

## ANTI-DUMPING LAWS IN INDIA: A PARADIGM SHIFT IN BUSINESS

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### ABSTRACT

This structural review paper contributes a momentous role in the evaluation of anti-dumping laws in India and historical intervention of the international conventions in the development of Indian laws from the year 1985 to present scenario. The study has also reflected trade concerns from the neighboring countries. Anti-dumping laws are the subject matter of indirect taxes in India. It is to safeguard inland businesses from the negative business repercussion due to dumping of foreign similar goods. Paper has outlined the concept of imposed duty which is constructed on the Article VI of GATT 1994, Custom Tariff Act, 1975, Anti-Dumping Rules, 1995. The paper has attempted to capture the amendments of the laws with the pace of time and judicial dictum in the event of trade conflict. This paper shows a significant viewpoint on the process of imposing duty by reflecting a methodical acumen of how authorities work in case of dumping in line with the international conventions and domestic laws. The paper has also embarked with treasured directions for the impending research in conjunction with this line of inquiry.

**Keywords:** normal value; dumping; export price; WTO, GATT.

### LEIS ANTI-DUMPING NA ÍNDIA: UMA MUDANÇA DE PARADIGMA NOS NEGÓCIOS

#### RESUMO

Este artigo de revisão estrutural contribui com um papel importante na avaliação das leis antidumping na Índia e na intervenção histórica das convenções internacionais no

desenvolvimento das leis indianas desde o ano de 1985 até o cenário atual. O estudo também refletiu preocupações comerciais dos países vizinhos. As leis antidumping são objeto de impostos indiretos na Índia. Visa salvaguardar as empresas do interior das repercussões comerciais negativas devido ao dumping de bens similares estrangeiros. O artigo delineou o conceito de direito imposto que é construído no Artigo VI do GATT 1994, Lei de Tarifas Aduaneiras, 1975, Regras Anti-Dumping, 1995. O artigo tentou capturar as alterações das leis com o ritmo do tempo e judicial ditado em caso de conflito comercial. Este artigo mostra um ponto de vista significativo sobre o processo de imposição de direitos, refletindo uma perspicácia metódica de como as autoridades trabalham em caso de dumping, em conformidade com as convenções internacionais e as leis nacionais. O artigo também embarcou com orientações valiosas para a pesquisa iminente em conjunto a esta linha de investigação.

**Palavras-chave:** valor normal; dumping; preço de exportação; OMC; GATT.

## 1 INTRODUCTION

The period of industrialization was engrossed to elevate employment opportunities and reduce poverty. To expedite process of economic growth and industrialization, Indian government has adopted industrial policy resolution in the starting era of 1950s. To safeguard the native souk and domestic companies, India levies duty to the article export to the India after evaluating on the constant basis. Indian customs department is in charge to enforce duty and collection of the imposed charges. The foremost perseverance of anti-dumping duty is to curb malicious practice of discriminating business practices in the intercontinental market. If a merchandise presented in the marketplace of a different nation for the purpose of trade from below than its nominal value, it would create a potential commercial threat to the domestic company. To save the interest of the domestic company, anti-dumping duty is levied on such imported items. The main objective of dumping is to create more market penetration and to create exit of their competitors from the competition. The 19<sup>th</sup> century has witnessed the origin of the laws related to the anti-dumping with the urge of sugar factories from the Europe to the governments to sojourn the dumping of the sugar at lower price. The first antidumping practice was initiated by Canada in the year 1904 and in 1916 by US and countries of Europe (Aggarwal, 2002). The Kennedy Round (1962-67) and Tokyo Round (1973-79) has played a vital role in the development of the anti-dumping agreements (Debroy; Chakraborty, 2006). These agreements are the guiding principles for the investigations but differs from nation to nation (Saslow, 2016).

The paper is build up on the theoretical scrutiny of the literature from various journals, government data, international conventions, treaties and relevant data source of the research.

