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## Chapter-2

### EVOLUTION AND POLITICAL ECONOMY OF ANTI-DUMPING ACTIONS

Trade remedy actions have two main aspects; economic cause and effect of monopolization and unfair trade, and legal framework of the defense mechanism. But there is a third element, which is also equally important, i.e., the political economy of protectionism, which explains the evolution of such trade remedy laws in general and antidumping actions, in particular. This section traces the history and the political economy arguments of trade remedy laws in general and antidumping practices in particular, and analyses the developments in the pre and post Uruguay Rounds of GATT negotiations.

#### **2.1 Response Mechanism to Unfair Trade and Trade Remedy Laws:**

Tackling ‘uncomfortable’<sup>1</sup> imports and sudden surge of injurious imports of certain merchandise had been a matter of concern for nation states even before the GATT came into force. GATT members realized very early in the multilateral trade regime that trade liberalization would require periodic adjustments to take into account specific industry problems. The original GATT 1947 provided that tariffs reductions that led to such problems could be ‘renegotiated’. In an emergency, a country could raise its tariff first, and then negotiate compensation with principal

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<sup>1</sup> In the political economy literatures often the imports, which disturb the domestic industry in any manner, have been termed as ‘uncomfortable imports’.

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exporting countries. GATT also included a long list of other provisions that allowed import restrictions. Over time, these provisions have proven to be quite fungible (Finger, 2001). Whatever the reason behind a government's need to raise tariff rates, the action could be given legal cover under any number of provisions. The issue was handled through various measures like Voluntary Export Restraints (VERs) and Orderly Marketing Arrangements and other tariff and non-tariff means. Over time, countries whose tariffs had been bound under GATT commitments have used different instruments to deal with troublesome imports: 'Renegotiations' were virtually replaced by negotiated 'Voluntary Export Restraints' (VERs), VERs in turn gave way to 'Antidumping' actions (Finger, 2001).

Safeguard mechanism built into GATT framework to deal with contingent protection was supposed to act as a 'safety valve' for emergency actions against contingencies of increased imports and unfair trade practices by trading partners putting pressure on the domestic industry. These so-called 'escape clause' provisions i.e., 'Safeguards', and 'Antidumping and anti-subsidy' mechanisms under Article XIX and Article VI of GATT 1947 contained provisions for handling troublesome imports in the form of new restrictions and re-negotiation of compensating agreement with trading partners. While Safeguard provision was subject to MFN principles, i.e., tariff reduction or increase or imposition of import restriction had to apply to imports from all countries, antidumping and anti-subsidy actions under the GATT derogated the MFN principles of GATT and was applicable to targeted countries. These mechanisms were supposed to have been used to evoke political support within the domestic constituencies for greater trade liberalization during various multilateral negotiations. But they gradually turned into major

protectionist instruments for the trading partners, used more as retaliatory actions than contingent protection measures.

### 2.1.1 Safeguards

Art. XIX, termed as “Emergency Actions on Import of Particular Products” and generally referred to as the ‘escape clause’ or the ‘safeguard clause’, provided a country that had an import problem with quicker access to redressal mechanism. Under this article, if the imports caused or threatened to cause serious injury to domestic producers, the country could take emergency action to restrict those imports. If subsequent consultation with exporters did not lead to satisfactory compensation, the exporters could retaliate. By 1963, every one of the 29 GATT member countries that had bound tariff reductions under the GATT had undertaken at least one re-negotiation- in total 110 renegotiations (Finger, 2001). In use Article XIX, emergency action and Article XVIII, re-negotiations complemented each other but with time these provisions were replaced by others, like negotiated export restraints (VERs) as in Textiles sector under MFA.

However, over the years, the GATT- contracting parties expressed dissatisfaction about the safeguard provisions, and the Tokyo round negotiations singled out the improvement of the multilateral emergency safeguards system as a priority area for reforms. The contracting parties could not come to a mutual agreement and a special committee of the GATT continued the negotiations on this issue for years. Soon “voluntary export restraints”, ‘bilateral arrangements’ and ‘antidumping duties’ became increasingly common devices for protection of domestic industries. Compared to safeguard actions, antidumping became the ‘road most taken’ (Finger, 2001).

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Between 1958 and 1987 only 26 cases of safeguard-like actions were taken whereas 1,558 antidumping actions were initiated between 1980 and 1989.

The Uruguay Round negotiations, however, made the safeguards system more flexible. The non-discrimination rule can now be relaxed in exceptional circumstances. However, the requirement of injury test; i.e., 'serious injury' or 'threat of serious injury', to be demonstrated on the basis of 'objective evidence', remained. Moreover, the new safeguard code does not foresee any compensation and the retaliation allowed during the first three years of the measure can only be applied provided the safeguard measure has been taken as a result of an absolute increase in imports. An important achievement of the new safeguard agreement is that it stipulates the phasing out of the 'gray area' measures of protection like 'voluntary export restraints', and 'orderly marketing arrangements', etc. But some studies indicate that phasing out of 'gray area measures' might prove difficult as most of these measures are 'disguised' and are not subject to any official notification and publications.

