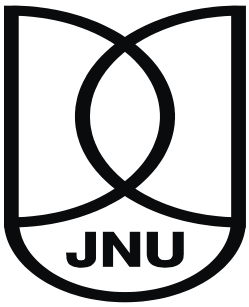
South Asia and Anti-Dumping Dispute Settlement at the World Trade Organisation

Thesis submitted to Jawaharlal Nehru University
for award of the degree of

DOCTOR OF PHILOSOPHY

APARAJITA



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2019

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Date 09/07/2019

DECLARATION

I declare that the thesis entitled **"South Asia and Anti-Dumping Dispute Settlement at the World Trade Organisation"** submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.

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Dedicated to my mother Priyanka Sinha and my father Binod Kumar .....

Acknowledgements

The writing of this thesis has received a lot of cooperation from different quarters. I wish to extend my sincere thanks to all of them who very kindly extended their help for the preparation of this thesis. Though, only my name appears on the thesis, a great many people have contributed to my work. The writing of my thesis has been one of the most significant academic challenges I have ever had to face. Without the support, patience and the guidance of the following people, this study would not have been completed. It is to them that I owe my deepest gratitude.

First, I would like to express my sincere thanks and gratitude to my supervisor, Prof. Amita Batra, who helped me tremendously to understand my topic and complete my thesis satisfactorily. I owe a deep intellectual debt to her for her decisive and constructive criticism. She has supervised the study thoroughly and has given me full freedom to work. Without her encouragement, impeccable and persuasive guidance at every step this effort would not have succeeded. She has been a constant source of inspiration for me not only as a teacher but as a friend. I wish her good health and long life that many other scholars and researchers may benefit of her knowledge.

I would like to thank the chairperson, Prof. Sanjay K. Bhardwaj, faculty members and other staffs of SIS for building the foundation of research work and for giving me support and motivation at each step of my work. I also acknowledge the staffs of different offices, libraries, computer centre, documentation units etc. from where I could get access to necessary materials. I would also like to thank all the scholars whose work I have intensely consulted for my work that find place in my references.

I thank my friend Shikha for providing me emotional and mental strength during the course of my work. I also thank my friends Geeta, Reena, Hoimonti, Kirti, Monoj, Nitivant and Subodh for their prayers, motivation and support during my crucial times and also for their criticisms and encouragement.

I specially thank my friends Ajit and Nuzhat for helping me in editing my chapters and improving my work. Ajit has always been a source of motivation and encouragement in my life and Nuzhat has been a constant support as a friend since my graduation days.

I thank my family members especially my father Binod Kumar and my mother Priyanka Sinha, who instilled in me the importance of education since my childhood. They are the one who shaped the capabilities in me, enlarged the choices for me and provided me support throughout my work.I would also like to thank my brothers Kunal Gaurav, Vishal Anand and Ritu Raj, sister Archana Sinha, sister-in-law Radhikha Khurana, brother-in-law Ayush Kumar and my nephew Ayansh for encouraging and supporting me throughout my Ph.D. journey.

I thank the whole JNU administration for providing me a healthy atmosphere for my work. Last but not the least; I thank the almighty God for providing me good health during my work and for his/her blessings because of which I could complete my work on time.

Aparajita

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Abbreviations

ACWL	Advisory Centre on Law
ADA	Anti-Dumping Agreement
ADD	Anti-Dumping Duties
ADM	Anti-Dumping Measure
ADMs	Anti-Dumping Measures
ADP	Anti-Dumping Practice
APP	Asia Pulp and Paper
ASCM	Agreement on Subsidies and Countervailing measures
BABMA	Bangladesh Battery Manufacturers Association
BBC	British Broadcasting Corporation
BOPP	Biaxially Oriented PolyPropylene
BRICS	Brazil, Russia, India, China, South Africa
BTC	Bangladesh Tariff Commission
BTT	Board on Tariffs and Trade
CAP	Committee on Anti-Dumping Practice
CBP	Customs and Border Protection
CDSOA	Continued Dumping and Subsidy Offset Act
CIF	Cost, Insurance and Freight
CII	Confederation of Indian Industry
CPD	Centre for Policy Dialogue
CWS	Centre for WTO Studies
D.C.	District of Columbia
DGAD	Director General of Anti-Dumping and Allied Duties
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism

DSS	Dispute Settlement System
DSU	Understanding on the Rules Governing the Settlement of Disputes
EBR	Extended Bond Requirements
EIA	Energy Information Association
EIDB	Export Import Data Bank
EU	European Union
EVI	Economic Vulnerability Index
FANs	Friends of Anti-Dumping
FICCI	Federation of Indian Chambers of Commerce and Industry
FTA	Free Trade Area
FTD	Free Trade Division
GAP	Group of Anti-Dumping Policies
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
GSP	Generalised Scheme of Preferences
HR Coils	Hot-Rolled Coils
HRI	Human Resource Index
HS Code	Harmonized System Code
IBEF	India Brand Equity Foundation
ICRIER	Indian Council for Research on International Economic Relations
ICSTD	International Centre for Trade and Sustainable Development
IIFT	Indian Institute of Foreign Trade
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ITAC	International Trade Administration Commission of South Africa

ITO	International Trade Organisation
JMDC	Jute Manufacturer Development Council
LDC	Least Developed Country
LLB	Bachelor of Laws
LLM	Master of Laws
MFA	Multi Fiber Agreement
MFN	Most Favoured Nation
MOC	Ministry of Commerce
MOCI	Ministry of Commerce and Industry
MOT	Ministry of Trade
MPEDA	Marine Products Exporters Development Authority
MWA	Marketers Welfare Association
NAMA	Non- Agriculture Market Access
NGOs	Non-Governmental Organisation
NTC	National Tariff Commission
OECD	Organisation for Economic Co-operation and Development
PET	Polyethylene Terephthalate
PITAD	Pakistan's Institute of Trade and Development
PPC	Pretoria Portland Cement
PSET	PITAD School of Economics & Trade
PTA	Preferential Trade Agreement
QR	Quantitative Restriction
RAPP	Riau Andalan Pulp and Paper
RIS	Research and Information System for Developing Countries
S&DT	Special and Differential Treatment
SAARC	South Asian Association for Regional Cooperation
SACU	South Africa Custom Union

SAIL	Steel Authority of India
SAPTA	South Asia Preferential Trade Agreement
SCM	Subsidies and Countervailing Measures
SEAI	Seafood Export Association of India
SMPA	Storage Media Products Manufacturers
SPS	Sanitary and Phyto-Sanitary Measures
T&C	Textile and Clothing
TBT	Technical Barriers to Trade
TDA	Trade Development Authority
TEXPROCIL	The Cotton Textiles Export Promotion Council
TFA	Trade Facilitation Agreement
TIFA	Trade and Investment Framework Agreement
TPD	Trading Partner Agreement
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
UAE	United Arab Emirates
UCF	Unbleached Cotton Fabric
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
USB	Universal Serial Bus
USD	United States Dollar
USDOC	United States Department of Commerce
WTO	World Trade Organisation

Chapter 1
Introduction

1.1 Background

International trade under the framework of the WTO works on the principles of trade liberalisation, reciprocity and non-discrimination (WTO 1995). The trade liberalisation has to be achieved by reducing non-tariffs and tariff barriers. The countries cannot discriminate among its trading partners which are granted through the embodiment of Most Favoured Nation (MFN)[1] and National Treatment[2] principles of the WTO. These principles however, can make economies vulnerable to injuries and governments with such open trade regime should have some measures to protect its economies from such trade shocks (Fischer and Prusa 1999). Subsequently, the WTO allows its members to deviate from these principles through the use of safeguards, countervailing and anti-dumping measures known as 'contingent trade protection provisions' to prevent import surge and unfair trade practices (WTO 1995).

The Safeguard measures (ASG; Article XIX of the GATT 1994) allow for temporary restriction on imports through the imposition of tariffs or quotas if such import surge threatens or causes injury to the domestic industries (WTO 1995). The Agreement on Subsidies and Countervailing measures (ASCM; Article XVI of GATT 1994) allows for the imposition of duties on imports benefiting from the subsidies given by the exporting country government (WTO 1995). The Anti-Dumping Measures (ADMs; Article VI of the GATT) allow member countries to restrict imports if it threatens or injures the domestic industries due to dumped imports (WTO 1995).

