

LDCS' RESPONSE TO ANTI-DUMPING MEASURES UNDER THE WTO REGIME: A CASE STUDY OF BANGLADESH

Muhammad Omar Faruque*

ABSTRACT

With the advancement of multilateral trading under the aegis of World Trade Organization (WTO), the markets are becoming more liberalized than ever before. Taking advantages of such globalized open market, exporters tend to dump their surplus products in overseas markets, often at a lower price. Although WTO's principle objective is to dispel the tariff and non-tariff barriers, the adverse impact of dumping on the local industries of the importing country necessitated its approval of remedial measures like Anti-Dumping. In the first part of this study, a short review has been placed on the current Anti-Dumping laws and practices of WTO followed by a comparative analysis of compliance scenario of Least Developed Countries (LDCs) in the second part. The following part contains an examination of the trade policy of Bangladesh in respect to the compliance with WTO laws on antidumping. In this course, local Anti-Dumping laws, rules, their practical compliance by stakeholders and consequent institutional developments have been critically analysed. This article investigates why countries similar to Bangladesh could not initiate any Anti-Dumping Investigation even today. Conversely, describing the case study of Bangladesh, this article shows how frequently LDCs are being affected by such measures. Although the article argues that Bangladesh is one of the pioneers in establishing the legal and institutional framework among LDCs, it depicts how institutional shortfalls and inherent shortcomings of WTO system hindered the positive engagement of LDCs like Bangladesh. This article inclines to suggest few way outs for the LDCs in general based on the experience of Bangladesh.

I. INTRODUCTION

The very objective of Anti-Dumping measure is to protect the local industries from the effect of market distortions caused by dumping which refers to exporting goods at a lower price than its market price or lower than its production cost in the exporting country. But in the era of trade liberalization, arguably, Anti-Dumping measures are often serving as a protectionist tool. It is evident that countries like Bangladesh are not being able to capitalize the incentives arising out of such measures but paying the costs not less than the others. In this paper, after analysing

* **Muhammad Omar Faruque**, LL. B. (Hons.) & LL.M (University of Dhaka), is a Lecturer, Department of Law, Daffodil International University.

the Anti-Dumping mechanism of WTO and practices of Least Developed countries (LDCs), particular emphasize will be given to the trade policy of Bangladesh that governs Anti-Dumping issues to critically evaluate the legislative and administrative compliance of Anti-Dumping measures of WTO. In doing so, this study will diagnose the problems and analyse prospects of various external factors that affect the compliance of WTO rules.

As a matter of course, Least Developed Countries are most populous and contributing 13% of the total world population which is expected to cross 20% by 2050.¹ Being mostly populous (i.e. with huge consumers) LDCs are potential markets for the dumping of various products; there is a necessity of critical overhaul why LDCs cannot take any actions even after alleged dumping over the years. Is the WTO Agreement on Anti-dumping itself bars them to do so or there are other reasons behind such less engagement of LDCs in Anti-Dumping sphere is an intriguing question to answer.

Bangladesh is one of the LDCs according to the United Nations.² At the same time, it is also a growing economy with an enormous market opportunity and it has been alleged that a number of products are being dumped in the Bangladeshi market.³ It is no surprise since the least developed and developing countries with a huge number of consumers have been the major targets of dumping.⁴ With no exception to other LDCs, Bangladesh could not initiate a single investigation till the date to take on such unfair practices.⁵ Conversely, a number of Anti-Dumping measures were taken against Bangladesh by developed and developing economies.⁶ Bangladesh could not even respond to

¹ LDCs in Facts and Figures, UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States at <<http://unohrrls.org/about-ldcs/facts-and-figures-2/>>. Last visited on April 22, 2017.

² List of Least Developed Countries, United Nations Committee for Development Policy Development Policy and Analysis Division Department of Economic and Social Affairs, at <http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf>. Last visited on April 22, 2017.

³ Dhaka Chamber of Commerce and Industry, *Economic Policy Paper on Anti-Dumping and Countervailing Duty Measures* (DCCI 2000) at p. 9.

⁴ Debroy B., and Chakraborty D. (eds), *Anti-dumping: Global Abuse of a Trade Policy Instrument*, New Delhi, 2007 at p. 87.

⁵ Ahmed. R. 'Bangladesh could not impose Anti-Dumping Duties' *The Daily Crime Petrol News*, March 04, 2017.

⁶ WTO Statistics, 'Anti-Dumping initiations: Reporting Member v Exporting Country' at <https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsRepMemVsExpCty.pdf>. Last visited on July 23, 2016.

all the allegations brought against her. Such actions against Bangladesh have been affecting negatively to the development pursuit of this country. Since Bangladesh has been embarking on as a developing country very shortly, it should work intensely to dispel the effects of existing unfair trade practices. Following the footprint of other emerging developing countries, Bangladesh should enhance its capacity to extract the best possible outcome from the trade remedy measures offered by the WTO regime. In order to understand the LDCs' less engagement with anti-dumping measures, this study will examine how far Bangladesh has been complying with the existing WTO laws of Anti-Dumping compared to other LDCs and why Bangladesh cannot successfully apply the Anti-Dumping measures by comprehensively analysing its legislative capacity and administrative actions. In the final part of the study, few recommendations will be placed in pursuit of an effective Anti-Dumping regime in the reality of LDCs and multilateral trading system under WTO.

II. DUMPING AND ANTI-DUMPING MEASURES UNDER WTO

Anti-Dumping is a counter-measure taken by an importing country in tackling dumping (i.e. selling at a lower price) of the goods by an exporting country. Since the lowering of price is always welcomed by the consumers and importers, it is not illegal *per se* but where such dumping causes injury to the local manufactures of importing countries, it becomes an unfair trade practice and become actionable under the World Trade Organization (WTO) laws. However, Anti-Dumping measures of WTO do not intend to prevent dumping but only to offset its harmful effects.⁷

USA and Canada were the pioneer countries to react to such predatory dumping in the first half of last century.⁸ Being a traditional state practice, states have the legal and moral right to control such dumping to protect their domestic industries. Hence, WTO has very limited scope to interfere in such protectionist approaches of the member states.⁹ The only thing WTO can do and has been doing is formulating a uniform structure of Anti-Dumping measures i.e. how member governments should react to dumping¹⁰ by penalizing predatory dumping. Although the uniformity endeavour of WTO has recently been halted by the proliferation of Free Trade Areas (FTAs), the WTO agreement on Anti-

⁷ Andersen, H., *EU Dumping Determinations and WTO Law*, Texas, 2009 at p. 9.

⁸ Stoll, P.T. and Schorkopf, F., *WTO-World Economic Order, World Trade Law*, Leiden, 2006 at p. 151.

⁹ Understanding the WTO: The Agreements, Anti-dumping, Subsidies, Safeguards: Contingencies, etc at <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8e.htm>. Last visited on August 23, 2016.

¹⁰ World Trade Organization, *Understanding WTO*, Geneva, 2015 at p. 44.