### **2.1.2 Antidumping**

There is a strong view that the new safeguard measures are most unlikely to substantially diminish recourse to other forms of protection, i.e., antidumping action, as the latter provides an easier option compared to safeguards and 'safeguard' is likely to continue as the 'road less taken'. On the other hand, several features make the antidumping code an attractive instrument for protection seeking industries and for governments inclined to provide protection under the new rules (Finger, 2001). These features include the fact that:

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- Antidumping allows derogation of MFN principles and particular exporters could be singled out for action;
- The action under AD is unilateral and requires no compensation or re-negotiation as in the case of safeguards;
- The injury test (material injury) in case of antidumping investigation seems to be softer than the injury test (serious injury) for action under Article XIX (Safeguards);
- Antidumping action is against unfairness and rhetoric against unfairness provides a vehicle for building a case for protection;
- Threat of formal action under the antidumping law provides leverage to force exporters to accept Voluntary Export Restraints in the form of Price Undertakings;
- The investigation process itself tends to curb imports. This is because the exporter bears substantial legal and administrative cost and importers face uncertainty of having to pay backdated antidumping duty once an investigation is completed.

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, 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 offers a 'safety valve' that has facilitated international consensus about general trade liberalisation, as well as

promoted the adherence of many developing countries to the WTO. On the other hand the counter argument has been that the 'cure' i.e., implementation of the antidumping law- has turned out to be worse than the 'disease' i.e., unfair trade.

## 2.2 Literature Review

Indiscriminate recourse to anti-dumping has caused alarm among researchers, analysts and administrators about its efficacy and misuse as a protection measure. While some have raised questions about the ambiguities in antidumping regulations and procedures, others have questioned the economic rationale behind such actions. Economic analysis by many scholars and researchers suggests that antidumping legislation is economically inefficient and that dumping practices do not conform to the economic explanation of protection<sup>2</sup>.

The literature on antidumping discusses the extensive use of antidumping and identifies at least three basic problems. **First**, there is no economic rationale for antidumping action as long as dumped imports are not based on predatory intent and monopolization. **Second**, there is substantial evidence that antidumping is used even in the absence of any dumping. The Agreement on Antidumping and national antidumping laws make it possible to deviate strongly from economically reasonable calculation methods. **Third**, current antidumping practice can create a paradoxical situation. Although it is ultimately intended to secure competition at home, there are strong indications that antidumping promotes collusive agreements between firms.

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<sup>2</sup> Hutton et al (1990), Hyun (1998), Bourgeoise et al (1998), Willing (1998), Leclerc (1999), Prusa (2001).

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A large section of literature views antidumping as an ordinary import protection instrument. In this view, antidumping is out of line with the spirit of the WTO, and provokes trade conflicts as countries apply antidumping measures to retaliate against other countries' measures (Kolev and Prusa, 1999; Krugman, 1987; Krishna, 1997; Finger 1993; Hindley, 1988). Finger (2001) argues that rise of Antidumping into prominence has nothing to do with the logic of a sensible 'pressure valve' instrument. Antidumping policy is also said to be captured by few domestic firms and industries that lobby for protection. Moreover, in many cases, import competing domestic producers are less efficient than their foreign rivals or have a dominant position in the national market, and that factor is not taken into account in antidumping actions. A further danger of competition exists when antidumping laws are used to cartelize domestic markets. Empirical evidence of such a '*domino effect*' of antidumping cases exists in various countries. These studies generally talk of 'collusive impact' and abuse of dominant market position' by domestic industry as forms of anti-competitive business conducts. These arguments (Martin et al, 2001), model antidumping legislation as a "minimum price rule" which forbids the foreign firms to undercut the 'normal value' or 'fair price' of the product.

Prusa (1999 and 2001) has documented the spread of AD protection and analyzed the trade impact of such protection. He finds that such investigations have a significant impact on import trade, regardless of whether duties are officially levied and finds that the settled cases are as restrictive as those, which result in affirmative actions and duties. A large section of literature [Prusa (1992 and 1994), Panagariya *et al* (1998), Fischer (1992)] has argued that it is not dumping but AD policy, which undermines competition as AD rules have unintended side effects and

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concentrate on the '*collusive impact*' of antidumping as a *competition restricting behaviour*. Thruringer, Martin and Weiß, (2001) analyse whether AD policy facilitates the abuse of *dominant market position* which is another form of anti-competitive business conduct and conclude that the current administration of AD legislation as 'minimum-price protection', is inconsistent with the objective of a competition friendly international trading system.

The political economy arguments in the literature focus on the lobbying and rent seeking behaviours of the domestic interest groups. They link the evolution and proliferation of antidumping action as the outcome of intense lobbying by the constituencies benefited by trade remedy laws. As per this literature, trade remedy laws are nothing but disguised protectionism that is the outcome of intense lobbying. Hankla (2001), Yoshimatsu (2001), Kaempfer et al (2002), Kutzenstein (1978) and Goldstein (1988) have provided various political economy explanations of trade protectionism. They underline 'systematic factors', 'societal factors', 'rent seeking behaviours', and 'domestic institutional' explanations. The issue has been analysed as a 'demand side' product of competing societal interest groups that react to changes in market conditions and macro-economic factors, most importantly employment. On the other hand the 'supply side' approach built on 'rent seeking' behaviour, deals with firm-behaviour in seeking protection under the threat of import pressure. Antidumping instrument in such a case serves as a collusive device for the rent seeking domestic import competing industry to seek protection. Prusa (2001) finds that for the new users, strategic motives are more important than the economic motives for filing AD cases, supporting the findings of Blonigen (2000) and Bown (2000), which examined the threat of foreign retaliation to US antidumping behaviour. There has been substantial increase in



number of actions by the developing countries, in the recent times, against the traditional users of the antidumping instrument. Most of these developing countries, targeting developed country exports, had suffered similar action by developed countries earlier. . Literature also analyses the economic rationale of antidumping action under the GATT Antidumping code<sup>3</sup>. Most of these studies decry the use of antidumping instrument against so called ‘unfair trade’, as the action is not based on any economic rationale except in case of predatory pricing and below marginal cost dumping. This and other studies in the field suggest that the GATT/ WTO anti-dumping code is vague and ambiguities in the very definition of dumping and in the determination of dumping and calculation of injury margins facilitate dumping findings.