Among the three trade protection measures, the anti-dumping measures have been used largely by the countries followed by countervailing measures and there has been only a rare use of the safeguard measures (Table 1.1). There is also a vast difference in the ratio of use of these protective measures (Table 1.1). This makes the anti-dumping an interesting subject of the study. The focus of this study is mainly the anti-

[1]According to the MFN principle (Article 1 of the WTO) countries cannot discriminate among their trading partners and have to give equal MFN status to all its trading partners.
[2]According to the National Treatment principle (Article 2 of the WTO), countries cannot discriminate between their own and foreign products and services.

dumping measures leading to the WTO disputes. The Article VI of the GATT 1994 provides guidelines on the procedure and process of the anti-dumping measures.

Table 1.1

Contingent Protection Measures (1995-2017)

	1995-97	1998-00	2001-03	2004-06	2007-09	2010-12	2013-15	2016-17	Total
Anti-Dumping Measures	629	917	917	622	600	546	752	546	5529
Countervailing Measures	33	84	51	22	55	57	109	75	486
Safeguards	10	50	61	34	43	56	58	19	331

Source: WTO (2019)[3]; Author's compilation based on data collected from the WTO Website.

Before getting into the analysis of the uses and practices of anti-dumping measures, it becomes pertinent to know about the phenomenon of dumping as practiced by different countries in conducting their trade.

1.2 Dumping

The understanding of the anti-dumping measures needs a proper study and understanding of the concept of dumping. There is an uncertainty regarding the origin of the word 'dump' (Finger 1993). Nonetheless, in Britain, the question of the tariff was an important political issue in 1903 and 1904 followed by critical pieces of literature which talked about the tariff controversies (Finger 1993; Bahal 2012). There was a dearth of literature which talked about dumping and the term became well established. Since then, the word dumping was found in different languages like German, French and Italian. The term was initially used in a vague and uncertain manner and still is used as a synonym for different practices of price like local price cutting, customs undervaluation, severe competition, bargain and sales ata lower price in one national market compared to others.

Viner (1923) has been considered as the first scholar to trace incidences of dumping (Finger 1993). Viner (1923) "notes a 16th century English writer charging the

[3]The data on contingent protection measures is available till December, 2017 at the time of thesis writing.

foreigners with selling paper at a loss to smother the infant paper industry in England" (Finger 1993). He noted another incidence of dumping in the 17th century by the Dutch "selling in the Baltic regions at ruinously low prices to drive out French merchants" (Finger 1993).

There is an absence of any definition of dumping that is universally accepted and it has been defined by several scholars in different ways. Dumping is considered as the sale of products in the foreign market below the price of the domestic market's marginal cost (Bannock, Baxter and Rees 1978). Dumping is "price discrimination between national markets" (Viner 1923). Dumping occurs if "similar products are sold by a firm in an export market for less than what is charged in the home market" or if "the export price of the product is less than total average costs or marginal costs" (Hoekman and Leidy 1989). Dumping is "sales in international markets by foreign producers either at prices less than they charge in their home markets or at prices below their cost of production" (Baldwin 1998). The one important change in the definition is that earlier the dumping was confined to predatory pricing dumping[4] strategies but in recent years dumping covers unfair trade practices due to social[5] and environmental dumping[6] (Cass and Boltuck 1996).

The WTO Agreement on Implementation of Article VI of the GATT 1994, known as the Anti-Dumping Agreement (ADA) defines dumping as,

> for the purpose of this Agreement, a product is considered as being dumped i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country (Article 2.1 of the ADA).

An English Economist T. E. Gregory points out that the term dumping is used to cover four practices which are: (1) Sales at price lower than the price in foreign markets. (2) Sales at a price that prevents foreign competition. (3) Sales at price

[4] Predatory dumping meant temporary sale of commodity below its average cost or at lower price in the foreign market so that foreign producers are derived out of market, after which the price is raised to take the advantage of monopoly power abroad.

[5]Social dumping is trade in products of countries that suffers from low wage, low health and other benefits (Cass and Boltuck 1996).

[6]Environmental dumping is trade in products of countries that has less protection of environment (Cass and Boltuck 1996).

abroad which are below the price prevailing in the current domestic market. (4) Sales at a price which are not profitable to the sellers (Viner 1923).

1.3 Causes of Dumping

1. Dumping takes place when the producers of a particular country have competition with the producers of another country.
2. The producers want to gain a larger share of the world market in order to expand its industry and eliminate all other producers in other countries.
3. Dumping occurs when there is an excess commodity in the domestic market and producers try to get rid of them by giving them at a cheaper rate in the foreign market.
4. Dumping is practiced in order to gain profits when the producers divide the sale in both the markets and charge the prices that are willingly paid by the buyers.
5. Dumping is practiced by the monopolists in order to develop new trade and profitable relations with the foreign market.

There are certain conditions that are mandatory for the dumping to be exercised. First, there should be an imperfect market where differences in price are possible between markets. In such market conditions, firms are price setter, not the price taker and the price is decided by them. Second, the market should be segmented so that no arbitrage is easily possible between the markets.

Mastel (1996) in American Trade Laws after Uruguay Round classified the motivation of dumping into four categories: (1) *Overcapacity dumping* occurs when companies produce and sell at price below average cost of production trying to get at least fixed cost spent on the product. (2) *Government Support dumping* occurs when due to subsidy provided by their governments, firms sell below the cost of production as done in case of agricultural products (3) *Tactical dumping* occurs when the same product is sold in different markets with a different price which works best if the home market is closed for imports and achieves profits that manages the low sales at the foreign market. (4) *Predatory dumping* drives competition out of the market to gain its exclusive control that injuries the local market which is an extreme form of price discrimination. Dumping hampers importing country's industries and as such

the WTO allows for anti-dumping measures on products causing dumping in the market of the particular country.

1.4 **Anti-Dumping**

Dumping was regarded as a problem for International trade and the Anti-Dumping Measures (ADMs) became important to offset the adverse impact of dumping. If dumping is a disease, the anti-dumping measure is considered as medication. Under Article VI of the GATT,

> The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than normal value of the product should be condemned if it causes or threatens material injury to an established industry in the territory of the contracting party or materially retards the establishment of a domestic industry (WTO 1994).[7]

The WTO ADA permits governments of particular countries to act against dumping if it hampers its industry. Subsequently, to prevent such injury the domestic industry can impose anti-dumping measures on that particular product. The government has to provide evidence of dumping and has to demonstrate that its industries are injured due to dumped products before applying anti-dumping measures. The WTO ADA provides detailed guidelines for investigation, margin calculation, determining injuries, process, and duration of the dumping, procedure, reviews, enforcement and dispute settlement related to dumping. The definitions of dumping have gone through changes and it has evolved over the years during Kennedy Round (1967), Tokyo Round (1979) and Uruguay Round of multilateral trade negotiations (1994) while negotiating on the anti-dumping code.[8] The ADA lays down strict rules for applying anti-dumping measures. There are three parts and two annexes in the ADA of the WTO. Part I consists of Articles 1 to 15, Part II covers Articles 16 and 17 and the final provision is mentioned in Article 18 of Part III (WTO 1995).

The economists often argue that the legal basis for anti-dumping provisions is completely different from its economic basis (Deardoff 1989). According to economists, dumping can only occur if there is imperfect competition, markets are segmented and products are not homogeneous. These concepts are missing in the anti-

[7]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, WTO Document LT/UR/A-IA/3 of 15 April 1994

[8]For more details, refer to the WTO website. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf.

dumping provisions. The lack of economic principles make economists unhappy about the provisions of GATT and later WTO related to anti-dumping (Viner 1923). According to Finger, "antidumping is just ordinary protection with a good public relations program" (Aggarwal 2007).

