# Chapter-1

## 1 Introduction

Regulation of foreign trade has remained one of the most important policy issues faced by national governments. In addition to affecting national economic welfare, trade policy is highly distributive in nature, and thus often controversial. Since the Second World War, the global trend across countries has been towards greater liberalisation, due largely to the multilateral trade regime and a broad application of the most favoured nation (MFN) principle. Nevertheless, despite the general trend towards trade openness, pressures originating from both the international and domestic arenas have ensured that protectionism; whether in the form of tariff, antidumping and safeguard mechanism or other non-tariff mechanisms, remain a powerful force.

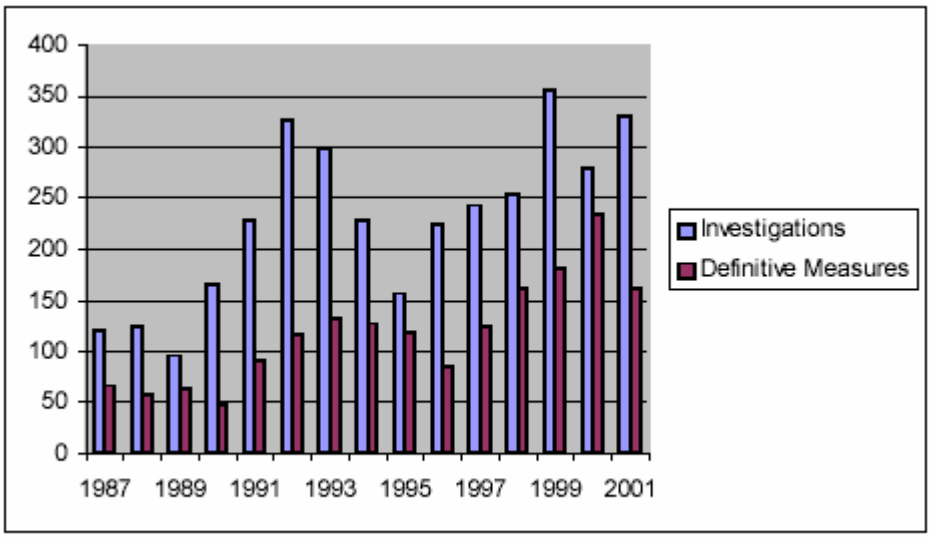
This dual pressure for trade liberalization on the one hand and protection on the other has forced nation states to evolve various 'emergency' and 'safety valve' protection measures to guard against various contingencies arising out of liberalization and tariff reduction under the multilateral trade regime. "Trade remedies", in the form of 'antidumping', 'anti-subsidy' and 'safeguards' legislation, form part of the trade policy of a number of countries, both developed and developing. The increased use of trade remedies bear close correlation to increased trade liberalisation, resulting in "free trade". When tariffs are high, domestic industries are protected

from the full rigor of international competition. But when tariffs are reduced or eliminated, the domestic industry may find it difficult to compete against imports that are less expensive. This can lead to unemployment and financial losses. Trade remedies are therefore, often used to mitigate the effects of free trade. Domestic compulsions may force some countries to pursue more liberal policies, while others retain significant barriers to trade, before moving on to some of the typical protectionist instruments like Antidumping and Safeguards. The latter two instruments, often referred to as 'safety valves' were designed to protect the domestic industries from unfair trade practices arising out of liberalisation and were used to soften resistance to greater liberalization of trade to take place. However, over time they have occupied the center stage of trade policies as trade protectionist instruments for both developed and developing countries. They are in effect causing large trade distortions, the problems, which these instruments were designed to solve.

Anti-dumping actions are legitimate measures permitted under Article VI of GATT/ WTO rules and are by now the most frequently employed instrument of 'contingent protection'. Historically, the United States, the European Union, Canada and Australia, have been the primary 'traditional' users of the antidumping law, accounting collectively for over two-thirds of the antidumping cases initiated between 1990 and 1995. However, after adoption of **Antidumping Agreements** under the WTO framework, developing countries have been more active in antidumping actions surpassing the traditional users group. In a dramatic proliferation of the antidumping weapon, developing countries have been filing antidumping actions against one another, and against members of the traditional

users groups. In 1990, developing countries accounted for less than ten percent of antidumping cases initiated, but by 1995 they accounted for forty-three percent and by 2001 they represented almost 50% of cases initiated. Over the past decade, almost 3300 Anti-dumping cases were investigated and notified to GATT/ WTO. Of these almost 50% were initiated by the four traditional user countries and approximately 40% by the developing countries like Mexico, South Africa and India. India, Mexico, Argentina, South Africa, Brazil, Korea, Indonesia, Turkey, Philippines and Malaysia have become some of the heaviest users of antidumping measures. Between 1987 and 2001, more than 3300 investigations were initiated, of which 1700 resulted in definitive measures (Rotinger, 2002).