There are also authors who hold the view that the effect of proliferation of AD is not altogether negative; that it might have helped countries- particularly developing countries- to move towards a more liberalized regime (Miranda *et al* 1998). Others argue that as long as the traditional users of the AD system continue to use it against developing countries, it is useful for developing countries to have the ability to hit back (Vermulst, 1997).

### **2.3 Political Economy and Evolution of Trade Remedy Laws**

There is a body of literature which describes the evolution of various trade remedy laws in the last century as a response to political economy forces within nation states and the progressive dismantling of tariff and non-tariff barriers under multilateral trade arrangements starting in the middle of the twentieth century. Various schools have tried to explain the political economy and

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<sup>3</sup> Murray et al (1989), Lindsey (2000), Tharakan (1995), Didier ( 2001), Tharakan (1994)

domestic lobbying factors influencing external trade policies. These explanations focus on ‘systemic factors’, ‘societal preferences’ and the nature of ‘national institutions’ to explain the dynamics. The structure of international geopolitical and economic systems, and presence of hegemonic powers as well as the compulsion of nation states to continue within these institutional frameworks, influence trade policy and trade defense mechanisms of nations (Hankla, 2001). At the same time, societal preferences of interest groups like labour unions, environmentalists and import competing industries also influence national governments to take a protectionist stance (Baker, 1983). The rent seeking behaviour of well organised producer groups and import competing industries generally result in more producer than consumer influence on the political process (Kaempfer *et al*, 2002). The prevalence of protectionist tariffs, quotas, and voluntary export restraints (VERs) are a direct result of this process. The ability of domestic public institutions and their officials to withstand pressure from society and conflicting societal preferences in trade policymaking and their autonomy also decides the course of trade policy and the trade defense mechanism.

Most of the trade policy instruments and trade defense mechanisms have evolved in response to progressive trade liberalisation due to tariff reduction and removal of other non-tariff barriers, in the developed world, particularly in the United States. A drastic retrogression in economic globalisation took place in the 1920s as a result of post World War I isolationist and neo-mercantilist tendencies combined with monetary instability and economic depression. This neo-mercantilist era was manifested by an increase in tariff and other trade barriers. This trend

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was embodied in the Smoot-Hawley Tariff Act of 1930 in the US, protectionism associated with rise of fascism and rise of the Soviet State. With the easing of foreign policy pressures on trade policy in the aftermath of World War II, the United States provided the political and economic leadership for the opening up of the international trading system. Under American leadership, the Bretton Woods system created several multilateral institutions including the GATT, which led to progressive lowering of US trade barriers. While American leadership was advocating lowering of trade barriers of all kinds under the multilateral system, the domestic import competing industries brought in sufficient pressure through the US Congress to rein in the Executive and to include trade protectionist instruments. The desire of the US Congress to regain control over trade policy instruments and their implementation after ceding considerable power through Reciprocal Tariff Agreements Act in 1934, forced the American Executive to include the so called 'Escape Clauses' in trade policy to handle uncomfortable imports. The political economy factors underlying the trade remedy laws of the US are also reflected in the way Congress successfully insulated these mechanisms from the presidential veto by creating the office of the United States Trade Representative (USTR) and the International Trade Commission (ITC) directly under the control of Congress. They were supposed to lend a sympathetic ear to the injured business in the policymaking process and protect domestic industry interests. The 1916 Antidumping Act and the 'safety valve' safeguard provisions of GATT 1947 along with the strengthened 'Super 301' formed the framework to compensate and protect injured industries. The 1916 Antidumping Law, as amended and adopted in 1921, later formed the basis for the GATT Antidumping code and

began to be used by the GATT negotiating parties as the main trade remedy instrument against so-called “unfair” trade.

## 2.4 Evolution of Antidumping practices

Canada (1904), New Zealand (1905), Australia (1906), and the USA (1916) were among the first countries to adopt antidumping laws. The early laws of Australia and America followed the spirit of the competition laws of their times, for example, the US ‘*Sherman Antitrust Act of 1890*’, the Clayton Act, and the Robinson-Putnam Act-the three major antitrust statutes (Neils, 2000). These laws mainly addressed concerns of monopolization as it was feared that foreign firms might drive out domestic rivals by setting prices at unreasonably low or predatory levels, thus obtaining monopoly power to charge supra-competitive prices later. Subsequently, the focus of antidumping policy changed from *monopolization* to the broader concern of *fairness*, when the US enacted a new law in 1921. Canada’s antidumping law, of course, had concern for fairness from the very beginning. Others soon followed suit to include the fairness concept in their antidumping laws. Under the broad concern for *fairness* it was deemed *unfair* that a foreign firm or a cartel operating from a protected home market, could subsidise low-priced exports through the gains from high-priced home market sales, or that it could export production surplus below cost in times of slack home demand. The threat of monopolization became less relevant for legal purpose after the 1921 law, although it is still used as an argument in defense of antidumping policy (Neils, 2000)<sup>4</sup>.

