify the existence of trade remedial measures in a trading system. No universal definition exists for trade remedial measures. Therefore, lets understand each trade remedial measure mentioned above, separately.

Anti-dumping

Anti-dumping is a tool that an importing country adopts to combat dumping. An anti-dumping measure normally takes the form of imposition of anti-dumping duties, which are levied to nullify the impact of dumping.

In order to understand anti-dumping, the first step would be to understand dumping. Dumping means the introduction of goods in the commerce of another country at a price that is less than its normal value. In other words, if a country exports its goods to another country at a price that is less than the normal

value of that particular product it would be considered to be dumping its products. There are three ways to determine the normal value of the product that is exported and dumped.

The first option is to look at the price of the exported product in the importing country. In other words, the first option is to look at the domestic price of the exported product. For example, if the domestic price of a product is 10 units and if the same product is exported and sold in the export market at a price less than 10 units, this product would be construed to be dumped. This option is the first option to calculate the margin of dumping[1].

If this particular price cannot be used to determine the margin of dumping, then the other two price options that can be used are:

1. The comparable price in the third country export market.
2. The cost of production in the country of origin plus a reasonable amount for administrative, selling, general costs and profits.

Countervailing measures

Countervailing measures are those measures that are employed by an importing country to counter any injurious subsidisation of exports taking place in the exporting country. Let us understand why subsidisation of exports becomes injurious.

The practice of the government providing subsidies to its industries is an old practice. The government does so for a variety of reasons. The aim could be to help them economically or provide incentives for growth or to boost the growth of a particular kind of industry. These subsidies that countries provide to their industries help them to sell their products in the export market at cheap prices.

This ability to sell their goods at cheap prices gives the companies an undue advantage in the export markets. Subsidies are harmful, as the rich countries, which can afford to dole out huge subsidies, can use these subsidies to give undue support to their domestic industries and thus cut their costs and enable them to price their products competitively in the export market.

This is the reason why subsidisation is prohibited. However, all subsidies are not prohibited provided they fall within the ambit of the Agreement on Subsidies and Countervailing Measures (ASCM). Countervailing measures are used to combat this injurious subsidisation. These measures take the form of countervailing duties. These duties are aimed at offsetting the gain caused to a particular industry because of subsidisation.

Safeguard measures

Safeguard measures are those measures that countries adopt to counter any kind of emergency because of a surge of imports. A country is entitled to take certain measures if increased imports of a product are causing or threaten to cause serious injury to the domestic industry of the importing country. The measures that an importing country may apply to counter such a situation are assorted. An importing country may apply quantitative restrictions or suspend concessions or even increase tariffs above the bound rates.

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What are the conditions under which trade remedial measures can be imposed?

As it has been discussed above, there are three kinds of trade remedial measures. The conditions under which these trade remedial measures could be imposed differ from each other. However, one common characteristic that runs through all the three measures is that they can be imposed only if "injury" is being caused to the domestic industry. However, the degree of injury to be proven for the imposition of one kind of trade remedial measure will differ from that of another. Let us take each trade remedial measure separately and look at the conditions under which each could be imposed.

Anti-dumping measures

Dumping *per se* is not prohibited either under General Agreement on Tariffs and Trade (GATT) or under the Anti-dumping Agreement (ADA). Dumping is only a pricing technique or a pricing methodology that a producer employs after keeping in mind the different demand elasticity of different markets. Dumping *per se* will not invite the imposition of anti-dumping measures. Anti-dumping measures can be employed only if this act of dumping becomes injurious.

Thus, the conditions under which anti-dumping measures can be used are:

1. Dumping is taking place.
2. This dumping is causing "material injury"[2] to the domestic industry.
3. There is a causal link between dumping and the "material injury" being caused to the domestic industry. In other words, dumping should be directly responsible for the material injury that is taking place.

Countervailing measures

Not all subsidies are prohibited under the ASCM. It would be pertinent to look at the definition of "subsidy" given in ASCM. For the purposes of ASCM, a subsidy shall deem to exist if:

1. there is a financial contribution by a government or any public body within the territory of a member; and
2. a benefit is thereby conferred i.e. this subsidy results in a benefit to the recipient.

Thus, in case a financial contribution by the government or any other public body does not present benefit, it cannot be called a "subsidy" under ASCM. Further, for this subsidy to be prohibited or actionable or subject to countervailing measures, it has to be "specific"[3] . This specificity may be to an enterprise, a particular sector or a region. In other words, if a "subsidy" is not specific it cannot be subjected to countervailing measures.