The research has witnessed the advancement of the anti-dumping duty with the change of international conventions and business environment. It has also recorded the legal framework of the duty and implementation effects with the logic of judicial verdicts.

## **2 THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT 1947)**

It is enforced on 01-01-1948 by the signatory member states. It applies provisionally to all parties which are coming into the contract. The GATT contains 38 articles and annexures in the agreement (WTO, 2016). The main purpose of the GATT agreement was to regulate international trade among the contracting nations. It was to facilitate trade and reduce barriers, preferences on reciprocal or equally beneficial basis. It allows other signatory members to question trade related issues of other countries in accordance with the agreement. It is only a multinational treaty and signed by different nations for trade related issues (Kumar, 2001).

The definition and trade effects of dumping on international business emerged from GATT 1947. Article-VI was included in the treaty for the idea to identify the dumping article separately. The main purpose of the entry in the treaty was to levy the duty on the international transported commodity and avoid threat of dumping. The foremost part of agreement is to regulate the application of measures against anti-dumping by the member countries under WTO. The anti-dumping actions may be implemented by the importing nation after due investigation of the imported material and its impact on the domestic market (Alston; Kelly, 2004). Under the GATT agreement (Article IV), three conditions need to fulfill before imposing anti-dumping actions by the importing nation. Firstly, country is exposed to dumping and damage has been occurred to the local marketplace. Thirdly, dumping is not neglected because of industrial injury. Likewise, WTO also incorporated the provision under the treaty is to implement the provision of anti-dumping duty. On the national level, all members formed legislation in line of WTO anti-dumping provisions. The historical birth of WTO was witnessed in the year 1995. It was due to the GATT developments and its drawbacks (Hansen; Philipp; Jørgen, 2014).

## **3 FOUNDATION OF WTO**

The foundation of WTO is the result of growth of international trade and commerce

after the world war-II. The attached multilateral trade agreements and legal instruments in the agreement are compulsory for all the member's states (Shadikhodjaev, 2010). From the establishment of World Trade Organization, it is very easy to differentiate between the pre and post 1980 policy related to the anti-dumping. In the pre-era, mostly complaints related to the anti-dumping did not attract import duties in comparison to the present scenario. Attributable to the creation of WTO and the Uruguay Round, International tariff was started decreasing after the year 1995. It is resulted in the increased practices of imposing anti-dumping, anti-subsidy to safeguard the domestic marketplace industries (Aggarwal, 2011).

In year 1995, WTO was established to frame rules of trade between different countries. WTO was also responsible for enforcing these rules on the nations. WTO was the replacement of long time enforced the GATT agreement. The foremost purpose of the WTO is to stimulate sustainable progression, growth in employment and production etc. (Bhandari, 1998). The 1986-94 negotiations which are also known as Uruguay Round defines major work for WTO (WTO, 2016). Charter of the ETO is consisting of two things i.e. the preamble and the body of the agreement (Appleton, 1997). WTO works as a platform for negotiations related to the trade matters or any new issue related to the multilateral trade. It also performs the function of trade policy review (Bhandari *et al.*, 1998). Article IV (1) of WTO makes a provision of at least one ministerial conference in two years. It is comprising of all signatory members and meet to perform functions of WTO with necessary actions if necessary (Goyal, 2006). Three generations witnessed the transparency in the working of WTO. The first generation includes the policies of GATT on information after the year 1947. In the year 1979, Tokyo round negotiations were held on monitoring and surveillance mechanisms and witnessed the second generation. The process of monitoring and surveillance was heightened in the negotiations of Uruguay Round and shaped the foundation for the creation of the WTO. After the decision in year 2002 related to the access to documents by the public with is greatly supported the internet witnessed in the third generation. Also, the number of WTO members were increased to 160 (Mavroidis; Wolfe, 2015).