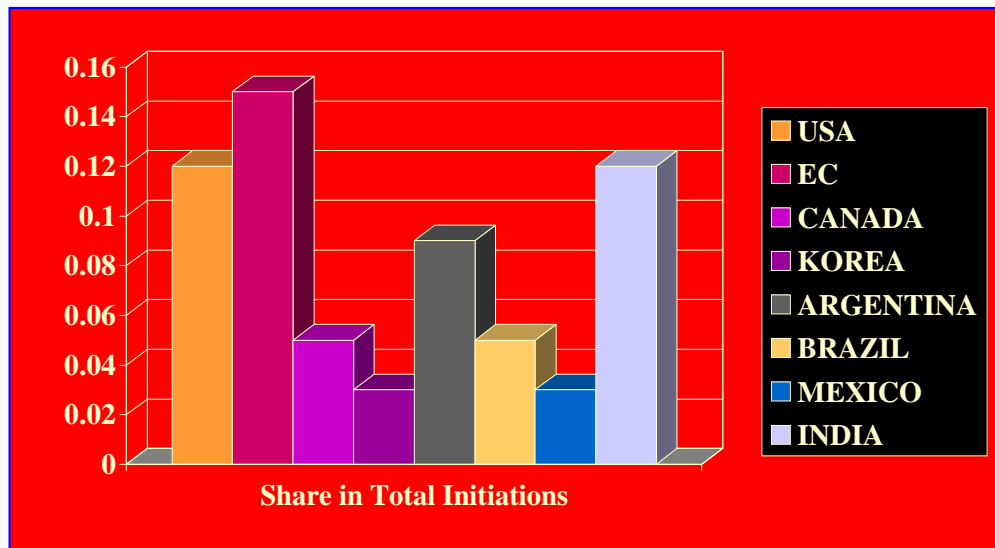
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<sup>4</sup> For details of history of antidumping policy see Finger, J.M. (1991),.

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In the U.S., the shift from other measures to antidumping was propelled by the desire of the Congress to regain control over trade policy from the executive branch, which controlled tariff negotiations, implementation of emergency actions, and negotiations of VERs. By broadening and strengthening the antidumping laws and by eliminating the president's discretion to override an affirmative finding, the Congress could give its constituents access to import relief that would not be diluted by the president's general foreign policy interests. The Antidumping Act of 1921 remained largely intact until 1979 when administrative authority was transferred from the US Treasury Department to the Commerce Department. The 1921 Act served as the model for similar legislation and treaty agreements around the world and the GATT.

**Figure- 4 Shares of Selected Countries in World Antidumping Initiations**



Source: Annual Report of Director General of Antidumping and Allied Duties, India

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The United States also faces the maximum number of antidumping actions against its exports. Between 1995 and 2000, the US faced an average of 65 antidumping actions against its exports each year. Table below shows the top ten users of antidumping action between 1995 and 2000.

**Table -2****Top 10 Antidumping Users, Total Measures in Place, 1995–2000**

Country	1995	1996	1997	1998	1999	2000	Average
United States	309	313	321	327	342	323	323
EU	138	137	138	139	150	154	143
Canada	95	96	93	77	79	87	88
Mexico	92	90	82	83	77	77	84
South Africa	17	31	47	58	94	105	59
Australia	84	64	42	44	41	45	53
India	13	15	20	44	62	98	42
Argentina	19	31	35	37	42	43	35
Turkey	37	37	35	34	35	13	32
Brazil	20	26	24	31	37	41	30
All others	50	59	84	102	122	117	89
Total	874	899	921	976	1081	1103	976
Traditional	651	636	618	611	631	622	628
Nontraditional	223	263	303	365	450	481	348

**Source: CATO Institute Paper No 14**

Antidumping measures emerged as a major policy instrument in the European Union (EU) for similar reasons. Slower growth made European governments sensitive to the displacement of domestic production by emerging Asian exporters. The Treaty of Rome adopted Antidumping as a trade policy instrument for the EU. The EU Commission could take

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antidumping action, but member states could not. There is a view that the European Commission, like any organisation demonstrating its usefulness and expanding its turf, pressed forward with antidumping actions to pre-empt member governments from responding individually to their industry's increased demand for protection. On 31<sup>st</sup> December 2001 there were 175 anti-dumping and 16 countervailing measures in force accounting for about 12% of all antidumping initiations in the world. Between 1995 and 2000 average number of measures in place in EU was 143 while there were 92 measures in force against the community and its member countries' exports at the end of 2001. The profile of antidumping investigations in the EU is shown in the table below.