1.5 Evolution of the Anti-Dumping Laws

It was in 1904 when the first law on anti-dumping was adopted by Canada and by the end of October 2018, eighteen members had notified their anti-dumping legislation[9] (ADP Report 2018). The countries like Australia (1906), United States (1916), Japan (1920), New Zealand, France and the UK (1921) followed Canada and adopted laws on anti-dumping. It was considered that such adoption was to protect domestic markets from the dumping of German products after World War I (Finger 1993). However such a view was considered as "wartime plague of mendacious propaganda" by Viner (1923). It was in the early 1950s that Greece, Germany and Norway adopted anti-dumping legislation parallel to the time when GATT was established (1948). In 1956, the GATT members decided to properly understand and examine the legislation on AD (GATT 1958) which was followed by a few countries adopting anti-dumping legislation. The code on anti-dumping was first adopted in the Kennedy Round (1967). As the Kennedy and Tokyo Round was not part of the GATT Agreements, it needed to be validated by different countries separately.[10]

The broader origin of this law came as a public response to large monopolies and interested groups in the western countries especially the USA in 19th and 20th century. The USA introduced its first anti-dumping legislation in 1916 in which selling imports at lower prices was made illegal "with the intent of destroying or injuring the industry in the United States, or of preventing the establishment of an industry in the United States" (Blonegin and Prusa 2015). The law was adopted against the background of the Sherman Antitrust Act (1890) [11] and the Clayton Act (1914).[12] It was a criminal act with a criminal penalty as according to this law the complainant had to provide evidence to the judiciary that predatory dumping was practiced by the

[9]The twenty nine members of the European Union are counted as one member at the WTO forum.
[10]The USA did not sign the anti-dumping code of the Kennedy Round.
[11]The Sherman Antitrust Act of 1890 was a federal law passed in 1890 in the USA that prohibits contracts, combination or conspiracies in the restrained of trade or commerce.
[12]The Clayton Act of 1914 was an amendment which was made to the Sherman Act which clarified concepts like price discrimination, price fixing and unfair business practices.

foreign suppliers. This led to imposing fines and even imprisonment to the one found guilty. This practice was challenging as showing predatory intension to harm competitors by firms was legally difficult. The Tariff Commission Report of the USA in 1919 stated that broad issues of dumping were not covered in the legislation of 1916 which could be harmful to the producers of the USA. As a result, the 1921 Act was enacted in which duties could be imposed on the dumped goods by the Secretary of the Treasury and intension was not taken into consideration. The 1916 law focused on the exporter's intension whereas the 1921 law emphasised on injury and differences in price. According to the US 1921 Act:

> whenever the Secretary of the Treasure finds that an industry in the US is being or is likely to be injured or prevented from being established, by reasons of importation into the US of foreign merchandise and that merchandise of such class is being sold or is likely to be sold in the US at less than its fair value, he shall make such finding public. If the purchase price or exporter's sale price is less than the foreign market value (or in the absence of such value, than the cost of production) there shall be levied, collected and paid a special duty in an amount equal to such difference (Dale 1980).

The USA enacted the 'Anti-Dumping Act of 1921' that was an improvement over its 'Anti-Dumping Law of 1916'. The article six of GATT 1947 was formed on the basis of the US Act of 1921(Irwing 2005).

The basic principles of Article VI of GATT 1947 are:

1. A product would be considered as dumped if it was being introduced into the commerce of an importing country at less than its normal value, that is, if the price of the product exported from one country to another was less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. However, if there is absence of such domestic price, the highest comparable price for the like product for export to any third country would be considered in the ordinary course of trade, or the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit would be taken (WTO 1995; Gupta and Choudhury 2011).
2. Dumping needs to be condemned by imposing anti-dumping duties if it causes or threatens material injury to an established industry in the territory of a

contracting party or materially retards the establishment of a domestic industry (WTO 1995; Gupta and Choudhury 2011).

3. Due allowance would be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability (WTO 1995; Gupta and Choudhury 2011).
4. A contracting party might levy on any dumped product an ADD not greater in amount than the margin of dumping in respect of such product (WTO 1995; Gupta and Choudhury 2011).
5. The ADD would only be levied if it determined the effect of dumping as the case might be, was such as to cause or threaten material injury to an established domestic industry, or was such as to retard materially the establishment of the domestic industry (WTO 1995; Gupta and Choudhury 2011).

The act stated that the anti-dumping duties can be applied if the market value was more than the export price which resembles ADA's Article 2.1 according to which dumping would be considered if the product's normal value is more than its export value. Second, the act said that the cost of production can be calculated if the normal price was not certain which led the basis for the 'constructed value' under ADA's Article 2.2 that provides guidelines for calculating normal price under several situations in which the proper comparison of export price with normal price is not possible. According to Article 2.2 of the ADA,

> when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with the comparable price of the like product when exported to an appropriate third country, provided that this price is representative or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits (WTO 1995).

Third, according to the 'Anti-Dumping Act of 1921', there should be a relation between products dumped and damage caused similar to ADA under article 3.1. Therefore, the 'Anti-Dumping Act of the 1921' of the USA laid the bases for agreements on anti-dumping of the WTO.

The scholars like Stewart et al. (1993) view that anti-dumping law was adopted by developed countries because of fear from Germany. Germany had collected large stockpiles of goods during the world war to dump in the world market so that it could be economically advantageous as Germany had scientific superiority, cartel structure and protective tariff which increased the possibility of dumping. The other scholars like Eichengreen and James (2001), viewed that the European countries adopted anti-dumping legislation to rebuild their economies which were affected due to World War I. The World War I had disrupted global trade that led to import substitution domestically in the war affected countries. The end of the war would lead to a surge in imports affecting the domestic industries which paved the way for anti-dumping laws for many countries. So, anti-dumping laws were adopted individually as a protectionist measure in the war affected developed countries. The laws were adopted by the European countries and the USA as the consequence of World War I. Britain adopted its first anti-dumping legislation in 1921 followed by other countries of Europe.

Though anti-dumping legislation was adopted individually by the countries, a multilateral initiative was also initiated. A study was undertaken on dumping and differential pricing by the League of Nations in 1922. With the great depression of 1929, the other forms of protection like tariffs and quotas were used frequently and anti-dumping duties were not used much. However, it did not prevent GATT from emphasising on anti-dumping laws and a collective agreement was achieved in 1947 with the formation of the GATT. Article VI of the GATT incorporated basic conditions for adopting anti-dumping measures and it became international law. The original draft of Article VI of the GATT did not contain detailed rules regarding calculating and administrating the anti-dumping laws and several provisions were added to the anti-dumping laws through various GATT negotiations over the years.

The focus of the GATT's early rounds was to eliminate a traditional form of trade protection and did not make any addition or changes in Article VI of GATT. The negotiations on anti-dumping during the Kennedy Round of 1967 were signed by seventeen parties. The first change to the anti-dumping rules was initiated in the Tokyo Round (1973-79) which talked about 'sales below cost' and broadened the rule for defining dumping. It also clarified the concept of material injury. The most substantive changes to anti-dumping provisions were made in the Uruguay Round

(1986-1994). It provided a very detailed description regarding the implementation of anti-dumping actions by the WTO members. Though, the round refined anti-dumping provisions, the fundamental concepts of applying anti-dumping measures did not change which was based on traditional users' national laws (Deardoff 1989).[13] The developing countries had no role to play as most of them were colonies of developed countries and the ADA was designed by the developed countries to protect their emerging industries.

1.6 Developing Countries and the Anti-Dumping Code Negotiations

In the earlier negotiations of the GATT like the Geneva (1947), Annecy (1949), Torquay (1951), Geneva (1956) and Dillon Round (1960-61) the emphasis was on reduction of tariffs for easier flow of goods across member countries. However, in 1950s Sweden's dumping findings on Italy's stockings were challenged by Italy; a broad recommendation was made by the Panel as there was an absence of any formal rulings on anti-dumping and dumping. It was in 1958 that the members of the GATT asked the Secretariat to undertake a comparative study of laws related to anti-dumping. Subsequently, in 1960 a group was formed to look into the anti-dumping laws and similar studies were also conducted by the GATT Working party. During discussions on anti-dumping laws, not a single proposal came from developing countries as the primary focus for developing countries was on getting trade concessions in the form of reduction of tariffs within the GATT's framework (Hoda 1987).

Part IV was incorporated in GATT (1965) that allowed for preferential treatment to developing countries with three articles mentioned under 'Trade and Development'. This was an important article for developing countries. Article 36 stated that the developing countries' reciprocation is not required in return of the concessions given by developed countries that went against the principle of reciprocity. Article 37 said that priority should be given to the products which are of trade interests for developing countries. The final article that is Article 38 provided for joint action for developed and developing countries in different areas like the cooperation of agencies and studying the export potential of developing countries.

[13]The anti-dumping laws were based on the national laws of traditional users like Australia, Canada, the EU and the USA.

During the GATT negotiations which adopted Article IV, a proposal came that the developed countries should refrain from using measures like anti-dumping if the interests of developing countries were affected. However, such a proposal was not accepted by the developed countries. The Paragraph 3c was added to Article 37 which stated that the developed countries should consider the trade interests of less developed countries before imposing any measures as permitted under the agreement and they should also explore constructive remedies, if possible for least developed countries. The provision mentioned under the article was vague and it did not specifically talk about anti-dumping provisions. It even did not provide any suggestions for overcoming such measures for developing countries (Hoda 1987).