#### **4 INDIAN HISTORY OF ANTI-DUMPING**

Anti-dumping practices started working from the period of 1930s to reduce the manipulative practices and to prohibit the dumping of goods from the foreign origin. Since Indian government adopted new economic policy 1991, dumping had been an alien

phenomenon for the Indian Government. It is pertinent to mention that till September 1985 India does not have any legal provision related to anti-dumping duty, however with the adoption of liberalization, globalization and privatization in the 19<sup>th</sup> Century, wherein India try to maintain their economy and rest of the developing economy was facing recession, thus India had become one of the largest place of export at lower price, which make essential for levying anti-dumping duties. The first anti-dumping duty was registered in 1992-93, was against the import of PVC from Brazil, Mexico, Korea and USA. Then by the end of 1996-97, 19 case were recommended for the anti-dumping duties which was increased to 60 case by the end of 2001 (Ahuja, 2004). Most case on which India levy Anti-Dumping Duties falls under the head of Chemical, Petrochemical, Steel metal and consumer products. As per the report of WTO 2002, for the month of January-June 2001 India acquire 3<sup>rd</sup> position in term of initiating anti-dumping investigation after USA and Canada. As per the report, India initiated 16 case between 1<sup>st</sup> January to 31<sup>st</sup> June 2001 and USA and Canada were 30 and 23 (WTO, 2002), which shows that India is one of the active member of WTO in term of initiating anti-dumping investigation.

If India use anti-dumping duties on other country's exporter, similarly other countries do the same things, means Indian exporter also face anti-dumping duties imposed by other countries. In 1988 first anti-dumping duty imposed on the Indian exporter. On 14<sup>th</sup> November 2001, The World Trade Organization had conducted a meeting at Doha, Qatar. As various reports suggested the huge use of anti-dumping duties which cause restriction in market accessing, the ministry of WTO decided to reconcile the provision of anti-dumping and this aimed to clarifying and improving various rule of the Agreements and execution of Art. VI of GATT. This reconciliation had become the opportunity for India to raise his issues about the present anti-dumping duties, as majority of Indian exporters are not in a position to deal with duties enforced by the other country. Government also framed rules and regulation for curbing the problem of dumping under the Customs Tariff Act, 1975 (Jain; Jain, K; Upadhyay, 2008). India witnessed first legislation of anti-dumping in the year 1985 with the notification of Customs Tariff rules, 1985. For precautionary actions to curb the problem of dumping in the country, Directorate General of Anti-Dumping and allied duties was formed in the year 1998. In addition to the Directorate, few important sections were also added in the Customs Tariff Act, 1975 and its rules, 1995 (Baruah, 2007). Now, the name has been altered to Directorate General of Trade Remedies in the year 2018.

The Directed General of Trade Remedies (DGTR) is the department to deal with various types of unfair trade practices, initially it was divided into various department for dealing with different practices i.e. Directorate General of Safeguards (DGS) dealt with the safeguard measures. The Directorate General of Foreign Trade (DGFT) dealt with Quantitative measures and the Directive General of Anti-dumping and Allied Duties which dealt with the CVD cases. In 2018, the Directorate General through its annual report for 2018-19, in which government established a single window system for dealing with all type of unfair trade practices with their remedies and this window is the merger of DGS, DGFT, and DGDA. DGTR in his annual report of 2018-19 has initiated a step to bring all the requested amendment in the anti-dumping rules 1995, the Countervailing Duty Rules, 1995 and the Safeguard Rules, 1997, they also contented to take all needed missing Provision in the WTO agreement, requested all the stakeholder to submit their feedback. Below table represent the total Anti-dumping case initiated by the department and their finding up to 2009-2018 (DGTR, 2020).