**Table 3****EUROPEAN UNION: Antidumping and Anti-subsidy cases Initiated (1997-2001)**

<b>Product</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Chemical and allied	8	-	28	17	5
Textiles and allied	8	9	11	-	5
Wood and paper	7	-	-	-	-
Electronics	14	-	12	2	3
Other mechanical engineering	1	-	5	1	4
Iron and Steel	4	19	25	7	16
Others metal	1	-	-	2	-
Other	2	1	5	2	-
	<b>45</b>	<b>29</b>	<b>86</b>	<b>31</b>	<b>33</b>
Of which anti-dumping	42	21	66	31	27
Of which anti-subsidy	3	8	20	0	6

**Source: EU 20<sup>th</sup> Annual Antidumping Report 2001**

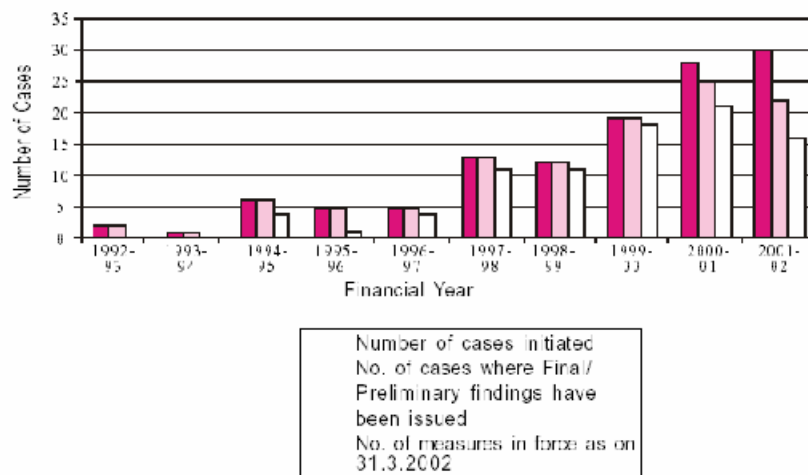
India represents the developing countries in this analysis. India's macroeconomic reform process initiated in early 1990s included dismantling of trade limiting barriers like licences and permits. India was one of the original contracting parties to the GATT. With the adoption of Tokyo Round GATT code on Antidumping and gradual dismantling of trade barriers initiated in the mid eighties, India amended its Customs Act in 1985 to provide legislative backing for relief to domestic producers against unfair trade practices such as dumping and subsidies.

The Indian experience with antidumping practices is relatively recent. But India has emerged as one of the major players in the antidumping regime more recently. Though India enacted its first antidumping legislation in 1985, not a single case was filed until 1992 presumably because the high tariff and import control regime in India provided adequate protection to domestic industry under the import substitution industrialisation policy. The first antidumping case by India was initiated in 1992, which coincided with the macroeconomic reforms and trade policy reforms initiated in India in 1991, whereby tariff and non-tariff barriers were gradually dismantled. As shown in table below, there was a sharp rise in antidumping measures after the Uruguay Round of negotiations, and enactment of new legislation for antidumping action. It coincided with the acceleration of the trade reform process through which the domestic industry was suddenly exposed to foreign competition. India accounts for almost 12% of all antidumping initiations in the world as much as the EU and second only to the United States. Chapter 6 provides an overview of the antidumping actions of India in the last decade and its impact on major sectors where it has been applied more frequently.



**Figure-5 Year-wise break-up of Anti-dumping cases (1992-2002): India**

Financial Year	Number of cases Initiated	No. of cases where Final Findings / Preliminary Findings have been issued	No. of measures in force as on 31.3.2002
1992-93	2	2	0
1993-94	1	-	0
1994-95	6	6	4
1995-96	5	5	1
1996-97	5	5	4
1997-98	13	13	11
1998-99	12	12	11
1999-2000	19	19	18
2000-2001	28	25	21
2001-2002	30	22	16
Total	121	110	86



Source: Directorate General of Anti-Dumping and Allied Duties Annual Report 2001-2002

## 2.5 GATT and Pre-Uruguay Round Developments

Antidumping Rules were included in the GATT 1947. These rules were based on the national antidumping laws existing at the time especially that of the US, and the objective was to restrain national antidumping actions, rather than to give new entrants to the GATT system an excuse to

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set up their own antidumping system. As the tariff rates were lowered over time following the original GATT agreement, antidumping duties were increasingly imposed. Soon the inadequacy of Article VI of GATT to govern their imposition became more apparent. Consequently, contracting parties to GATT negotiated a more detailed Code relating to antidumping. The first such code, the Agreement on Antidumping Practices, entered into force in 1967 as a result of the Kennedy Round of GATT negotiations. Most national antidumping laws that already existed were brought into line with the GATT rules after the 1967 GATT Antidumping Code came into force. However, the United States never signed the Kennedy Round Code, and as a result, the Code had little practical significance.

The European Union had adopted antidumping rules at its foundation in 1957 and at the same time, in an unprecedented move, it abolished antidumping action against trade between its member countries.

The 1947 GATT Agreement defined '**dumping**' as the practice whereby the "products of one country are introduced into the commerce of another country at less than the 'normal value' of the product". GATT 1947 permitted antidumping duties only when such action caused "**material injury**" to the domestic industry. However, in response to the pressure from developed countries, the antidumping code was amended twice. The amendments made in the Kennedy round (1963-67) required that the dumped imports be "**demonstrably the principal cause of injury**" for the duties to be imposed. However, the Tokyo Round (1974-79) revised the position again rendering such demonstration of principal cause of injury unnecessary (from

‘principal cause’ to ‘a cause’ of injury) and expanded the definition of “**less than fair value**” to capture not only price discrimination but also below cost price. The Tokyo Round Code, which entered into force in 1980, represented a quantum leap forward. It provided enormously more guidance about the determination of dumping and injury than the original Article VI and provided a procedural framework for conducting investigations. The changes made in the Tokyo round enabled countries to apply antidumping to a much broader range of cases and contributed to rapid increase in the use of antidumping initiations and policies in the subsequent years as can be seen in the following sections.