Different kind of subsidies given in the ASCM

Red Light Subsidies — mean prohibited subsidies. These are prohibited, as they are trade distortive. With certain exceptions, such as preferential treatment for developing countries and transitional economies, all red light subsides must be eliminated. There are two categories of red light subsidies: export subsidies and subsidies conditional upon the use of domestic goods over imported goods. Export subsidies mean those subsidies that are dependent upon export performance. In other words, those subsidies whose grant is conditional or dependent upon an enterprise's export performance. Similarly, subsidies conditional upon the use of domestic goods over imported products means that payment of these subsidies is conditional or dependent upon an enterprise using domestically manufactured goods over imported products.

Yellow light subsidies — are not prohibited *per se* but may be subject to countervailing duties if they cause adverse effects, such as injury to domestic industry or serious prejudice to their interests.

Green light subsidies — are neither prohibited nor subject to countervailing measures. These include non–specific and specific subsidies that meet certain conditions. Specific green light subsidies include research and development, regional development, and environmental conservation subsidies.

Thus, the conditions under which countervailing duties can be imposed are:

1. there has been subsidisation of imports;
2. injury was caused to the domestic industry; and
3. there was a causal link between the subsidised imports and the injury.

Safeguard measures

Conditions under which safeguard measures can be imposed are:

1. there has to be a surge or increase of imports;
2. there is a "serious injury"[4] or "threat of serious injury" to the domestic industry; and
3. a causal link exists between the increased imports and serious injury or threat thereof.

3

Business Standard

Are these measures temporary or can they be employed permanently?

All the three trade remedial measures are to be employed temporarily and cannot be imposed forever. The basic purpose behind imposition of a trade remedy is that it is used only when unfair trade practices cause injury to domestic industry. Once this injury is remedied there is no justification to maintain that particular trade measure. Let's take each measure separately and look at the duration for which it can be imposed:

Anti-dumping measures

Any definitive anti-dumping duty cannot be imposed for more than five years[5], after which it automatically gets terminated.[6] However, the importing country can impose anti-dumping duties for another successive term of five years. Such imposition of measures for a successive term can be done only if the authorities carry out a review process and the result shows that the removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury. The basic postulate behind having a fixed term for imposition of anti-dumping duty is that the remedy is meant to exist only till the injury lasts, and once the injury has been combated with, the duty should also be removed.

Countervailing duties

The ASCM clearly states that a countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidisation, which is causing injury. The duration for which a countervailing duty can be imposed

and the manner in which its imposition can be extended is similar to that of the imposition of anti-dumping duties. Just like an anti-dumping measure, no definitive countervailing duty can be imposed for a period more than five years[7]. For a countervailing duty to be extended for a successive period of five years, the interested party shall submit positive information to the investigating authorities of the importing country. This positive information should substantiate the need to have a review in order to find out whether the injurious subsidisation is still continuing and thus is there a need to continue with the countervailing duty or not. Even in review cases where it is decided to continue with the countervailing duty, it cannot be continued for more than five years.

Safeguard measures

A safeguard measure shall also remain in place till such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment by the domestic industry. The maximum period for the application of a safeguard measure is four years, unless it is determined by competent authorities that its continuation is necessary to prevent or remedy serious injury or that there is evidence that the domestic industry is indeed adjusting.

The total period of application of a safeguard measure, including the application of a provisional measure (the period of initial application and any extension thereof) will not exceed eight years. For developing countries this period is ten years. Any safeguard measure that has been applied for a period greater than one year shall be progressively liberalised at regular intervals. A safeguard measure to be applied for over three years shall undergo a mid-term review.

4

What are the comparative trends in the imposition of these trade remedial measures? Are these measures being imposed only by developed countries or are they being resorted to by developing countries as well?

Business Standard

The comparative trend in the imposition of the three trade remedial measures throws an interesting picture. From1995 to the first half of 2003, the total number of anti-dumping initiations by reporting countries were 2284[8]. For the same period the total number of countervailing initiations were 16. From 1995 to 2002, the total number of safeguard initiations was 230. The use of anti-dumping as a trade remedial measure has increased over the years. But the use of countervailing duties as one of the trade remedial measures is showing a downward trend. In the case of safeguards, till the year 2000, there were very few initiations. The safeguard initiations increased in the years 2001 and 2002. In 2002 alone the number was 116[9]. In other words, out of all the safeguard initiations during the period 1995 to 2002, half of them were initiated in 2002 alone.