Table 1 - Indian history of Anti-dumping

Year	Initiating	Finding	Termination
2009-10	26	17	3
2010-11	43	4	1
2011-12	27	6	1
2012-13	28	2	2
2013-14	38	4	1
2014-15	31	2	1
2015-16	36	4	3
2016-17	45	3	0
2017-18	44	5	7
2018-19	25	0	1

Source: DGTR, 2020, Ministry of commerce and industry

India is a developing and many other countries act as a barrier in the developing process, as many other members of WTO use trade remedies against Indian export, thus with the aim of tacking with this issue DGTR has developed a dedicated trade defense wing. It has established with the aim of protecting exporter from the various trade remedies initiated by the other members of WTO and to provide the maximum benefit of MSMEs recaps from the

exporter's potential. As per the provision of Rule-5 of tariff rules, 1955 deal with the commencement of anti-dumping duties in India. The investigation shall not be initiated by designated authority, if he does not receive any written information about the unfair Trade practice, then only designated authority initiated investigation against it. Following grounds might be taken into consideration while initiating anti-dumping activity-

- Question should be based on dumping of goods
- Act must have some injury to the domestic market
- There should be a nexus between the question on dumping and damage caused to the domestic market.

## **5 LEGAL FRAMEWORK FOR ANTI-DUMPING IN INDIA**

The Custom Tariff Act, 1975 and other rules were framed to regulate the anti-dumping in India and sections of Custom Tariff Act, 1975 amended (sections- 9, 9A, 9B and 9C) in view of anti-dumping measures. All amended sections and rules were in line of WTO agreement on anti-dumping and countervailing measures (DGTR, 2023). In the recent years, developing countries are using dumping laws to protect trade. The investigation of anti-dumping is a composite of importing country, domestic industry, exporter from foreign nations and investigating bodies from importing nation. In addition, government of the exporting nation is also involved (Jain *et al.*, 2008).

### **(a) Under the Customs Tariff Act, 1975**

Section-9A elaborates the term “anti-dumping duty”. It also elucidated the “margin of dumping” and “export price” with respect to an item. It explained the concept of ‘margin of dumping’ as the variance amongst the export and nominal price of the article.

### **(b) Customs Tariff Rules, 1999**

It delineates the method of investigation of anti-dumping to identify the consequence of dumping on the home industries. It also governs the appointment of designated authority for investigation. The designated authority will authenticate all supportive evidence of dumping or any injury caused to the industry. It also provides that no investigation will

proceed if domestic producer satisfies rule-5 sub-rule-3 (a) & (b). The investigating authority will notify the consular of the government of the shipping organization. After the acknowledgement of the appropriate application, within 45 days' intimation notice will be issues by the investigating authority. Within 150 days of the initial determination report, final determination is made. If the affected party is not satisfied with the decision of the designated authority, then aggrieved party may file against the order within 90 days to the Appellate Tribunal. Article-3 of the GATT agreement also sets certain factors to judge the industrial injury. It must rely on the affirmative evidence and volume of dumping and their impact on the domestic price and market (Chaudhry, 2002).

### **(c) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994**

It describes the articles approved by the member countries connected to the anti-dumping in the domestic market. Article-1 of the GATT agreement explicitly elaborates that all anti-dumping measures will simply be pertinent after the fulfillment of conditions given under GATT 1994 (Article VI). Article-2 of the agreement describes the connotation of 'dumping' as the sent any item or product to a different nation less than its standard price. Under Article-3 of the agreement also elaborated the process of investigation of injury to the industry. In year 1998, the Directorate General of Anti-Dumping & Allied Duties (DGAD) was created and located in New Delhi. Ever since from its formation, all anti-dumping related issues are dealt by the DGAD. Additional Secretary to the government of India heads the DGAD and assisted by joint secretary and a director. According to Article-6 of the agreement, all participating parties are required to provide information as required by the authorities and provide information in writing. As per Article-7 of the agreement, provisional actions should be taken after initiation of investigation as per Article-5.