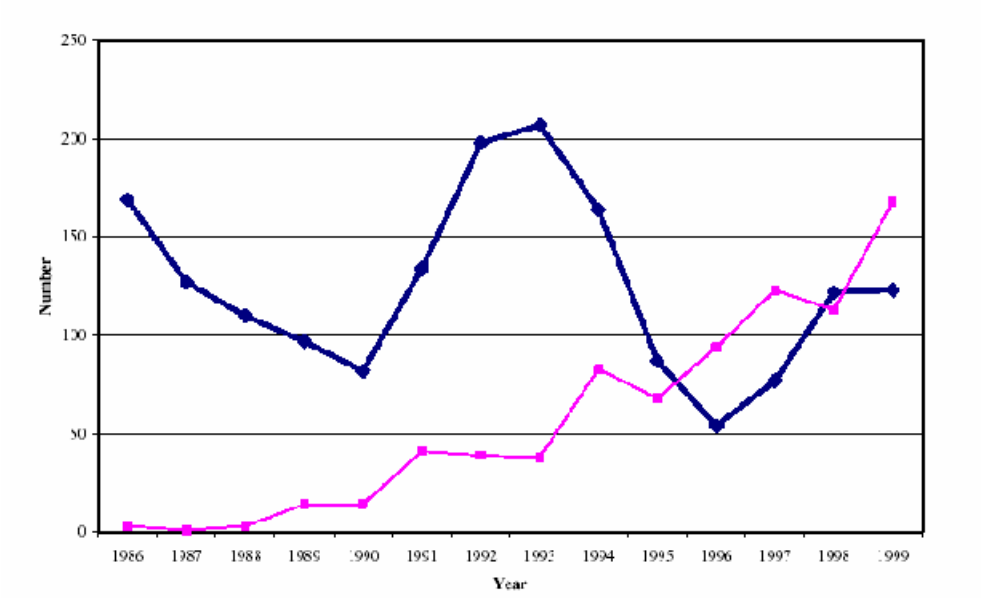
**Figure-1 Antidumping action (1987-97) All Countries**




Source: Roitinger, Alexander (2002). "Antidumping Reform, Trade Policy Flexibility, and Compensation." University of St. Gallen, August 2002 Discussion Paper No. 2002-18

In 1994, only twenty-five countries had joined the GATT Antidumping Code and implemented antidumping legislation. By December 2001, those number rose to 87. The terms of the WTO Agreement require that all 144 members must join the Antidumping Agreement and ensure adoption of conforming legislation..

**Figure-2: Antidumping initiations by developed and developing economies, 1986-99**




Source: Finger, J. Michael; Ng, Francis; and Wangchuk, Sonam. (2001), "Antidumping as Safeguard Policy", Mimeo. *World Bank.*

A WTO report on Antidumping[1] indicates that during the period 1995-99 out of total 1,218 cases initiated under the Antidumping agreement, 382 were initiated by the developed countries and 502 cases were initiated by the developing countries, rest being from the transition

[1] WTO report on Anti-dumping ,(2001) www.wto.org and Academy of business studies (2001)

economies. In the year 1999 itself member countries notified 360 initiations, an increase of 42% over 1998. India and European Union reported the highest number of initiations at 68, followed by the US with 45 initiations. Since 1995, there has been a sharp increase in the number of cases initiated by developing countries. A striking number of countries with no prior experience have adopted antidumping regulatory regimes