The first major effort to negotiate an ADA was made in the Kennedy Round (1964-67) which provided for multilateral rules for anti-dumping (Babili 2006). The negotiations were held to discuss the procedure related to the investigation, calculating the margin of dumping, establishing injury and the causal relations between injury and dumping. It also provided guidance for price undertaking and the collection of duties. The Group of Anti-Dumping Policies (GAP) consisted mainly of the OECD countries and developing countries were missing from earlier negotiations. However, in the later years of the Kennedy Round, concerns were raised by developing countries regarding the definition of dumping according to which,

> a product is to be considered as dumped, i.e. introduced in the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country (WTO 1995).

The developing countries argued that their market price mostly was higher than their export price because of their insufficient cost structure caused due to the high cost of capital, poor infrastructure facilities, labour laws, labour market conditions and bad governance. Therefore, in order to access the foreign markets, developing countries had to sell their products at a price lower than their domestic price. They argued that relying on the domestic market price and cost of production for considering normal value for anti-dumping investigation was not appropriate for developing countries. They came up with the proposal that the normal value calculation should not be based on the domestic price but on the international price. They also proposed that in the case of allegation of dumping against these countries, the third country's export price

should be considered instead of the price in their own market. The proposals were not considered by the developed countries (Kufuor 1998). Although a GATT Working Party was also established to consider the interests of developing countries related to Kennedy Anti-Dumping Code in 1970, it failed to conclude an agreement on the text and the basic definition of dumping remained unaltered, the issue raised by developing countries.

As discussed, the role of developing countries was confined to tariff concessions in the earlier negotiations of the GATT and the major laws including anti-dumping laws were designed by developed countries. Though, the participation of developing countries had increased in the Kennedy Round, their role remained negligible in the laws related to anti-dumping and it was mainly carried out by the OECD countries. Nonetheless, in the later phase of the Kennedy Round the developing countries raised concerns over the definition of dumping, their proposals as discussed in the above paragraph was completely rejected by the developed countries. Therefore, the developing countries until the Kennedy Round had no say in the anti-dumping laws' formation.

The Tokyo Round (1973-79) negotiated on the 'Special and Differential Treatment' provisions through which anti-dumping had Article 13 for developing countries. However, developing countries questioned the relevance of this article as the provision of the SDT was taken directly from Article 37(c) of Part IV without any improvement or modifications added in the earlier rounds of the GATT which required developed countries,

> To have special regard to the trade interest of less developed countries when considering the application of other measures permitted under this agreement to meet particular problems and explore all possibilities constructive remedies before applying such measures where they would affect essential interests of these countries (WTO 1995).

The developing countries again raised concern over the definition of dumping that required domestic price to be compared with the export price[14]. The proposal for granting technical assistance to developing countries was also raised. Nonetheless, these proposals were not considered and remained unattended in the WTO.

[14]The issue has already been raised during the Kennedy Round negotiations.

The negotiations in the Tokyo Round were also dominated by the developed countries and no major concerns of developing countries were considered on anti-dumping laws. The Tokyo Round provided for a reduction in custom duties in nine industrialised countries. The Tokyo Round instead removed the 'principle cause test' which said that there should be a determination of injury only if the relationship between the dumping of products and the injury caused due to dumping has been found by the authorities. Article 3(4) was added which said, "…There may be 'other factors' which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports." The authorities were not even required to examine these factors. The list of 'other factors' that can hamper domestic industries was added in the main text in earlier rounds which was shifted to the footnote in the Tokyo Round. The injury indicators that were included in the Kennedy Round like the practices of restrictive trade and the performance of exports were deleted in the Tokyo Round and it provided clear guidelines to the authorities for finding and establishing injury and the investigation period for dumping findings was confined to one year for speeding up the final determination. The Tokyo Round also aimed at bringing transparency in the system by extending the role of the anti-dumping committee and Article 8(5) was incorporated which asked for public notice for all anti-dumping decisions.

Article 15 of the ADA, talked about Consultation, Conciliation and Dispute Settlement, which was included in the Tokyo Round. This article is of utmost importance for this study as the thesis revolves around the dispute settlement mechanism covering anti-dumping disputes of India, Pakistan and Bangladesh. It said that the parties involved can consult with each other regarding any matter related to anti-dumping agreements. The matter may be referred to the Committee for Conciliation if a mutually agreed solution is not achieved at the consultation stage. The established Committee can establish the panel on the basis of written statements or facts made available by the party to examine the matter if the Committee for Conciliation fails to solve the issue through the use of its good office.

At the end of the round, it can be seen that though there was dumping related provisions in the agreement, no provision in favour of developing countries was considered. There were large numbers of anti-dumping initiations by different countries after the end of Tokyo Round negotiations as it improved the procedural

aspects of the injury finding and liberalised the injury test and causal relation between dumping and injury.

The Uruguay Round replaced GATT with the WTO that also included provisions on services and intellectual property adopted in Punta Del Este (1986). The participation of developing countries in this round increased compared to previous round of the GATT (Carpenter 1999).[15] The developing countries emphasised on including provisions on anti-dumping which was not referred to in the Ministerial Declaration for the Uruguay Round (Leeborn 1997). The developing countries by this time had started liberalising their trade and the anti-dumping provisions were obstacles for their products in getting market access of the industralised countries. They complained that developed countries extensively used anti-dumping that hindered their process of trade liberalisation. An important shift in the developing countries' role was that developing countries made a large number of submissions and proposals like including public interest clause, provisions on sunset review and anti-circumvention and review in the process of cumulation in the Uruguay Round of the WTO (Aggarwal 2004).

One of the proposals made was to strengthen the Dispute Settlement Mechanism (DSM) of the WTO so that the anti-dumping provisions are not misused by countries as the protectionist measures to protect their industries. However, developed countries did not want much international interference to their domestic decisions and subsequently, Article 17.6 (ii) was added in which the panel had limited role in the ADA which differed from the normal role of the panel in the DSB. There were no efforts to improve or elaborate on the SDT provisions for developing countries.

The major suggestions given by developing countries were rejected and only the proposal on Sunset Review was accepted. According to the Sunset Review Clause, after every five years, the authorities have to review the imposed anti-dumping duties and duties should be abolished if dumping is not found. However, it was not a great success for developing countries as the authorities could extend the anti-dumping measures for another five years if they figured that the removal of measures would harm the domestic industries.

[15]The Anti-Dumping Code of the GATT was signed by 25 countries whereas the Anti-Dumping Agreement of the Uruguay Round was signed by 128 countries.

The Uruguay Round provided with more detailed rules for initiating and implementing duties of anti-dumping, provisional measures and price undertaking. It also laid factors for terminating investigations on anti-dumping[16] and detailed notifications regarding anti-dumping measures were needed to be reported to the CAP.

Therefore, though the participation of developing countries had increased, they could not influence the outcome of the Uruguay Round and it was mostly determined by industralised countries like the EU and the USA. The provisions of major concerns for developing countries like SDT provisions, the definition of dumping and strengthening of DSM were not considered.

An attempt was made in the Doha round negotiations to clarify the anti-dumping measures (Das 2018)[17]. In the Doha round, the developing countries wanted inclusion of anti-dumping as a subject matter in the negotiation but the USA opposed its inclusion.[18] Though later the USA accepted the proposal and the anti-dumping agreements were included in the Doha agenda, their scope was limited. The members were mandated to negotiate on clarifying and improving the measures of the ADA. A group called 'The Friends of Anti-Dumping' (FANs) has been formed jointly by the developing countries like Chile, Brazil, Costa Rica, Colombia, Israel, Rep. of Korea, Turkey, Thailand and Chinese Taipei and few developed countries like Hong Kong, China, Switzerland Japan and Singapore. These countries became important players in the negotiations on anti-dumping. It was reported that several proposals were made for Doha Round negotiations out of which thirty proposals were from the FANs. The other active developing countries that have participated in the WTO negotiations are Argentina, India, Egypt, China and Venezuela. The countries have proposed amendments in the anti-dumping provision as developing countries have been major targets of anti-dumping actions (Johri 1999). Anti-dumping was the most important

[16]The anti-dumping investigation has to be terminated if the margin of dumping is less than 2 percent of the export price and less than 3 percent of the imports of product in question in the importing country.