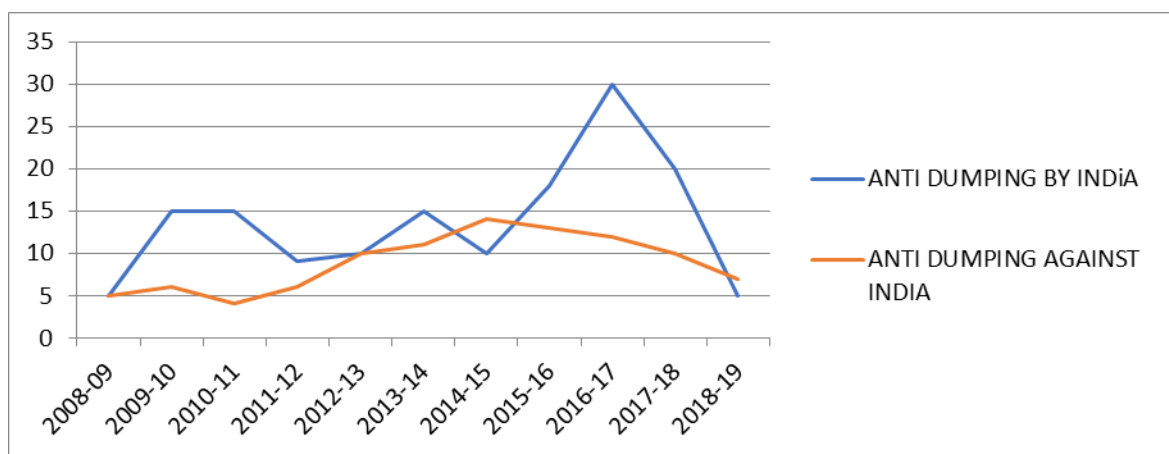
## **6 CONSEQUENCES OF PREVENTIVE ACTIONS IN INDIA**

As the report publish by the WTO, anti-dumping measure have pertained on 3604 products from 1995 to 2017 and the products from China have been subjected to the outrageous i.e. 1269 initiated and 926 have been imposed. India is one of the biggest countries, who utilized trade remedies in an effective and efficient manner, India has initiated

total 652 investigations since 1992 till 2019, which consist 600 anti-dumping cases, 9 countervailing and remaining 9 safeguards investigations. As per the report of WTO, India has taken highest measure against China i.e. 274 Anti-dumping measures.

As per the reports of WTO, since 1995-2018 India has initiated highest number of Anti-dumping investigations against China i.e. 224 investigations out of which only 181 have been measures and it acquires 24% of total Anti-dumping initiation by India. Chemical and allied Industrial sector are majorly impacts by this trade remedial investigation, almost 45% of the total AD measure are taken against sectors only till 2018 (DGTR, 2019).

Figure 1 - Consequences of preventive actions in India



Source- Annual report 2018-19, DGTR, Ministry of commerce and industry

The graph of estimated data by WTO, revealed that India had shown aggressive actions for initiation of investigation, which result in cases by India are reducing from last few years and especially in 2018-19 India is almost at par situation, means the cases initiated by India against other country are almost equivalent to the cases initiated by other country against India.

In the last one decade the directorate of DGDA, DG and safeguard have finalised 430 final findings, with regard to the finalising investigation, the period from 2017-2019 was very productive, as the directorate had finalised almost 111 notifications due to the strengthen the procedure, rules and timelines.

## 7 AMENDMENTS

Generally, anti-dumping laws are designed to address unfair trade practices, such as

trading commodities to a different nation at a lesser value than they are traded locally, causing harm to domestic industries. Amendments to these laws typically focus on improving the effectiveness of anti-dumping measures, streamlining procedures, addressing loopholes, and ensuring compliance with international trade rules. The anti-dumping laws and countervailing duties are used to target the biased imports of goods, the Indian government strength the anti-dumping provision by the union budget 2020-21. On 2nd Feb 2020 the Ministry of Finance has released an amendment vide Notification no. 09/2020 customs, they pass the custom Tariff rules, 1955 with amendments. The amendment of 2020 replace the Rule-25 of the Custom Tariff rules 1995, mention the provision related to circumvention provision connecting to anti-dumping duties in India, before the amendment circumvention defines as “the charge in the Pattern of trade” amongst the nations and the companies. The other important amendments may be proposed as per the need:

(i) Amendments may be made to the calculation methodology used to determine whether dumping has occurred and to calculate the extent of the dumping margin. This can include changes to the factors considered in determining normal value, export price, and the margin of dumping.