## **2.6 Uruguay Round and Antidumping Negotiations**

In the Uruguay Round negotiations, the US and the EU sought to strengthen the Antidumping Code by addressing some of the problems that have become apparent in the past decade (Wolf, 1995). They wanted gaining GATT acceptance of their concern over issues like circumvention and also were interested in regulating more closely the procedures used in antidumping action in view of the increased use by developing countries. However, many contracting parties actively sought to weaken the code to reduce existing disciplines on their dumping and pressed for change in substantive rules. U.S. negotiators mounted extraordinary efforts in the final months of the Round and averted some of the changes sought in the initial texts. The US effort in the negotiation was supplemented by its arm-twisting legislation like ‘Super 301’, which helped the US to force opposing developing countries like India into submission. However, the net result was a new code, a compromise, which in general weakened the existing discipline on dumping.

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According to “summary of the Uruguay Round Agreement” prepared by the GATT secretariat, the Uruguay Round achieved the following improvements in the Antidumping Code (Park, 2001):

*“In particular the revised agreement provides for greater clarity and more detailed rules in relation to the methods of determining that a product is dumped, the criteria to be taken into account in a determination that dumped import cause injury to the domestic industry, the procedure to be followed in initiating and conducting antidumping investigations, and the implementation and duration of antidumping measures. In addition, the new agreement clarifies the role of dispute settlement panel in disputes relating to anti-dumping actions taken by domestic authorities.”*

The Uruguay Round Antidumping Agreement (URAA) made no attempt to correct the asymmetries in the system and introduce rational economic principles into the GATT/ WTO code of antidumping. Its attempt to discipline the imposition of new restriction depended entirely on procedural, not substantive constraints (Finger, 1998). While the procedural rules were tightened, substantive rules were retained with minor changes. Most important change in the Uruguay Round Code was transformation of ‘dumping’ from “demonstrably the principal cause of injury” to “Proximate Cause of injury” to the domestic industry.

## **2.7 Post Uruguay Round Proliferation of Antidumping actions**

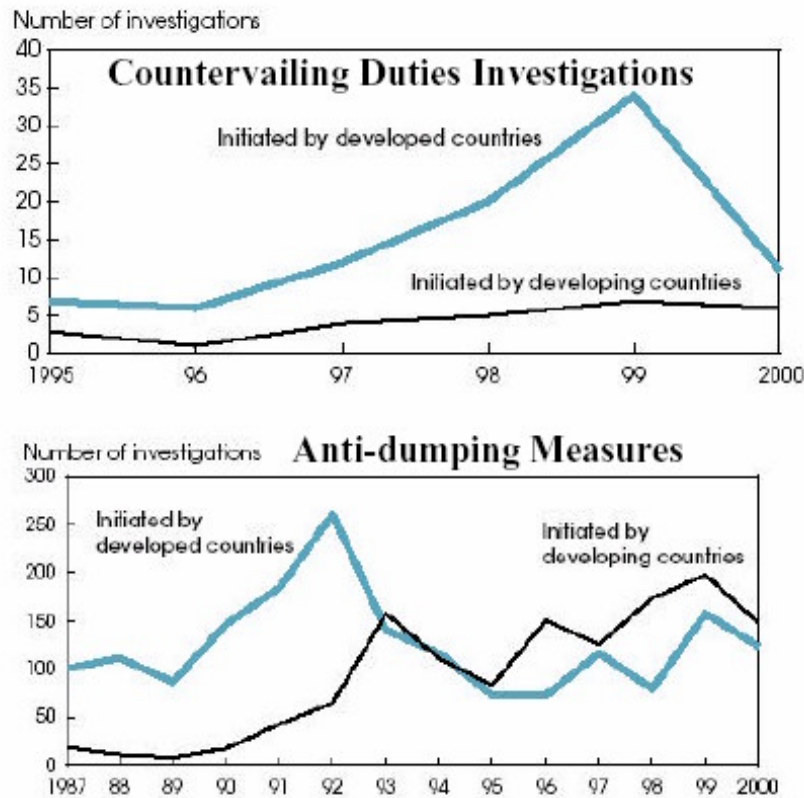
Prior to the Tokyo Round, the use of antidumping policies was very limited among contracting parties of the GATT. In 1958, only 37 antidumping decrees were in effect across all GATT members and 21 of these were in South Africa alone. Studies on the pre-1980 AD activities reveal that almost all AD activities were confined to six traditional users, the US, the EU, Australia,

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Canada, South Africa, and New Zealand, with at most 24-36 cases filed per year for all these users combined together. Till the early 1970s less than 5% of the cases actually resulted in definitive action in terms of imposition of duties (Park, 2001). However, in contrast to the pre-Tokyo Round, the world witnessed a dramatic increase in AD activities during the 1980s and 1990s.

During the 1980s, some 1,600 cases were filed worldwide, double the number of cases filed in the 1970s. While the developed countries dominated the antidumping regimes of the 1970s and 1980s, the 1990s saw a further dramatic change in the form of rapid adoption of AD policies by the developing countries, especially after the Uruguay Round. In 1990, developing countries accounted for less than 10 percent of the antidumping cases initiated. But by 1995 they accounted for 43 percent and by 2000 the same had reached 50%. A striking number of countries, (by 2002 there were 87 countries, which had adopted these codes) with no prior experience have adopted antidumping regulatory regimes as opposed to only 25 countries that had adopted GATT antidumping codes and implemented antidumping legislation in 1994. Most of the developing countries have informed the WTO of their intention to adopt antidumping regulations.