The issue of imposition of trade remedial measures by developed and developing countries is very important. It would be pertinent to examine these trends by taking each trade remedial measure separately.

Anti-dumping

Prior to 1997, developed countries like the US, Australia and Canada, and the EC, were the traditional and major users of anti-dumping measures. These users accounted for 60 per cent of all investigations and 66 per cent of all definite measures imposed. However, this trend has changed now and these traditional users account for a little over half of these measures. Many

developing countries like India[10], Argentina, Mexico, South Africa and Brazil have emerged as new users of anti-dumping duties. Another interesting development has been the increasing South-South imposition[11] of anti-dumping duties. See Box below.

South-South imposition of anti-dumping measures

A large part of anti-dumping duties that have been imposed on developing countries like China, Brazil, Chinese Taipei, Ukraine and India, during the period of 1995 – 2002, have been by developing and least developed countries. If we take the instance of China, we find that out of approximately 200 anti-dumping measures imposed against it, developing or least developed countries accounted for 120 of them[12]. Similarly, if we take the example of India, out of 40 anti-dumping measures, developing and least developed countries have imposed approximately half of them[13].

Countervailing measures

Traditionally, the US and the EC have been the largest users of countervailing duties. In fact, the US continues to be the pre dominant user of countervailing duties. As it has been stated above, the imposition of countervailing duties is showing a general downward trend.

Safeguard measures

Countries that have been the major initiators of safeguard investigations for the period 1995–2001 are the US, which has initiated 42 investigations, Chile and India who have initiated 16 and 11 investigations respectively.

Importing country	Total number of countervailing duties imposed from 1995 to June 2002
Argentina	4
Australia	1
Brazil	5
Canada	7
US	34
European Community	15

Source: Rules Division Countervailing Duty Database. www.wto.org

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Business Standard

Does this trend demonstrate preference for one kind of trade remedial measure? If so, why?

The trend in the imposition of trade remedial measures amply demonstrates that countries have shown clear preference for anti-dumping measures over the other two trade remedial measures. The statistics clearly reveal that when it comes to trade remedies, countries have shown a high degree of liking for anti-dumping measures.

It would be interesting to look for reasons behind the fondness that countries show for anti-dumping as compared to other trade remedial measures.

Anti-dumping and countervailing measures

Countries prefer imposing anti-dumping duties to imposing countervailing measures because:

1. Imposition of countervailing duties is politically more sensitive due to the fact that another government is being investigated apart from the exporting industry. Whereas in an anti-dumping investigation only the exporting company is involved.
2. In ASCM there are time bound schedules for the phasing out of prohibited subsidies, and if this phasing out is not done, then, it is more likely to be challenged in WTO's Dispute Settlement Body (DSB).
3. Subsidy calculation methodologies are not well established as compared to dumping calculation methodologies[14].

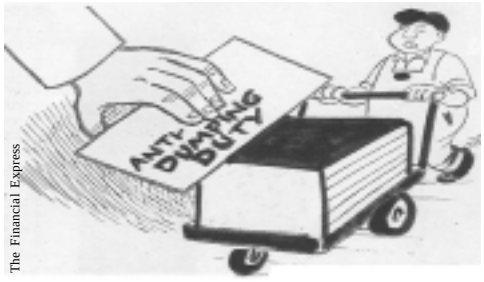
Anti-dumping and safeguards

Similarly, countries have preferred anti-dumping duties to safeguard measures primarily because imposition of anti-dumping duties is convenient as compared to imposition of safeguard measures.

1. The recommendation to impose safeguard duties is subject to the domestic industry improving itself and becoming competitive. On the other hand, there is no such obligation while imposing anti-dumping duties.
2. Members imposing safeguard duties or other safeguard measures are obliged to offer compensation in terms of tariff concessions on other items of export interest to countries whose exports will be affected by these duties. There is no such obligation in imposition of anti-dumping duties.
3. The degree of injury to be proved for the imposition of safeguard measure is more stringent than that required for imposition of anti-dumping duties[15].

6

Is undue protection to domestic industry the primary motive behind the imposition of trade remedial measures?



The Financial Express

The imposition of trade remedial measures is primarily linked to the protection of domestic industry from any injury caused because of under-valued imports. But, it has been seen over the years that countries have used trade remedial measures as a pretext to protect domestic industries. The use of anti-dumping measures, in particular, is linked to the protectionist argument. Countries have used anti-dumping measures as one of the tools to illegitimately protect their respective domestic industries. Extending this kind of illegitimate protection to domestic industry acts as an impediment to free trade and encourages countries to erect protectionist trade barriers.