(ii) Amendments may expand the scope of products or countries covered under the anti-dumping law. This can include adding new products or including additional countries in the list of targeted imports subject to anti-dumping laws.

(iii) As from regular basis update in the Customs and Tariff Act, 1975 and in Anti-Dumping Rules, the Designated Authority has initiated the Sunset Review Investigation via a notification no. 7/10/2019-DGTR at 17<sup>th</sup> July 2019. Sunset reviews evaluate the need for continued anti-dumping measures and assess whether the exclusion of measures would likely lead to the continuation or recurrence of dumping. Amendments may modify the procedures or requirements for conducting sunset reviews. An anti-dumping duty is valid for up to 5-years from date of initiating of Anti-dumping investigation, if it is not completed within the said period the authority need to revoke it. During 2018-19, 15 cases of Anti-dumping were due expiry the authority due to expiry of period (DGTR, 2019).

Sec-9A (5) of Customs Tariff Act, 1975 read with rule 23 of Anti-Dumping Rules, established the provision of imposing Sunset review. As per the provision of section-9A (5) of the Customs Tariff Act which states that the anti-dumping duty either completed or revoke on the expiry of 5-year from the date of imposing, but if the Central government is of opinion that the cessation of such duty is not required, then the government may increase the time

period of such prescribe period which might not be exceeding 5 years and such further extension shall commence from the date of such extension.

The Designated Authority is required to examination either the continuation or recurrence of dumping and injury. There is no such specific examination hasn't been suggested either by WTO or Indian Law, thus all the powers come in the hand of Designated Authority they are free to examination by all the parameter whichever they deem to think fit (DAS, 2024).

(iv) Some amendments may introduce provisions to consider public interest factors, such as the impact of anti-dumping measures on domestic consumers, downstream industries, and employment. Public Interest measure simply means the actions taken by the designated authority are in such manner which doesn't harm the interest of common people, following factors can be taken into account when deciding on the imposition or continuation of anti-dumping measures.

- An anti-dumping measure must either be equivalent or less than the margin of dumping, but it should not be more than the margin of dumping, means the level of remedy used must not be higher than the level of action. This idea is also mention under Article 9.1 of Anti-Dumping agreement which states that "*the amount of anti-dumping duty shall not exceeded to the margin of dumping imposed under Article-2* (WTO, 2014)"
- The anti-dumping measures should not be higher than the level of injury caused to the domestic industry.

(v) Amendments may address methods used to circumvent anti-dumping measures. This can include provisions to identify and address cases where importers alter the description, packaging, or country of origin of goods to avoid anti-dumping duties.

(vi) Changes in the procedures and timelines for conducting anti-dumping investigations can be implemented. This may include modifications to the initiation, investigation, and review processes to ensure greater efficiency and transparency. In certain cases, amendments may introduce provisions to expedite the investigation process, allowing for faster determinations and anti-dumping measures to be imposed in a shorter timeframe. The investigations procedure has been conducted as per the provision of Customs Tariff Act, 1975.

(vii) The "lesser duty rule" governs the burden of anti-dumping duties. Amendments

may adjust the application of this rule, which limits the duties imposed to the amount essential to counteract the injury caused by dumping. As per the provision of Article-9 of WTO Anti-Dumping agreement, which provide the provision on limit the amount of duty that can be optional.