[17]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

[18]Before Doha Ministerial Conference a resolution was passed by the House of Representative that instructed President to, "To preserve the ability of the United States to enforce rigorously its trade laws, including the anti-dumping and countervailing laws, and avoid agreements which lessen the effectiveness of domestic and international discipline on unfair trade, especially dumping and subsidies (US House, 7 November 2001).

issue to be discussed at the Doha Round negotiations for less developed countries as they are mostly targeted for anti-dumping measures (Zanardi 2004). The ministers agreed at:

> negotiations aimed at clarifying and improving disciplines under the [Antidumping Agreement], while preserving the basic concepts, principles and effectiveness of [the Antidumping Agreement] and [its] instruments and objectives, and taking into account the needs of developing and least developed participants (Article 28, WTO Ministerial Declaration, 2001).[19]

Though, developing countries and the LDCs are the mainly targeted for anti-dumping measures, traditional users Australia, Canada, EU, USA and New Zealand should also work for clarification of existing rules as the less developed and developing countries are also becoming active users of the anti-dumping measures.

1.7 Provisions of the ADA

There are a few specific provisions related to the ADA that are necessary to understand the practice of applying anti-dumping measures on imported products of specific countries. These provisions have been briefly mentioned in this section that has been referred throughout the chapters of the study.

The anti-dumping measures can only be applied under the circumstances that have been provided under Article VI of the GATT 1994 and no specific action can be taken against dumped products except measures referred under this article.

1.7.1 Determination of Dumping

The dumping is determined based on a comparison between the domestic price that is the normal value of the 'like products' (similar or identical products) and the export price of the exporting country. A fair comparison has to be made between the normal value and the export price at the same trade level (ex-factory level) and at the same time.

1.7.2 Normal Price

There are three situations in which the data on normal value can be rejected by the investigating authority like when there is the absence of any sale of the 'like product' in exporting country's market in normal times or when product's sale is low or when

[19]Article 28 also provides rules for the improvement of the countervailing measures.

sales do not allow for comparison between prices in a proper market situation. The third country's appropriate price or constructed normal value is taken for construction of normal value.[20]

1.7.3 Export Price

There are some cases in which the export price cannot be considered in the case of related exporters and importers due to transfer pricing.[21] The export price then is based on imported products first sold to independent buyers. The allowances for taxes, costs, duties and profits have to be considered between the importation and resale.

1.7.4 Methods of Comparison

The comparison between the two markets has to be made through the 'weighted average-by-weighted average method' or 'transaction method'. In the 'weighted average-by-weighted average method', the weighted average normal price is compared with the weighted average export price. In the 'transaction method', the export price and normal price is compared separately. In exceptional situation, weighted average normal value can be compared to individual export transaction. There may be price rejection of non-market economy and in such case the price of the third market economy is taken for calculating normal value.

1.7.5 Determination of Dumping

The determination of dumping is based on injury, the threat of injury or material retardation to domestic industries due to dumped imports. The domestic producers of like products or producers who produce a large proportion of product constitute a domestic industry. The anti-dumping investigations can be initiated simultaneously on the imports from several countries. The authorities should also examine other factors that hamper domestic industries and such injuries should not be assigned to products that have been dumped known as a non-attribution rule.

[20]The constructed normal value is the sum of the cost of production, overhead expenses and reasonable profits.

[21]Transfer Pricing is used for goods and services transferred between units and profit-centered within the same company, as well as for goods and services transferred between related companies located in different countries (Persevic and Haladika 2013).

1.7.6 Initiation of the Anti-Dumping Investigation

The anti-dumping case is initiated on the request of domestic industries through a written application to the administrative authority demonstrating that industries are suffering due to dumping. The application has to be supported by those producers who collectively produce more than 50 percent of the product in consideration and investigation would not be initiated if domestic producers supporting the application are less than 25 percent of products produced.

1.7.7 Termination of the Anti-Dumping Investigation

The agreement demands termination of the investigation if the dumping margin is *de-minimis* that is below two percent of the export price and dumped imports' volume is negligible that is below three percent of the dumped products individually and seven percent collectively or injury is found negligible. The period of investigation is one year which can maximum extend for 18 months.

1.7.8 Interested Parties in the Anti-Dumping Investigation

Throughout the investigations on anti-dumping, the interested parties are given full opportunities for defending their own interests. The group includes governments of respective importing countries and exporting countries, the foreign and domestic producers and representative of trade associations of both the countries. The authorities have to provide the non-confidential information and summary of confidential information to interested parties for effective debates and discussion. When parties fail to provide important information in the given time period, injury is determined on the basis of the facts available.

1.7.9 Application of the Anti-Dumping Measures

The anti-dumping can be applied in three ways like provisional measures, price undertaking or anti-dumping duties. The provisional measures are applied when the investigating authorities find that there are chances of dumping and injury in the domestic market and such measures are required to prevent the injury of the domestic market. The price undertaking means voluntary undertaking given by the exporter to revise its price or remove dumped imports to eliminate the injurious impacts of dumping whose acceptance is authorities' discretion. The anti-dumping duties are

imposed in a non-discriminatory manner on the like products that are found dumped and are causing injury to domestic producers which is more than the margin of dumping.

The anti-dumping duties can also be imposed for the period in which products faced provisional measures. It is under a certain situation in which duties are imposed on product that was consumed in the market not prior to 90 days of applying provisional measures. The public notices of procedures and findings of investigation has to be published.

1.7.10 Reviews of the Anti-Dumping Measures

There are three types of reviews recognised by the ADA. These are new shippers' reviews, interim (mid-term reviews) and expiry (sunset) reviews. The new shippers' review requires the authorities to review anti-dumping measures on the request of those producers whose production was not available in the investigation period. The interim review is requested by interested parties to review the decision of anti-dumping measures within five years of measures imposed. The definite anti-dumping duties are applied for a period of five years. The authorities can continue with duties for five more years after reviewing imposed duties (Sunset Review) and if they consider that removal of duties would lead to injury of industries.

The members should have independent administrative and judicial tribunal for reviewing the final determination of the administration. The developed countries have to consider the situation of developing countries and consider all remedies before applying anti-dumping measures on their product.

1.7.11 Committee on the Anti-Dumping Practices

There is a 'Committee on Anti-Dumping Practices' (CAP) which necessitates members to inform about their actions (Article 16). The national laws reviewed by the committee on ADP should confirm to the ADA.

1.8 Anti-Dumping Uses: Developed Versus Developing Countries

In the early 1980s, only a handful of countries initiated anti-dumping investigations. These traditional users are Australia, Canada, the EEC and New Zealand and a major percentage of all anti-dumping petitions were filed by them (Table 1.2). The anti-

dumping measures were imposed by a handful of countries, and the imports of these active countries were targeted by other active countries practicing anti-dumping, which created an AD club (Finger 1991; Prusa and Skeath 2002). As a result, anti-dumping was not an issue for other countries and remained confined to these developed traditional users.

However, the scenario has changed in recent years since 1995. The new entries are made by India, Argentina, Brazil, New Zealand and South Africa that have used anti-dumping actions largely as compared to traditional users. The new users have surpassed the traditional users (Table 1.2). Though numbers of developing countries users have increased, it has been confined to only a few developing countries (Aggarwal 2004). There were around forty percent of developing countries that have not initiated any anti-dumping investigation even if they had anti-dumping laws (Zanardi 2004). There are many countries like Bangladesh, Nepal, Vietnam, Maldives and Zimbabwe that have been targeted by other countries but have not initiated any anti-dumping investigations.

Table 1.2
Traditional and New Users

	1988-1992	In Percentage	1993-1997	In percentage
Traditional Users	**765**	**81**	**515**	**45**
New Users	**174**	**19**	**622**	**55**
Total	**939**	**100**	**1137**	**100**

Source: Miranda, Torres and Ruiz (1998)

Table 1.3
Anti-Dumping Initiations: By Reporting Members (1995-2017)

Top Initiators	1995-1997	1998-00	2001-03	2004-06	2007-09	2010-12	2013-15	2016-2017	Total
India	**40**	**133**	**206**	**80**	**133**	**81**	**97**	**118**	**888**
USA	**51**	**130**	**149**	**45**	**64**	**29**	**100**	**91**	**659**
EU	**99**	**119**	**55**	**89**	**43**	**45**	**29**	**23**	**507**
Brazil	**34**	**45**	**29**	**26**	**46**	**100**	**112**	**18**	**410**
Argentina	**64**	**69**	**39**	**31**	**54**	**33**	**31**	**31**	**352**
Australia	**66**	**52**	**48**	**27**	**17**	**37**	**52**	**33**	**332**
China	**0**	**16**	**66**	**61**	**35**	**22**	**29**	**29**	**258**
Canada	**30**	**47**	**45**	**19**	**10**	**15**	**33**	**28**	**227**
South Africa	**73**	**78**	**18**	**32**	**11**	**5**	**12**	**0**	**229**
Turkey	**4**	**16**	**44**	**45**	**35**	**18**	**34**	**25**	**221**