The protectionist propensity behind imposition of anti-dumping measures can be gauged from the manner in which the countries have interpreted the ADA. Three examples that stand out in exhibiting the interpretation of ADA for protectionist purposes are the use of the principle of zeroing in calculating the dumping margins, the violation of lesser duty rule and the sunset clause in imposition of anti-dumping duty.

Zeroing

"Zeroing" is a system where the negative margins[16] are considered equivalent to zero and are not allowed to offset the positive margins[17]. The use of the principle of "zeroing" in calculating the weighted average dumping margin has led to unfair practices in calculating dumping margins. The practice of "zeroing" in anti-dumping measures very unfairly ignores the negative dumping margin

of import prices from an exporter, and thus, the weighted average margin of dumping gets inflated, as the positive dumping margin is not offset by the negative dumping margin. This inflated dumping margin is used to show that injurious dumping is taking place.

Lesser duty rule

The lesser duty rule in the anti-dumping law embodies the cardinal principle that injurious dumping must be counterbalanced, but only with that duty that would be sufficient to counter this injurious dumping. Imposition of this minimum required anti-dumping duty to counter the injurious effect of dumping is called the lesser duty rule. The idea behind having a lesser duty rule is that injurious dumping is countered by imposing an anti-dumping duty that is not protective in nature.

It has been seen on numerous occasions that even when imposition of lesser duty would be sufficient to remedy the injury being suffered by the domestic industry, countries impose a duty equivalent to the full margin of dumping. The reason behind this is not to counter the injurious impact of dumping, but, under the guise of anti-dumping measures, extend undue and long-term protection to the domestic industry.

Sunset clause

Sunset clause[18] in the anti-dumping agreement signifies the automatic termination of the anti-dumping measure after a certain period of time.

This particular provision has been misinterpreted and misused by many countries and they have continued with the imposition of anti-dumping duties even after the expiry of the given time frame of five years. The imposition of anti-dumping duties beyond the stipulated norm of five years is mainly for protectionist purposes and with the idea to extend an unending protection to domestic industry.

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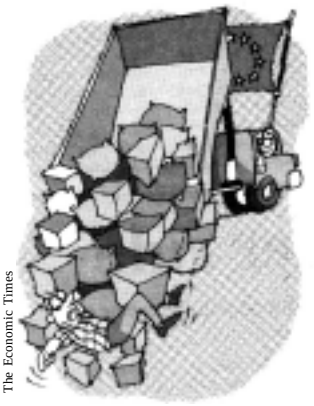


The Economic Times

Do trade remedial measures take public interest issues in consideration?

The trend in imposition of trade remedial measures clearly illustrates that there is a obvious preference for imposition of anti-dumping duties as a trade remedial measure over the other two remedies. It is also evident that since anti-dumping is the most used or abused trade remedy, the issue of public interest becomes important in imposition of anti-dumping duties. Inclusion or non inclusion of public interest issues would determine whether the imposition of anti-dumping duties is designed to protect the interests of all citizens, create non-discriminatory conditions of competition and foster general consumer welfare or not. Here we will examine the public interest issues only with regard to imposition of anti-dumping duties.

An important criticism levelled against the anti-dumping law is that it does not take into account public interest issues. The laws of anti-dumping, both at the domestic and multilateral level, are just concerned with injury to domestic industry. It does not take into account the impact of dumping or the impact of imposing anti-dumping measures on consumer interests or on other factors like competitiveness or competition in the economy. It is pertinent to understand that non-linkage of anti-dumping regime with public interest issues is purely because of protectionist reasons. Linking the anti-dumping regime with public interest issues means looking at anti-dumping through the prism of consumer welfare and industrial users. Anyone seeking to use anti-dumping measures for protectionist purposes would not want the inclusion of the interests of consumers and industrial users in the anti-dumping investigations.

Some of the provisions in the ADA incorporate issues of public interest, though in a limited manner. The ADA partly reflects the procedural considerations of public interest issues as it talks of providing opportunities to the "consumer organisations" and "industrial users" to furnish evidence to the investigating authorities. But these "consumer organisations" and "industrial users" are not made "interested parties"[19] in the anti-dumping investigation. For the purposes of the ADA, interested parties include:

(a) An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association or a majority of the members, which are producers, exporters or importers of such a product;
(b) The government of the exporting member; and
(c) A producer of the like product in the importing member/country or a trade and business association, a majority of the members of which produce the like product in the territory of the importing member.