## 8 JUDICIAL VERDICTS

The apex court in the case of *Commr. of Customs v. G.M. Exports*, held that the Indian rules, regulations etc. related with the imposing of anti-dumping duties must have compliance with the WTO agreement on Anti-dumping duties. In *S and S Enterprise v. Designated Authority* the Hon'ble Court stated the purpose behind levy of Anti-Dumping Duties, it is imposed to avoid unfair trade practice conducted by the exporting country, which cause flood of domestic market of importing country at a lower rate which the exporter country sells such product in their domestic market. The Court has also said that the method of anti-dumping duties is accepted by the GATT, it establishes a balance between the rights of exporter of other country to sell their product in their domestic market.

The apex court in *Raj Kumar Shivhare v. Directorate of Enforcement*, prescribed various legal aspects related to the right to appeal in anti-dumping cases i.e.

- a) Right to appeal which is allotted by the statute.
- b) There is no inherent right to file an appeal.
- c) Method of filing an appeal must be mention in statute.
- d) No appeal shall be entertaining in case of absence of any statutory provision.

The apex court in *Union of India v. Kumho petro Chemicals Company Ltd* held that the anti-dumping implementation done by the government under 'sunset review' was somewhere dissimilar to the exercise at the initial stage to acknowledge that whether the anti-dumping was to be imposed or not. In case of 'sunset review', the emphasis would be on the matter whether removal of the anti-dumping duty would lead to continuance or reappearance of 'dumping' as well as damage to the local business. In *Reliance Industries Limited v. Designated Authority*, the court observed that the proceeding conducted by the designated authority were quasi-judicial, hence the designated authority and so must be as per the principles of natural justice, they must be under an obligation to disclose the reason of decision.

The Delhi high court in *Jindal Poly Film Ltd v. Designated Authority*, finds worth in

the initial objections highlighted by the respondent and hold the plaint for seeking remedy, to challenge the impugned order U/S 9C of the CT Act. The court later on rejects the writ petition by giving detail order against the refusal of the Ministry of Finance to impose anti-dumping duties and allow petitioner to file an appeal under section-9C of CT Act, and petitioner may also file an application under section-14 of the Limitation Act, 1963 before the Appellant Tribunal for removing time spent in the High Court. The apex court in *Navin Chemical Mfg. and trading co. Ltd. v. Collector of Customs*, discussed the grounds for filling an appeal under sec 130-E(b) of the Custom Act, i.e.

- The question raised in the petition must have a direct nexus to the question for acknowledging the purchase value of the product on which the duty was supposed to be imposed, for acknowledging the rate of duty which is need to be imposed. This is a sine quo non for the admission of the appeal before the Hon'ble Court Under the said section.
- If is essential that the question raised must embrace a substantial question of law, which till that period not answer or discuss in any court.
- If by any other means tribunal after considering the material and relevant facts, things any possible reason then the court might allow the petition, by determining the principle of natural justice.

## 9 CONCLUSIONS

It is determined that the anti-dumping is acting as a safeguard for inland business and importing country. It is the duty imposed on imported items from the exporting country on any nominal values. WTO and GATT agreement are the major key role factors to maintain the balance of international trade and interest of the signatory countries. It is evident from the history of last few decades that trade barrier are lower down and economies are open to the trade with market stability (Ruggiero, 1996). It is also drawn from the discussion that participation form the countries of developed nature is required for the growth of world economy and industrialization.

After signing the GATT agreement, India has taken corrective measures to ensure prevention of dumping by making amendments and enactment of the Customs Tariff Act, 1975 and Customs Tariff Rules, 1999. The designated authorities take steps after taking consideration of positive evidence of dumping and its impact on the price of domestic article.

The cases of anti-dumping are investigated by the designated authorities and the preventive measures give opportunity to the affected as well as the affecting parties to make their versions. After the investigation, proper preventive measures will be taken by the authorities. It is a protection against unfair trade practice of dumping. It is a tool to defend the internal bazaar from the unfair trade rivalry because of the economies liberalization. It is also witnessed by the cases filed by the Indian market leaders against dumping and their success (Narayanan, 2006).

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