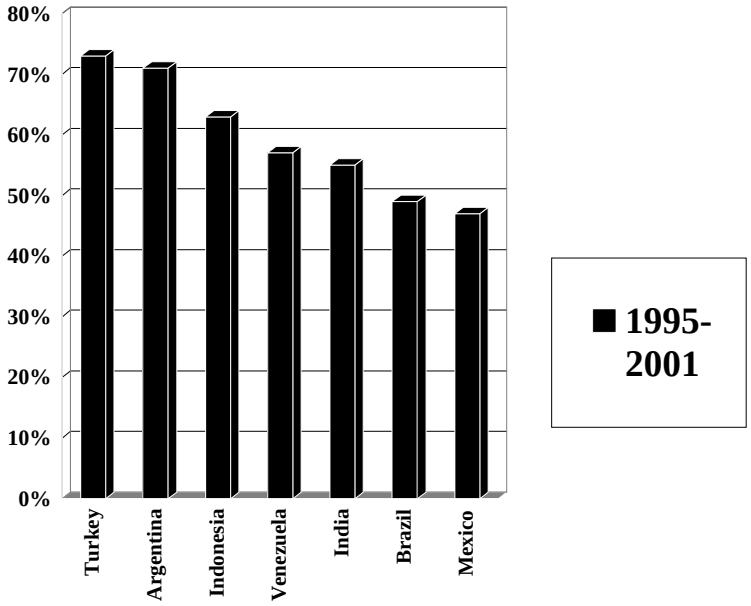
**Table-1 Initiation of Antidumping Actions 1995-99**

| | | **AFFECTED ECONOMIES** | | |
|---|---|---|---|---|
| INITIATING ECONOMIES | DEVELOPED COUNTRIES | DEVELOPING COUNTRIES | TRANSITION ECONOMIES | TOTAL |
| DEVELOPED COUNTRIES | 126 | 244 | 129 | 499 |
| DEVELOPING COUNTRIES | 252 | 258 | 201 | 711 |
| TRANSITON ECONOMIES | 4 | 0 | 4 | 8 |
| ALL MEMBERS | 382 | 502 | 334 | 1218 |

Source: WTO Annual Report, 2001

Proliferation of AD measures makes it evident that antidumping is no more a North-South issue, though retaliation by non-traditional users against the traditional users might have contributed considerably to the rise and spread of AD measures. Another striking feature of these developments is the rise in action among the developing countries themselves. The table above shows that the non-traditional developing countries have initiated more cases against themselves than against the traditional users after adoption of Uruguay Round AD Code.

**Figure-3 AD Measures levied against Developing Countries by Developing Countries**




Source: Crista Lucenti, World Trade Institute

Indiscriminate use of the so called 'safety valve' or 'trade remedy' instruments, particularly the antidumping actions is a cause of concern for economists and policy makers. The GATT Antidumping Code appears to treats dumping as a legal issue from a protection angle rather than analysing the underlying economic parameters. At present, antidumping law has become one of the most important trade policy instruments. Some view note that as the era of broad trade restriction disappears, the protectionist battles are poised to be fought on an industry-by-industry basis and antidumping law is emerging as the most important weapon in this battle. It has been argued that antidumping offered a 'safety valve' that facilitated international consensus about general trade liberalisation, as well as promoted the adherence of many developing countries to the WTO/ GATT. On the other hand the counter argument has

been that the 'cure'- implementation of the antidumping law- has turned out worse than the 'disease'. As Thomas J. Prusa (1999), rightly puts it, ''AD has become the trade policy of choice for both developed and developing economies''.

## 1.1 Need for this study

GATT Antidumping Code, as an instrument of trade remedy law, has come under severe criticism because of its indiscriminate use. On the other hand the protectionist element in the Code is strong enough for the domestic lobby to press hard to retain it. Because of the domestic pressure, major trading nations, particularly the United States, are extremely adamant on their stand regarding review of the antidumping code. The asymmetry in the practices of antidumping investigations by the member countries has also come under sharp criticism. India was a late entrant into the GATT antidumping regime though its merchandise has been facing antidumping actions in various countries for a long time. However, within few years of its adoption of the antidumping code India has shot into prominence as the second most frequent user of antidumping actions with about 12% of all antidumping actions initiated in 2001 sharing this position with the European Union.

Indiscriminate use of the code, particularly by the non-traditional users and developing countries and high percentage of definitive findings indicate the inherent flaws in the code permitting asymmetric interpretations and practices. During the preparation for the Seattle and Doha Ministerial Conferences, implementation issues and reform of the Agreement were recurrent and contentious issues. Intense debate and discussions also took place in the WTO

Antidumping Committee. In spite of the US opposition to strengthening the GATT disciplines on Antidumping, the Doha Development Agenda recognised the need to strengthen the Antidumping Code in order to check its indiscriminate use by members. However, the 'core principles' and 'objectives', as stressed by the US, have to be preserved.