Source: WTO (2018); Author's compilation based on the WTO data

India, the USA, Brazil, Canada, Argentina, Australia, the EU, South Africa, China and Turkey are the top ten countries that have initiated an anti-dumping investigation (Table 1.3). The group of countries includes countries from different regions and are categorised under different income levels. The World Bank classification of countries based on income has been followed in this study. The group contains the countries from Pacific and East Asia (China and Australia), Central Asia and Europe (EU and Turkey), the Caribbean and Latin America (Argentina and Brazil), North America (the USA and Canada), South Asia (India) and the Sub-Saharan Africa (South Africa). If the countries are classified on the basis of income then the group contains lower middle-income economies (GNI per capita of $996 to $3,895; India and Indonesia), upper middle-income economies (GNI per capita of $3,896 to $12,055; Brazil, China, Turkey and South Africa), high-income economies (GNI per capita of $12,056 or more; Argentina, the USA, Canada and the EU) (World Bank 2018). Therefore, it can be seen that the group of active users of the anti-dumping measures are from different regions and diverse income groups. The countries from high-income economies dominated the anti-dumping action in the 1980s but at present the top initiator of anti-dumping investigation is India which is from the group of lower middle-income economies.

However, this should not be misunderstood that measures imposed by traditional users (Australia, the EU, Canada, USA, and) have reduced. They are still responsible for major parts of anti-dumping initiations that are currently in force. In Table 1.3, it is observed that though, maximum investigations have been initiated by one of developing countries, India but developed countries like USA, EU, Australia and Canada are still initiating a large number of anti-dumping investigations.

There can be several reasons for this shift in the use of anti-dumping action. First, the formation of the WTO led to the reduction of tariffs which was no longer a barrier against the imports of products. Second, there was an increase in finished products' imports by developing countries that changed the import substitution practices of the 1970s and 1980s. Third, the domestic industries which were uncompetitive were threatened by these imports. Fourth, due to democratisation, the developing countries' pressure groups became organised and called for new barriers to replace tariff barriers.

1.9 Why are the Anti-Dumping Measures used Extensively?

The simple answer to the extensive use of anti-dumping measures is to prevent the unjust practice of trade caused by cheap imports. But the answer is not very satisfactory. Anti-Dumping like countervailing measures and safeguards are protectionist measures sanctioned by the WTO. Unlike, safeguard measures, countries do not have to provide compensation to the affected countries nor can the countries retaliate (Aggarwal 2007). Moreover, incase, if the panel rules are in the favour of the countries, the losing countries do not remove the duty and also justify their action which burdens the complaining country.[22] As a result, there are no other trade measures like anti-dumping that provides so much protection without much risk of imposition of large duties, with no provision of appeal and direct retaliation for affected countries.

The increase in the use of such activity is guided by the embrace of the anti-dumping laws by new users (Prusa 2005). The growth in trade has led to more anti-dumping disputes (Prusa 2005). The upper middle-income countries like Brazil, Mexico and South Africa started using anti-dumping measures by mid-1980s. In the early 1990s, the lower middle-income countries like Egypt, Peru, Columbia and Turkey joined the club of anti-dumping. In the mid-1990s, the low-income countries like India, Nicaragua and Indonesia used the anti-dumping measures extensively (Prusa 2005; Blonegin and Pursa 2015).

The countries reduced tariffs and trade barriers after becoming a member of the WTO. The domestic industries which were protected for long years had to face international competition. These countries started using these measures to protect their industries and manage the tariff concession promised under the WTO (Prusa 2005). The increase in the process of trade liberalisation and reduction of tariffs through the WTO institution led to the extensive use of the non-tariff barriers especially anti-dumping measures. Anti-Dumping is used "as pressure valve to sustain further trade liberalisation" (Zanardi 2004). The communication from the USA to the WTO in 1998 supported the relationship between the trade liberalisation and anti-dumping measures.

[22]The softwood lumber case is a well-known example of this phenomenon. Despite having the WTO Appellate Body ruled against it on several occasions, the United States continues to impose duties on Canadian softwood lumber

It reads,

> …anti-dumping laws administered in strict conformity with the Anti-Dumping Agreement actually assist governments in their effort to continue trade-liberalizing measures by providing relief to domestic industries injured by foreign firms that engage in unfair trade practices, even as international trade liberalizes. From this perspective, the antidumping rules are a critical factor in obtaining and sustaining necessary public support for shared multilateral goal of trade liberalization (Zanardi 2004).

The other reason can be attributed to the retaliatory motive of the countries. The countries started using anti-dumping measures as a response to anti-dumping actions taken against them (Prusa and Skeath 2002). China has a law that substantiates this reason for retaliatory action. According to Article 56 of the new Chinese law (2002), "where a country (region) discriminately imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of the actual situation, take corresponding measures against that country (region)" (Prusa and Skeath 2002).

1.10 Major Targets of the Anti-Dumping Action

The countries mostly targeted for investigation are from the upper middle-income group of countries like China, Chinese Taipei, Thailand, Russian Federation, Malaysia and Brazil and lower middle-income group of countries like India and Indonesia (Table1.4). "The usual confrontation between developed and developing countries is partly misleading since much of action from developing countries is directed towards other developing countries" (Zanardi 2006:17).

The developing countries are targets for not only developed countries but also for other developing countries (Table 1.4). The anti-dumping initiations impact more to the economy of developing countries as compared to the developed ones. Aggarwal (2007) has come up with two observations; first, there are fewer chances of trade diversion by targeted countries' exporters if the measures have been imposed by large importers like the USA. Second, the exporters of developed countries are in a better position to deflect their trade to offset the effects of anti-dumping measures.

A company requires enough time and expenses to defend against charges of dumping (Yano 1999). The firms of small countries face difficulties as it lacks experts, finance and manpower to deal with dumping charges and subsequently dumping

investigations are likely to result in the imposition of measures in these countries. The other cause of large anti-dumping investigations against these countries is that the prices in the domestic market may be higher as compared to export market because of insufficient structure of cost due to fiscal tax and tariffs.

Table 1.4

Anti-Dumping Initiations: By Exporters (1995-2017)

	1995-97	1998-00	2001-03	2004-06	2007-09	2010-12	2013-15	2016-17	Total
China	96	112	158	175	217	155	209	147	1269
Korea, Republic of	40	85	63	46	30	42	60	51	417
Taipei, Chinese	29	45	48	47	29	36	40	22	296
USA	48	43	47	37	29	38	29	12	283
India	22	36	42	28	17	21	39	22	227
Thailand	22	33	36	29	30	23	26	22	221
Japan	25	48	43	25	12	16	26	20	215
Indonesia	23	38	38	31	26	15	18	19	208
Russian Federation	16	43	31	17	12	8	16	19	162
Malaysia	10	20	18	25	24	9	22	20	148
Brazil	23	28	19	21	17	8	13	19	148

Source: WTO (2018); Author's compilation based on the WTO data

1.11 Sectors Targeted for the Anti-Dumping Measures

There are some sectors that have faced more anti-dumping measures compared to other sectors. During the period 1988 to 1997, 74 percent of anti-dumping measures have been initiated on sectors like plastic, textiles, machinery and electrical equipments, chemicals and metals especially steel (Miranda et.al 1998). The countries mostly target those sectors that are of export interests of its trading partners.