The parties mentioned in this list include only the business or industrial groups and not the consumer organisations or the industrial users. The inclusion of only business or industrial groups in the list of interested parties shows how protectionist agenda dominates the entire operation of anti-dumping measures.

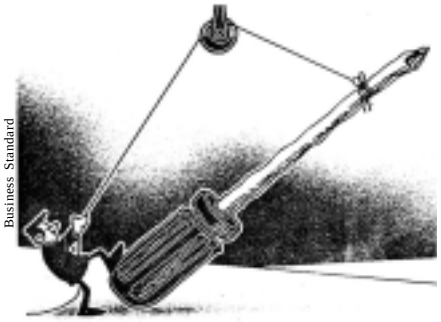
One of the most important amendments required in the ADA is to include consumer organisations and industrial users in the list of interested parties. Till now it is up to the discretion of the respective national governments whether to include them in this list or not. The Agreement should make it mandatory for all governments to include them as interested parties. Similarly, it is not mandatory for anti-dumping investigating authorities to accept evidence from consumer organisations. See Box below.

The ADA also does not look into factors like "restrictive business practices", predatory pricing, or whether imposition of duty equivalent to the full margin of dumping would restore the profitability of domestic industry or not.

Not mandatory to accept evidence from consumer organisations

The ADA states that consumer organisations and industrial users can provide information regarding anti-dumping investigations. In other words, these bodies are free to provide evidence that is relevant to the investigation regarding dumping, injury and causality. However, it is nowhere mentioned in the ADA that it would be mandatory for the national governments to accept this evidence. Thus, the member countries could refuse to accept this evidence and just go with the evidence that has been produced by the domestic industry, business groups or industrial organisations.

8



What are the special and differential (S&D) clauses given in the trade remedial agreements?

Special and differential concepts recognise that the exports of developing countries should be given preferential access to markets of developed countries, and that developing countries participating in trade negotiations need not reciprocate fully the concessions they receive. They also enjoy longer timeframes and lower level of obligations for adherence to rules[20].

Some of the submissions by developing countries on how to perationalise the S&D clause in the ADA:

The developing countries have proposed having separate de minimis dumping margins for developing countries. De minimis margins are those margins of dumping, which once crossed, allow the importing country to impose anti-dumping duties. In the ADA the de minimis dumping margin for developed and developing countries is the same. The need to have separate de minimis margins for developed and developing countries is compatible with the basic essence of the S&D treatment.

The other pragmatic proposal that has been made by many developing countries to operationalise the S&D clause is to make the imposition of lesser duty mandatory for developed countries on the products of developing countries.

Anti-dumping measures

ADA recognises that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures. The agreement states that possibilities of constructive remedies shall be explored before the imposition of anti-dumping measures where their imposition would affect the essential interests of developing countries. The ADA does not state how the S&D treatment for developing countries is to be operationalised. The developing countries have made some submissions in this regard. They are given in the Box below.

Countervailing measures

The ASCM has a provision for developing countries with a per capita income of less than US$1000 per annum, and for other developing countries, to maintain export subsidies prohibited under the agreement. Other developing country members may apply these subsidies for a period of eight years during which they must be phased out. Subsidies that are contingent on the use of domestic over imported goods are required to be phased out over a period of five years. These subsidies for less developed countries are to be phased out over a period of eight years from the date of entry into the force of the WTO.

Safeguard measures

The Safeguard Agreement, in its S&D clause, mentions that safeguard measures are not to be applied to developing countries if the share of imports of the product for the country is less than three per cent. This exemption does not take effect if developing countries with individual shares of imports of less than three per cent collectively account for more than nine per cent of the imports.

9

Down to Earth

What does the Doha Development Agenda state vis-à-vis trade remedial measures?

In the light of increasing and gross misuse of trade remedial measures, especially for protectionist purposes, the Doha Development Agenda authorises the review of the ADA and the ASCM.

The Doha Declaration, in paragraph 28, mandates the review of the Agreements on Implementation of Article VI of GATT 1994 and Subsidies and Countervailing Measures by taking two basic points into consideration:

1. The basic concepts, principles and effectiveness of these agreements and their instruments are to be preserved.
2. The needs of developing and least developing countries should be taken into account.

The deadline for concluding the review is January 1, 2005 and stock taking is scheduled for the Cancun ministerial.