The impact of antidumping actions on the volume and composition of trade is also a matter of concern. At the same time it is being increasingly realised that the domestic concerns for unemployment and livelihood will force countries to retain trade remedies laws like antidumping and safeguards in some form or other, so as to help them minimise the adverse effects of competition and trade liberalisation on their domestic economies. Macro economic factors and asymmetry in levels of economic development in the world will not permit complete dismantling of trade remedy regimes like antidumping. A multilaterally negotiated Competition law may not be a very close substitute of trade remedy laws as its cross-border application to trade issues will still be a problem. Therefore, there is a need to strike a balance between extreme protectionist practices as followed in some countries, and economic rationality arguments postulated by economists for a long time, who advocate complete dismantling of the AD regime. A reasonable solution appears to be modification of the AD rules to bring in economic rationality tests in the very definition of dumping and injury, strengthening the disciplines under the rules to check collusive and protectionist behaviours which scuttle genuine competition, and introducing a public interest angle to AD investigations, which will take care of consumer interest and economy-wide interests.

It is therefore important to understand how the instrument of antidumping has evolved over the years and its political economy factors, its basic principles and the objectives and the purpose it is intended to serve. It is also important to understand the strategic behaviour of the firms as to why they file antidumping complaints. There is a need to examine various critical provisions in the GATT antidumping codes as to how they are interpreted and implemented by member countries and how they can be rationalized, to draw up a reasonable antidumping policy for the country. Institutions have also played a very important role in administering trade remedy laws like antidumping. There is a need to understand their dynamics and functioning to prepare a blue print for India's AD administration.

## 1.2 Objectives

The frequency of affirmative injury determination of definitive duty imposition does not in itself necessarily tell us how effective a system is because high affirmative determination itself may reflect domestic industry bias. It may also be a function of smaller markets being more vulnerable to dumping than larger ones. It is important to compare the individual aspects of the AD systems, including legislation, procedures, practices and cost of compliance and their impact to judge the effectiveness of the system. Therefore, the objective of this study is to integrate the legal aspects of the framework agreements and economic rationality arguments, and analyse the disciplines in the GATT Antidumping Code, asymme

tries and complexities in the Rules, Procedures and Institutional framework of Members, and to propose changes in the WTO approach in general and India's AD system in particular.

## 1.3 Methodology

This study has adopted a cross-country comparison of antidumping practices of two developed and traditional users i.e., the U.S. and the E.U. and India, representing the developing countries as a new entrant to AD code as well as a major user of this instrument. Few landmark cases, which have in some way set the path for such practices in these countries, have been referred in the analysis in order to understand the asymmetry in interpretation of the rules and protectionist trends in domestic application of these rules. The WTO Panel rulings in some important cases have been incorporated to analyse two vital concepts i.e. 'Fair Comparison' and Determination of 'Dumping Margin', and 'Injury Determination' as the focal points of this study. Questionnaire responses were also invited from the domestic import-competing industries, user industries/ importers and exporters as well as the policy makers and officials handling antidumping investigations, to assess various aspects of the law and practices, and the perceptions of these groups about the rules, and practices. Depth interviews were conducted with few senior officers and the investigating officers in the Ministry of Commerce to obtain their views on various issues involved. This study covers the application of the antidumping rules under a broad framework from initiation to reviews. However, given the limited scope of this study, it does not cover how the affected exporters in the initiating countries handle the AD actions and the whole gamut of defense mechanisms and related dynamics. The latter could be a subject of study at a later stage.

## 1.4 The scheme of the paper

Chapter 2 summarizes in brief various political economy arguments behind the evolution and rise of Antidumping. Chapter 3 briefly outlines the GATT code of Antidumping and the national laws governing antidumping in the reference countries and also the economics of dumping and antidumping, which will be used in subsequent chapters for analysis.

Chapters 4, 5 and 6, which constitute the core sections of the paper, analyse three main substantive areas of antidumping actions respectively: 1) Dumping determination, and "fair value comparison", 2) Injury determination, and 3) Initiation and investigation procedures including review processes and institutional framework. They cover national practices, rules and case-reviews of the reference countries with respect to WTO rules on the subject and judicial as well as panel decisions.

Chapter 7 analyses the findings on the substantive provisions and procedures, economic concepts, and other issues arising out of the discussions in the previous chapters and draws up conclusions and recommendations for rationalisation of the antidumping system in general and the antidumping policy of India in particular.