Figure below shows the trends in antidumping and countervailing actions by developed and developing countries between 1999 and 2000. While CVD action has remained moderate, the antidumping actions seem to be steadily growing in the post Uruguay Round period.

**Figure- 6 Trends in Trade Defence Measures**

**Source: Source:William A. Kerr, “Dumping—One of Those Economic Myths”  
The Estey Centre Journal of International Law and Trade Policy**

[http://128.233.58.173/estey/j\\_pdfs/editors2-2.pdf](http://128.233.58.173/estey/j_pdfs/editors2-2.pdf)

The WTO report<sup>5</sup> on Antidumping indicates that during the period 1995-99, out of total 1,218 cases initiated under the antidumping agreement, the developed countries initiated 382 cases and 502 cases were initiated by developing countries, the rest being from the transition economies. In the year 1999 itself, member countries notified 360 initiations; an increase of 42%

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over 1998. Pervasive use of AD actions by both the developed and developing countries while attempting to lower other forms of trade restrictions has been viewed as emergence of a new form of protectionism in the garb of ‘contingent protection’ or ‘safety valve’ protection.

**Table-4 Antidumping Actions Reporting Country wise**

AD Actions, Reporting Countries												
Reporting country	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
<i>Traditional users</i>												
United States	15	40	24	34	63	83	32	48	14	22	16	391
Australia	22	16	21	47	68	71	59	15	5	17	42	383
European Community	28	27	18	48	29	42	21	43	33	25	41	355
Canada	31	15	13	15	11	46	25	2	11	5	14	188
New Zealand	0	9	1	1	9	14	0	6	10	4	5	59
TOTAL	96	107	77	145	180	256	137	114	73	73	118	1376
<i>New users</i>												
Mexico	18	11	7	11	9	26	70	22	4	4	6	188
Argentina	0	0	0	0	1	14	27	17	27	22	15	123
Brazil	0	1	1	2	7	9	34	9	5	18	11	97
South Africa	0	0	0	0	0	0	0	16	16	33	23	88
Others	6	5	11	7	31	21	31	50	31	71	60	324
TOTAL	24	17	19	20	48	70	162	114	83	148	115	820
<i>Overall Total</i>	120	124	96	165	228	326	299	228	156	221	233	2196
% by Traditional Users	80.0%	86.3%	80.2%	87.9%	78.9%	78.5%	45.8%	50.0%	46.8%	33.0%	50.6%	62.7%
% by OECD Countries	95.8%	95.2%	96.9%	98.8%	84.6%	89.6%	72.2%	61.8%	51.9%	40.7%	59.7%	74.7%

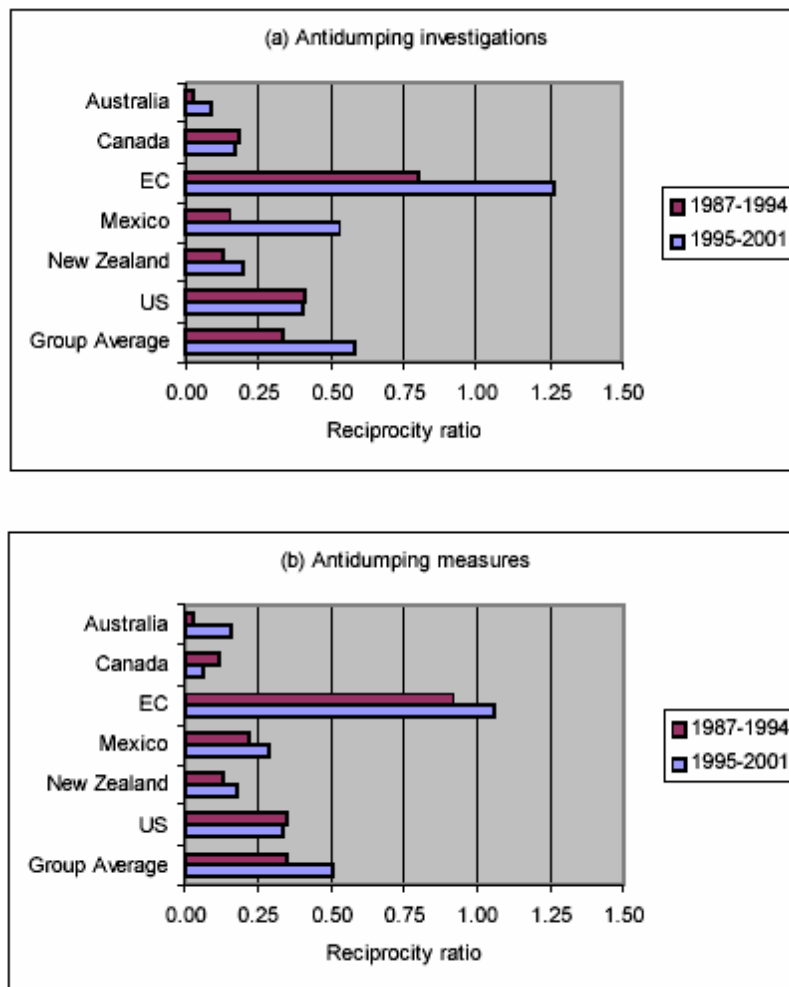
Source: NBER Working Paper No 7404

In addition to its rising popularity, the landscape of antidumping use has changed significantly in other ways as well. The traditional users of antidumping, namely Australia, Canada, the European Communities (EC), Mexico, New Zealand and the United States (US), are

<sup>5</sup> WTO Annual Report, 2001

increasingly becoming targets of antidumping measures, in what is known as “Retaliatory measures” by the non-traditional user. Figure below shows reciprocity ratios for antidumping investigations and definitive measures, respectively.

