

# ANTI-DUMPING MEASURES UNDER WTO REGIME: EFFECTS & CONSEQUENCES REGARDING COMPLIANCE IN THE TRADE POLICY OF BANGLADESH

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## ABSTRACT

*The growth of trade liberalization in the past century has contributed to imperfect competition worldwide. This free market system worked wonders for some countries and not so much for some others. Dumping is one of such practices which can easily be hazardous for the small local industries. Though the World Trade Organization's (WTO's) primary objective is to ensure the development of multilateral trading and global market access worldwide, the negative impact of dumping on the domestic business industries has demanded mitigating measures such as Anti-Dumping Duties (ADDs). This paper offers a brief discussion on the anti-dumping laws and practices under the current WTO regime as well as criticizes the loopholes in them. It has also scrutinized the Bangladeshi laws and rules regarding anti-dumping, trade policies, the institutional framework, their compliance and implementation in practical aspects etc. It evaluates the compliance situation of Bangladesh as a Least Developed Country (LDC) by analyzing the anti-dumping measures taken against it. The article also refers to how the process of graduation from the LDCs and pandemic adversely impacts the local market. Finally, the paper recommends some ways by which countries like Bangladesh can move forward and flourish in this global village.*

## I. INTRODUCTION

Dumping and Anti-Dumping (AD) is comparatively a new issue in the world trade system for many countries. USA and Canada were the firsts to use AD as a tool to save their local industries.<sup>1</sup> General Agreements on Tariffs and Trade, 1947<sup>2</sup> did not specifically include the provision on dumping but it was included as an exception to MFN rule. This was included in Article VI of the General

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<sup>1</sup> Palmeter, D. "A Commentary on the WTO Anti-dumping Code", 30 (4) (1996) *Journal of World Trade*, at p. 43.

<sup>2</sup> A Multilateral agreement on international trade; adopted on October 30, 1947, entered into force on January 01, 1948.

Agreement on Tariffs and Trade, 1994 (GATT)<sup>3</sup> after a lot of debate and discussion. Its deceptively simple rules gave wide discretion to the authorities of the importing countries.<sup>4</sup> US and European Commission (EC) wanted to retain their restrictive competitive practices and used AD laws as a back-door industrial policy beforehand.<sup>5</sup> Because of the resistance from US and EC it was not possible earlier to have this provision.<sup>6</sup> The WTO agreement regulates how much a government can or cannot react to dumping and take Anti-Dumping Measures (ADMs) to save their local industry.

Even after being a comparatively new arena, the developed countries have many dispute settlement issues regarding this. The developing countries (DCs) are not behind as well. But as a member of a Least Developed Country<sup>7</sup> Bangladesh's status in taking the ADMs is the focal point of this research. Whether we are being able to take sufficient measures against this, our laws and policies are enough to address this issue or not, if not what is the way forward – these are some key questions which the study will try to indulge in.

Bangladesh has ratified the agreement on AD issues, also amended some previous laws but it does not have any fresh and specific law dedicated to this issue. Recently, some more amendments have been made, but we are yet to see proper implementation of that. The neighboring country India is way ahead of us and we are already suffering from dumping issues which are only going to rise in the near future while the country graduates from the LDCs. Dealing with this area is really important for the same reason. Bangladesh and such other LDCs has become quite a target for the dumping because of their huge number of consumers<sup>8</sup> who are willing to buy products at a lower cost. This is one of the many reasons behind their inability to address the AD issues properly. Being themselves the victim, they are also facing legal measures taken against them by

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<sup>3</sup> The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), entered into force on January 01, 1995.

<sup>4</sup> Hamilton, D. L., “US Anti-dumping Decisions and the WTO Standard of Review: Deference or Disregard?”, 4(1) (2003) *Chicago Journal of International Law*, at p. 265.

<sup>5</sup> Horlick, G.N. and Shea, E.C., “The WTO Anti-dumping Agreement”, 29(1) (1995) *Journal of World Trade*.

<sup>6</sup> Croome, J., *Reshaping the World Trading System: A History of the Uruguay Round*, WTO, Geneva 1995, at p. 304.

<sup>7</sup> United Nations Conference on Trade and Development (UNCTAD), “UN List of Least Developed Countries”, available at: <<https://unctad.org/topic/vulnerable-economies/least-developed-countries/list>> (Last visited on January 15, 2021).

<sup>8</sup> In 2017, the combined population of LDCs stood roughly at 1 billion. It is projected to increase by 33% between 2017 and 2030 and to reach 1.9 billion in 2050. LDCs in Facts and Figures, UN Office of the High Representative for the Least Developed Countries, See Landlocked Developing Countries and Small Island Developing States, available at: <<http://unohrrls.org/about-ldcs/facts-and-figures-2/>> (Last visited on January 15, 2021).

other countries while trying to export their goods. Bangladesh has faced a number of reports while they could not initiate any case against such unfair trade practices.<sup>9</sup> Unfair trade practices are mainly unfair competition where the competitors are competing on unequal terms. Though they are the pioneer in filing the first complaint among the LDCs<sup>10</sup>, and also became a third party to a proceeding<sup>11</sup> but they could not respond against those AD reports soon enough. Whether the reason is hidden in administrative or legislative capacity to deal with such issues is another thing that this study will try to investigate. Even in the situation of pandemic, soon Bangladesh is going to be a part of the DCs. Keeping in mind this scenario we need to be more cautious while approaching these issues in order to cause less harm to our local industries. This research has critically analyzed the WTO dispute resolving mechanism, ADMs, trade policies and institutional framework of Bangladesh to determine the root cause of such failures. Reviewing the compliance mechanism is also a part of the paper as it is of utmost importance while establishing an effective AD process. Analyzing the context, perspective and grounds, the article will try to recommend some way forward for Bangladesh and other LDCs at the end.

## II. UNDERSTANDING THE CONCEPT OF ANTI-DUMPING: DISCUSSING RELEVANT LAWS

### A. Dumping & Anti-Dumping Measures

Dumping is a kind of export business technique or trade practice. When a domestic industry produces such an amount of products that its local market cannot consume the whole, then these surplus products are exported at a lower price than original production cost or lower than market price causing disadvantage to the same or like products of the importing country. Dumping generally is a by-product of industrial overcapacity.<sup>12</sup> It becomes a distorted method of competition depending on its motive. Only predatory dumping is considered as unfair trade practice by the WTO.<sup>13</sup> Dumping is not illegal *per se* because a healthy competition between the sellers is generally good for the consumers.

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<sup>9</sup> WTO Statistics, “Anti-Dumping initiations: Reporting Member v Exporting Country”, available at: <[https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsRepMem/ExpCty.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsRepMem/ExpCty.pdf)> (Last visited on January 19, 2021).

<sup>10</sup> The *Lead-Acid Battery Case* with respect to India’s imposition of Anti-Dumping Measures (DS306), discussed in later part of the paper.

<sup>11</sup> The US – Textiles of Origin Case, with respect to India’s complaint against US (DS243).

<sup>12</sup> Islam, M. R., *International Trade Law of the WTO*, Oxford University Press, South Melbourne, 2006, 1st edn., at p. 194.

<sup>13</sup> Conrad, C.A., “Dumping and Anti-dumping Measures from a Competition and Allocation Perspective”, 36 (2) (2002) *Journal of World Trade*, at p. 563.