Source: WT/MIN (01)/DEC/W/1.

In other words, the Doha Development Agenda appreciates the fact that the use of trade remedial measures per se is not bad. What it feels is bad is its hasty and indiscriminate use. The two basic points of consideration given in the Doha Development Agenda and mentioned in the Box support this statement.

The review process under the Doha Agenda states that the basic concepts and principles behind the anti-dumping agreement and the ASCM will remain the same. This means that if goods are dumped in the economy of a country,

and if this dumping causes injury to domestic industry, then anti-dumping duty can be imposed, but this provision should not be allowed to use anti-dumping duties for extending illegitimate protection to domestic industry. This review process recognises the first part of the above statement and aims at cementing the second part so that the trade remedial attribute is resorted back.

The Doha Agenda also enunciates that there is an urgent need to take care of the needs of the developing and least developed countries in the use of trade remedial measures. A direct corollary of this statement would be to strengthen the special and differential treatment clauses given in the trade remedial agreements, especially in the anti-dumping agreement as it is the most widely used trade remedy.

Paragraph 7 of the "Implementation Related Issues and Concerns" of the Doha Declaration identified certain issues for review in the anti-dumping agreement. Similarly, paragraph 10 identified issues for review in the ASCM[21].

Endnotes

1 Dumping margin is the difference in the dumped price and the comparable price. When dumped price is more than comparable price the dumping margin is called positive margin and when it is less it is called negative margin.

2 The term "material injury" is nowhere defined in the ADA. But determination of injury under the ADA is to be made after examining the impact of dumped imports on the domestic industry and this shall concern the overall evaluation of all the relevant economic factors and indices having a bearing on the domestic industry.

3 ASCM lists out various principles to qualify or disqualify a subsidy as being specific. Some of the principles are — where subsidies are granted to specific enterprises; conditions for eligibility for a subsidy are laid down; if there is a predominant use of a subsidy by certain enterprises; if the subsidy is designated for a particular geographical area; if it is a prohibited subsidy.

4 In the Safeguards Agreement, "serious injury" shall be understood to mean a significant overall impairment in the position of domestic industry.

5 An anti-dumping duty is to be imposed till the time it is necessary to counteract the material injury being caused because of dumping. However, no imposition can be sustained beyond a period of five years.

6 This automatic termination of a measure taken by the government once a certain time period has elapsed is called the "sunset clause" in an agreement.

7 Ibid.

8 See Rules Division Anti-dumping duty, www.wto.org

9 This increase was mainly because of steel safeguard initiations launched by the US.

10 India tops the WTO list in imposition of anti-dumping duties, initiating 331 actions between 1995 and the end of 2002. During the same period, the US and the EU, traditionally the most prolific instigators of anti-dumping actions, initiated 292 and 267 cases respectively.

11 South – south imposition of anti-dumping measures means that the developing and least developed countries are imposing anti-dumping duties on other developing and least developed countries.

12 Data from WTO Rules Division anti-dumping database.

13 *Ibid.*

14 See Krista Lucenti and Sharad Bhansali (2003) in Bridging the Differences in ed. Alan Winters and Pradeep S. Mehta.

15 Safeguard imposition requires proving "serious injury", whereas anti-dumping requires the proof of "material injury".

16 Negative margin means that the export price is more than the normal value or the comparable price.

17 Positive margin means that the export price is less than the normal value or the comparable price.
18 Infra, footnote 5
19 The significance of being “interested parties” is that they have a right to be notified, and they also have other procedural rights.
20 See Walter Goode (1997), “Dictionary of Trade Policy Terms”.
21 WT/MIN (01)/W/10

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6. Liberalisation and Poverty: Is There a Virtuous Circle?

This is the report of a project: "Conditions Necessary for the Liberalisation of Trade and Investment to Reduce Poverty", which was carried out by the Consumer Unity & Trust Society in association with the Indira Gandhi Institute for Development Research, Mumbai; the Sustainable Development Policy Institute, Islamabad, Pakistan; and the Centre for Policy Dialogue, Dhaka, Bangladesh, with the support of the Department for International Development, Government of the UK.

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7. Market Access Implications of SPS and TBT: Bangladesh Perspective

As both tariffs and other traditional trade barriers are being progressively lowered, there are growing concerns about the fact that new technical non-tariff barriers are taking their place, such as sanitary and phytosanitary measures (SPS) and technical regulations and standards.