**Figure-7 Reciprocity Ratios: Antidumping Initiations and Measures**



Source: St Gallen University Discussion paper no. 2002-18, August 2002



For each traditional user, the bars indicate what may be called the “reciprocity ratio”. This ratio is calculated by dividing the number of cases where the country is confronted with foreign antidumping by the number of cases where the country applies antidumping itself. High reciprocity ratio supports the notion that antidumping has degenerated into some sort of ‘prisoner’s dilemma’, where all users are necessarily made worse off compared to the situation without any antidumping. The situation is most pronounced for the EC, which has a reciprocity ratio well above one. This indicates that the EC is affected by foreign investigations more often than its actions against other countries, which goes to prove the retaliation theory. U.S companies have also increasingly become the targets of antidumping measures worldwide (9%), trailing only China (11%) (Neils, 2000). The first signs of such development of retaliation and proliferation were evident by early 1998, when Canadian and US steel producers filed antidumping complaints against the EC and Japan. The steel producers in the European Union were trying to persuade the EC to impose antidumping duties on steel products from Asia as a surge of imports threatened to make the EU a net importer of steel for the first time.

## **2.8 Post Uruguay Round negotiations**

Post- Uruguay Round proliferation of antidumping measures has made antidumping policy a hot issue in the U.S. trade policy debate as well as a matter of concern for most developed and developing countries. The US antidumping law, which protects domestic industries against supposedly unfair import competition, has long been unpopular with countries whose exports suffer from its operation. The implementation issues regarding the WTO antidumping codes were

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raised by several developing countries including India in the Seattle and Doha ministerial conferences. The US was under pressure from many of its trading partners to negotiate new international rules under the WTO. The idea is to tighten the requirements that must be met before antidumping protection can be granted. However, US lobbying interests, and their supporters in the Congress, had been vehemently opposing any new antidumping negotiations. American industries that frequently seek antidumping protection - in particular steel producers - argue that a strong law is needed to ensure a 'level playing field' and to maintain public support for generally open markets. Any effort to weaken the existing law is being opposed by US interests. This position was reflected in WTO ministerial conferences (Lindsey and Ikenson, 2001). The Clinton administration accepted the arguments of the powerful steel and other lobbies and strongly refused to put antidumping on the agenda for a new round of WTO negotiations. US intransigence on this point was one of the significant factors in the breakdown of the Seattle ministerial conference in December 1999 (Lindsey and Ikenson, 2001). Proposals for eliminating the arbitrariness and bias against foreign exporters were to be addressed in these ongoing WTO negotiations.

The WTO antidumping negotiations continued to face strong political opposition in the United States. The opponents of reforms of AD Code argued that any change in the agreement that threatens to weaken the U.S. antidumping law would expose American industries to unfair foreign competition. Such concerns were reflected in the "Trade Promotion Authority (TPA)" legislation passed by Congress in August 2002 which instructed the President to: "preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping,

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countervailing, and safeguard laws, and avoid agreements which lessen the effectiveness of the domestic and international disciplines on unfair trade, especially dumping and subsidies, in order to ensure that United States workers, agricultural producers, and firms can compete fully on fair terms and enjoy the benefits of reciprocal trade protection” (Lindsey and Ikenson, 2002). The PTA legislation almost included an amendment that would have provided for special “Fast Track” voting procedure to those parts of any trade agreement that made changes to antidumping rules. However, the so-called ‘Dayton-Craig amendment’, passed in the original Senate TPA bill, was eventually dropped in the conference committee.

Mindful of domestic political pressures, both the Clinton and Bush administrations strongly opposed any move for inclusion of antidumping on the negotiation agenda of the new round. On the eve of the Doha Ministerial conference the U.S. House of Representatives passed a resolution voted with 410 to 4, urging the president not to agree to any trade deals that would weaken the antidumping or other trade remedy laws. However, the Bush administration ultimately bowed to the international pressure and agreed at Doha to put antidumping on the table for negotiation but sought to limit the scope of such negotiation. There was overwhelming support for the inclusion of antidumping on the agenda of the Doha Round and the United States was completely isolated on this issue. However, specifically on US insistence and opposition, the Doha ministerial declaration contained the following provisions:

*“In the light of experience and of the increasing application of these instruments by members, we agree to negotiation aimed at clarifying and improving disciplines under the (Antidumping*

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*Agreement), while preserving the basic concepts, principles and effectiveness (of the Agreement) and (its) instruments and objectives. . . . . In the initial phase of the negotiations, participants will indicate the provisions including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase” (Doha Ministerial Declaration).*

The commitment to preserve the “basic concepts, principles and effectiveness” of the agreement and its instrument and objectives was inserted after an effort by the U.S. to limit the scope of the permissible changes to the antidumping rules. The inclusion of “discipline on trade distorting practices” on the negotiating agenda may open the doors to changes that expand national governments’ authority to apply antidumping remedies. Because of the flaws in the rules and investigation procedures, there is at present very little connection between the stated objectives of antidumping policy and the actual effects of antidumping actions. In spite of the above apprehensions and limitation of the scope, the new negotiation provides excellent opportunity for far reaching changes in the rules to plug the serious flaws in the rule, which permit routine initiations with very little justification for such action.

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