Table 1.5

Anti-Dumping Investigations: Sectors Targeted (1988-1997)

Commodity Sectors	No. of cases initiated (1988-1997)	In Percentage
Base Metals	**532**	**26**
Chemicals	**335**	**16**
Machinery and Electric Equipments	**271**	**13**
Plastics	**243**	**12**
Textiles	**144**	**7**
Others	**536**	**26**
Total	**2061**	**100**

Source: Miranda, Torres and Ruiz (1998)

Table 1.6

Anti-Dumping Investigations: Sectors Targeted (1995-2017)

	XV Base Metal and Articles	VI Chemical and Allied Industries	VII Resins, Plastic and Articles	XVI Machinery and Electrical Equipments	XI Textiles and Articles	X Paper, paper boat, Articles	XIII Articles of stone,plaster	Others[23]
1995-97	**146**	**94**	**82**	**91**	**32**	**53**	**25**	**106**
1998-00	**329**	**161**	**97**	**70**	**81**	**30**	**26**	**123**
2001-03	**287**	**236**	**123**	**45**	**45**	**34**	**28**	**119**
2004-06	**108**	**125**	**105**	**62**	**64**	**31**	**30**	**97**
2007-09	**145**	**137**	**68**	**66**	**71**	**29**	**18**	**66**
2010-12	**177**	**107**	**77**	**36**	**21**	**37**	**39**	**52**
2013-15	**291**	**138**	**109**	**46**	**37**	**23**	**40**	**66**
2016-17	**209**	**115**	**65**	**21**	**42**	**29**	**22**	**43**
Total	**1692**	**1114**	**726**	**437**	**393**	**266**	**228**	**673**
Percent	**29**	**20**	**13**	**8**	**7**	**4**	**4**	**12**

Source: WTO (2018); Author's Compilation based on the WTO data

[23]The other sectors include I Live animals and Products, II Vegetable products, III Animal and vegetable fats, IV oil and waxes, V Prepared foodstuff; Beverages; spirits; vinegar; tobacco, VI Mineral Products, VIII Hides, Skins and Articles; Saddlery and travel goods, IX Wood, cork and Articles; basketware, XII Footwear, headgear; feathers, artificial. Flowers, fans, XIV Pearls, precious stones and metals; coin, XVII Vehicles, aircraft and vessels, XVIII Instruments, clocks, recorders and reproducers and XX Miscellaneous manufactured articles.

The total number of sectors on which anti-dumping has been initiated till December 2017 was 5529.

Table 1.7

Anti-Dumping Measures on Specific Sectors

Sectors	Total Anti-Dumping Measures (1995-2017)	In Percentage
Base metals and Articles	**1153**	**31.9**
Products of chemical and allied industries	**757**	**21**
Resins, plastic and articles, rubbers and articles	**452**	**12.5**
Machinery and Electrical Equipment	**286**	**7.93**
Textiles and Articles	**271**	**7.50**

Source: WTO (2018)

The science based sectors were targeted more as compared to the labour and resource based sectors till the 1980s (Aggarwal 2007). The base metal, especially steel was targeted most in the resource intensive sectors (Table 1.5). The plastic, scale intensive, chemicals and rubbers are mostly targeted in the science based sectors. The base metals have been targeted for anti-dumping measures in 31.9 percent of cases followed by chemical and allied industries (21 percent) raisins, rubbers and plastics (12.5 percent)(Table 1.6 and 1.7). Miranda et al. (1998; 16) argued that "the world market for steel, base chemicals and plastics are highly cyclical. Thus at the bottom of the cycle, firms operating in these markets may turn to pricing sales below cost". One significant thing to notice is that there has been a shift in the sectors targeted from science based sectors to labour and resource intensive sectors which are of direct interest to developing countries.

1.12 Anti-Dumping: A problem for International Trade

Though anti-dumping measures were adopted to offset the adverse impact of dumping which was considered as a problem in International trade, these measures have been largely misused by countries. In its first seventy years, anti-dumping was not used widely and had a handful of users but at the present time, anti-dumping has become

an obstacle to the fair and free trading system of the WTO. The anti-dumping is considered a larger problem compared to dumping in international trade (Miranda, Torres and Ruiz 1998; Prusa 2005; Zanardi 2004; Blonigen 2003). The medication (anti-dumping measures) has proved to be more harmful than the disease (dumping) as it is being used as a protective measure by a large number of countries (Prusa 2005). Viner (1923) came out with a book "Dumping: A Problem in International Trade" and Zanardi (2005) wrote a book "Anti-Dumping: A Problem in International Trade" and subsequently both dumping and anti-dumping have emerged as a problem for free and fair international trade conducted by the institution of the WTO. Dumping is not a real-world problem (Hoda 2018)[24]. According to the Section 301 of the US Trade Act, the USA can take action if its trade is hurt due to measures of other countries and anti-dumping measures resemble such laws (Hoda 2018)[25]. The anti-dumping laws are so bad to be justified (Hoda 2018)[26]. Anti-Dumping "is simply a modern form of protection" since "all but anti-dumping staunchest supporters agree that anti-dumping has nothing to do with keeping trade "fair"..."(Blonigen and Prusa 2003). The countries misuse these measures to guard their industries (Das 2018)[27]. The measures are misused by countries as it is against the basic principles of the WTO and in this liberalised world and the aim should be on the complete elimination of anti-dumping measures (Hoda 2018).[28]

The general equilibrium model has stated that the removal of anti-dumping and countervailing duties in the USA in the year 1993 would have led to welfare increase by US$4 billion (Gallaway et. al 1999). "It often seems that just when developing countries begin to efficiently operate and become more competitive in particular markets, industrialised countries shut down those precise markets" (Prusa 2001). Therefore, anti-dumping which was used to prevent the unfair trade practice of dumping were actually used by developed countries as protective measures to prevent developing countries from becoming competitive in their market. A tendency was observed among developed countries that they initiated investigations against those

[24] Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[25] Ibid.
[26] Ibid.
[27] Personal Interview with Prof. Abhijit Das Chair, CWS at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[28] Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

developing countries which were major suppliers to the regions and world market. For example, Argentina's ASCOR was a primary multinational steel producer and Pohang Iron &Steel Corp of South Korea was the second largest steel producer during the 1980s and is third largest in the present time (2019). The tariff barriers have been reduced through various rounds of the GATT and as a result the extensive uses of anti-dumping measures as non-tariff barriers have been observed. The initiation of an investigation on anti-dumping should not be considered that measures would be imposed because the anti-dumping investigations can be terminated on several grounds as discussed in the above subsection of the chapter entitled "Provisions on Anti-Dumping Agreement". Therefore, it becomes significant to analyse the anti-dumping measures imposed on different countries from the period 1995 to 2017. Anti-Dumping laws are questionable and flawed if it is not being used to prevent unfair trade practices.

The next section introduces the Dispute Settlement System (DSS), the judicial body of the WTO, which examines the cases of trade disputes of the member countries. The countries can approach the WTO judicial body if it feels that the measures of other countries are against the WTO agreements and is hampering their trade. The members can participate as a complainant, a respondent and a third party. The structure, bodies and functioning of the WTO DSS has been discussed below. Subsequently, if anti-dumping measures are obstacles for international trade, these can be questioned and rectified through the DSS platform of the WTO.

1.13 Dispute Settlement System of the WTO

The DSU of the WTO provides for a mechanism for resolving trade disputes of member countries. The legal basis of such claims is provided through Article XXII and XXIII of GATT 1994. It came with certain advancement and modification of prior dispute settlement procedure of GATT 1947 like "reverse consensus", formation of the Appellate Body[29], proper deadlines for different procedures[30] and the improved process of compliance (Shedd etal. 2012)[31].

[29]The new Appellate Body was formed in order to review the legal interpretation of the panel which was a great achievement.
[30]There was a proper time framework for each procedure that was missing in earlier dispute settlement under GATT 1947.
[31]GATT had a provision that DSB would operate by consensus that is without the objection of any member. But it was reversed in the DSU in Article 2.4 that the members now had to decide by

The beauty of the WTO DSS is that it provides a platform for small countries to challenge the big countries as Costa Rica challenged the import restrictions by the USA on its exports of underwear. The rulings favored Costa Rica and the USA was asked to remove its import restriction from exports of underwear from Costa Rica (Hoda 2018)[32]. This demonstrates that trade measures of large countries can be challenged by small countries and can also get the panel rulings in its favour. This is possible only at the WTO DSS platform (WTO Handbook 2004).

The DSS of the WTO works with the help of different bodies. **a)** ***The Dispute Settlement Body (DSB):*** The DSB (DSU's Article 2) approves the request of members to form the panel, adopt the Panel and Appellate Body report. It also authorises the members to adopt retaliatory measures if losing members do not follow rulings of the panel. ***b) Director General*****:** It provides its good office for pacification and mediation to assist developing and LDCs at the consultation stage (DSU'S Article 5.6). It decides Panel's composition and time frame of the dispute if members fail to agree on these issues (DSU's Article 8.7). The retaliatory measures are also examined in case the parties fail to follow the decision of the Panel and Appellate Body (DSU's Article 22.6). ***c) Secretariat*** (DSU's Article 27): It provides administrative help and legal assistance to the DSB. ***d) Panel*** (DSU's Articles 6, 7 and 8): It is partially judicial in nature comprising of three to five members selected specifically for each case by the member countries in the dispute. The members serve in the individual capacity and not as a representative of the government. The Panel analyses, evaluates and scrutinises the matter initiated by different member countries and also gives rulings in that particular matter. ***e) Appellate Body*****:** This body (DSU's Article 17), unlike Panel, is permanent in nature elected for a period of four years. It examines the legal and factual aspects of the Panel's ruling if challenged by the members. ***f) The Experts*** (DSU's Article 13 and Appendix 4): The experts advise the panel on disputes which are technical or scientific in nature. The cases related to SPS measures, SCM and TBT require specialised knowledge of the expert. ***g) Arbitrators*** (DSU's Article 25): Arbitrators help when members fail to agree on a reasonable time period and the level of the process of retaliation.