The poor countries have been denied market access on quite a number of occasions when they failed to comply with a developed country's SPS or TBT requirements or both. The seriousness of this denial of market access is often not realised unless their impact on exports, income and employment is quantified.

In this paper, the author focuses on the findings of a 1998 case study into the European Commission's ban of fishery products from Bangladesh into the EU, imposed in July 1997.

This research report intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.

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Trade Related Aspects of Intellectual Property Rights — or TRIPs — has always been one of the most contentious issues in the WTO. Several studies have been conducted on the political economy of TRIPS *vis-à-vis* WTO, the outcome of which are crucial to the policymakers of the developing economies more than those in the rich countries. Increasing realisation of the poor countries' suffering at the hands of the patent holders is yet another cause of worry in the developing and poor countries.

This research document tries to find an answer to one specific question: what genuine choices do policymakers in South Asian

developing nations now have, more so after the linkage between the trade regime and pharmaceuticals? Starting with a brief overview of the key features of the corporate model of pharmaceuticals, the paper provides some insight into the challenges faced by the governments in South Asian countries. The aim is to anchor the present discussion of public health and the impact of TRIPs in the socio-cultural environment of this region.
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This book is a product of the project, EU-India Network on Trade and Development (EINTAD), launched about a year back at Brussels. CUTS and University of Sussex are the lead partners in this project, implemented with financial support from the European Commission (EC). The CUTS-Sussex University study has been jointly edited by Prof. L. Alan Winters of the University of Sussex and Pradeep S. Mehta, Secretary-General of CUTS, India.

The five issues discussed in the book are Investment, Competition Policy, Anti-dumping, Textiles & Clothing, and Movement of Natural Persons. Each of these papers has been co-authored by eminent researchers from Europe and India.
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11. **Demystifying Agriculture Market Access Formula: *A Developing Country Perspective After Cancun Setback***
At the Cancún meeting, a draft ministerial text on agriculture emerged, known as the Derbez Text. It was not surprising that at Cancún the WTO members failed to accept a ministerial text on agriculture. The Derbez Text had made the framework very complex, which the paper, "Demystifying Agriculture Market Access Formula" tries to demystify.
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The purpose of the study is not to rehearse the never-ending story on the pros and cons of the trade-labour linkage. It not only seeks to assess the current and possible future direction of the debate from the developing countries' perspective. It is hoped that this approach will provide developing countries with concrete policy suggestions in terms of the way forward. (#0410, Rs. 100/US$25, ISBN81-8257-025-5)

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Trade in environmental goods and services has assumed a centre-stage position. The excellent analysis of this issue involved in environmental trade concludes with soundly reasoned policy recommendations which show the direction that future negotiations must take if the originally envisaged 'win-win-win' situation is to be achieved.
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14. Protectionism and Trade Remedial Measures

Many have argued that there is no economic rationale behind the use of trade remedial measures and therefore, they should be scrapped. In the WTO acquis, three types of trade remedial measures are recognised. These are anti-dumping, countervailing and safeguard measures.

This paper examines how protectionism has influenced the use of trade remedial measures. It examines the trends of imposition of trade remedial measures. This trend clearly shows that countries have found anti-dumping measures a safe haven for extending protection to domestic industries. In order to highlight the protectionist nature of anti-dumping measures, the paper looks at the manner in which the countries have interpreted the WTO agreement on anti-dumping. The paper also makes a comparison between anti-dumping measures and safeguard measures. It demonstrates that countries have preferred using anti-dumping measures over safeguard measures because the former can be easily used for extending protection to domestic industry for a longer time.
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15. FDI in South Asia: Do Incentives Work? A Survey of the Literature

Over the last two decades or so, along with trade barriers, countries around the world have progressively dismantled restrictions on foreign direct investment (FDI). Apart from the main objective of increasing investment through inflow of foreign capital, the positive externalities of FDI to the host country are the other important reason for countries competing against each other for foreign direct investment.

The present paper has looked at the understudied issues of FDI policies in South Asia, particularly from the point of view of the effectiveness of performance requirements imposed by host countries and the costs of accompanying incentives. The survey of theoretical literature on performance requirements indicates that a case can be made for imposing such requirements in South Asia, particularly from the welfare point of view. As regards the costs of incentives, which a country offers to foreign firms, so far, only a few studies have tried to quantify them. These incentives are normally given as quid pro quo with performance requirements. But, in the bargain, it has been found, these incentives tend to be particularly costly over a period of time.
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16. WTO Agreement on Rules Of Origin: Implications for South Asia

The importance of rules of origin (RoO) has grown significantly over the years. The recent and rapid proliferation of preferential trading agreements and the increasing number of countries using RoO to discriminate in the treatment of goods at importation has focused considerable attention on this issue. RoO can be divided into two categories: non-preferential and preferential.

The paper tries to critically examine the WTO proposal on the harmonised rules of origin. The study has looked at its implications on South Asian countries, especially India. Further, in view of the contentious nature of the RoO pertaining to textiles, and the big stakes involved for South Asia, the study places special emphasis on textiles and clothing.
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17. WTO Agreement on Agriculture and South Asian Countries

Agriculture, in all its manifestations, has always been a sensitive and emotional issue for all countries, but it is more so for the poor countries of the South. It is the source of livelihood and employment for millions of people. Therefore, the deadlock on this issue in the arena of trade negotiations comes as no surprise. From the time one can remember, there has been a tussle between the rich countries like the European Union and the US on the one hand, and the developing countries like Brazil, India and South Africa on the other, to discipline the farm regime in the WTO in their favour.

Given this background, this paper looks into various commonalities in the economic situation of South Asian countries, their sensitivity attached to agriculture, and above all, a common approach to globalisation. In view of these realities, the paper tries to explore a common agenda that South Asian countries can follow during future negotiations on the WTO

Agreement on Agriculture. Now the Doha Round of trade negotiations has entered into a crucial phase after the July developments. The "July Package" has resulted in agreement over the framework for establishing modalities in agriculture. In light of this, there cannot be a more opportune time for publishing this paper.
(#0423, Rs. 100/US$25, ISBN 81-8257-040-9)

18. Agreement on SAFTA: Is It Win-Win for All SAARC Countries?

The growing popularity of Regional Trade Agreements (RTAs) has also ignited South Asian countries to create a South Asian Preferential Trade Area (SAPTA). The SAPTA was formed in 1993, but in true sense it remains a non-starter as the actual exchange of preferences remained extremely limited.

A major breakthrough, howevernevertheless, was made in January 2004 when during the 12th SAARC Summit, held at Islamabad, a framework agreement on South Asian Free Trade Area (SAFTA) was signed. The signing of the SAFTA agreement is a landmark in the evolution of SAARC since its formation in 1985. It marks a movement away from mere tinkering with tariffs (as it was under SAPTA).

One of the major objectives of this study is to sensitise various stakeholders (state as well as non-state actors) on the need for better regional cooperation, as it has been proved that such cooperation gives huge peace dividends. It provides a good account of existing trade between SAARC countries and highlights lessons learnt from the efforts so far made for better intra-regional trade within South Asia. It also discusses possible implications of SAFTA on South Asian countries.
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19. Trade Facilitation and South Asia

As the classical trade barriers such as quantitative restrictions, tariff rate quotas and high tariffs are disappearing, less visible barriers produced by an inefficient administration and organisation of the trade transaction process are being exposed to the public view. Attention has turned, over the years, to the 'invisible' costs on account of documentation requirements, procedural delays, or a lack of transparency and predictability in the application of government rules and regulations.

This paper tries to bring to the fore some practical political, economic and operational issues from the point of view of South Asian countries in particular and which may arise as a result of future multilateral agreement on trade facilitation. It throws light on some of the major policy issues and recommends approaches that would fit with the interests and priorities of South Asian countries. One of the major issues the paper tries to emphasise

upon is that the problems of improving customs administration in the region are only a small part of a much greater problem relating to border management and domestic tax and revenue enforcement issues.
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Keeping these issues in mind, CUTS with the support of Oxfam GB in India, had undertaken a project on globalisation and the Indian Informal sector. The selected sectors were non-timber forest products, handloom and handicraft. The rationale was based on the premise that globalisation and economic liberalisation can result in potential gains, even for the poor, but there is the need for safety measures as well. This is mainly because unhindered globalisation can lead to lopsided growth, where some sectors may prosper, leaving the vulnerable ones lagging behind.
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9. ABC of TRIPs

This booklet intends to explain in a simple language, the Trade-Related Intellectual Property Rights Agreement (TRIPs), which came along with the WTO in 1995. TRIPs deals with patents, copyrights, trademarks, GIs, etc. and countinues to be one of the most controversial issues in the international trading system. The agreement makes the protection of IPRs a fundamental part of the WTO. This monograph gives a brief history of the agreement and addresses important issues such as life patenting, traditional knowledge and transfer of technology among others.
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