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consensus not to do so, therefore, it was a complete reversal of the earlier process which prevented any member from blocking any decision.

[32]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

1.14 Stages in the Dispute Settlement System

The disputes go through different stages that are from pre-litigation that is the consultation stage to the litigation stage where the Panel and Appellate Body have to play a significant role. The final stage of dispute includes the stage of Implementation, Compensation and Retaliation.

a) Pre-Litigation Stage (Consultation Stage): The written request can be made for consultation with a trading partner if the country feels that it is being nullified of the trade benefits due to any trade measures of its trading partner. The consultation has to be taken place in 30 days span of consultation's request. The members can request for panel's establishment if the matter is unresolved in 60 days of consultation's request. The government of both countries can reach at a mutually agreed solution at any stage of the DSM (DSU's Article 4).

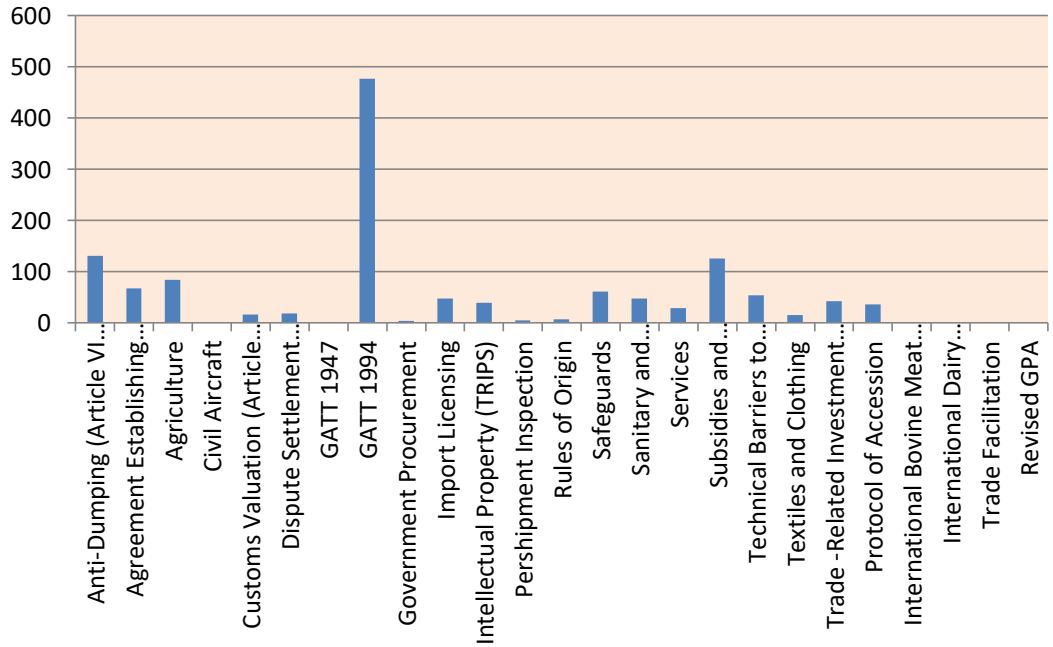
***b) Litigation Stage*:** The litigation stage includes the panel stage and the stage of the Appellate Body Report. *i)* ***First stage- the panel stage*:** If the pre-litigation stage that is consultation, fails to achieve any result, the complainant can request for the panel's establishment. The panel is established in 45 days of request received and it should present a report on that particular case within six to nine months. It should scrutinise and examine the facts and measures related to the dispute in impartial manner. ***ii) Second stage: Review of the Appellate Body*:** The parties can approach the Appellate Body for the review of the panel's rulings. The Appellate Body scrutinises legal aspect of the challenge and can modify, reverse or uphold panel's findings (Article 17.3 of the DSU).

c) Final Stage: The members after panel and Appellate Body rulings can adopt different measures: ***i) Implementation***: The countries have to follow panel and Appellate Body's decisions and confirm its action with the violated agreements. A reasonable time period for implementation is decided by the Dispute Settlement Body (DSB) if there is no possibility of immediate implementation. ***ii) Compensation:*** The other member can ask for compensation if losing member fails to comply with rulings. The party whose action has been questioned can also offer compensation to the member which has suffered due to countries' trade measures. *iii)* ***Retaliation*:** If countries fail to implement rulings and it even fails to provide any compensation, the countries can request for authorisation of retaliatory powers.

The complaint can be initiated when a member considers that their trade is hampered as a result of other countries' measures violating the WTO agreements. The complainant has to submit an application requesting consultation identifying the agreements which have been violated. The dispute can be and is often initiated under more than one agreement. The agreements are Agreement Establishing the World Trade Organization, Agriculture, Anti-dumping (Article VI of GATT 1994), Civil Aircraft, Custom Valuation (Article VII of GATT 1994), Dispute Settlement Understanding, GATT 1947, GATT 1994, Government Procurement, Import Licensing, Intellectual Property (TRIPS), Preshipment Inspection, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Services, Subsidies and Countervailing Measures, Technical Barriers to Trade (TBT), Textiles and Clothing, Trade-Related Investment Measures (TRIMS) and Protocol of Accession (Table 1.8). Till March 2019, 131 disputes have been initiated under WTO ADA which is highest compared to other agreements of the WTO (Figure1.1). The anti-dumping laws have been misused by the importing country for protection of domestic firms, the possibility of injury finding is high and subsequently more anti-dumping cases are filed (Aggarwal 2003).

Figure 1.1

Measures Challenged in the WTO DSS



Source: WTO (2019)[33]

[33]The data till April 2019 has been presented in Figure 1.1.

1.15 Consultation and Dispute Settlement under the ADA

In order to initiate WTO proceedings on anti-dumping in the DSB, the private industries of the importing countries lobby government and explain the technicalities of the case and convince the government of the importance of initiating the dispute in the WTO DSS. The government would not want to lose a case if it is the one approaching the DSB as a complainant and subsequently they tend to file the case only when they are convinced of favourable panel's ruling. The litigation process is costly and labour intensive as the fate of a particular dispute is dependent on the details and facts of the disputed matter. The targets are mostly developing countries by both developing and developed countries. Developing countries' participation over the past twenty years has increased and as a result, their role in the WTO disputes has also increased (Das 2018)[34]. The Trade and Investment Framework Agreement (TIFA) between Nepal and the USA speak volume of increase in the developing countries' participation in the international trade (Das 2018)[35].

The ADA in its Article 17 talks about Consultation and Dispute Settlement. Under ADA's Article 17.3, the consultation request can be made by countries with other countries in case it feels that it has been nullified of any benefit from the ADA because of another member's measures. According to Article 17.3 of the ADA,

> if any member considers that any benefit accruing to it, directly or indirectly, under this agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by other member or members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultation with the member or members in question. Each member shall afford systematic consideration to any request from another member for consultation (WTO 1995).

Under ADA's Article 17.4, if the consultation fails to achieve any result and if the importing country's administrating authorities have taken the decision to levy anti-dumping measures, the reference of the matter can be made to the DSB of the WTO. The complaining country can also approach the DSB if it feels that the provisional measure of the importing country that has injured its domestic industries was not taken in accordance to Article seven's Paragraph one. It provides, "Except as

[34]Personal Interview with Prof.Abhijit Das, Chair, CWS at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[35]Ibid.

otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and settlement of disputes under this Agreement" (ADA's Article 17.1).

A panel is established to investigate the issue by the DSB after receiving a request from complaining party. The matter will be investigated based on the written statement and available facts supporting the country's claim of the nullification of benefits arising from the trading partner's measures. The Panel's role is mentioned under ADA's Article 17.6 that says, "in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not have overturned" (WTO 1995).

This demonstrates that the panel has a very limited role as it just has to examine that the investigation has been done in impartial and objective manner and it cannot overturn the evaluation made by authorities conducting investigations in an impartial and objective manner. This makes Panel's role in the anti-dumping disputes different from DSU's other agreements. These articles limit the role of the panel as it cannot challenge the evaluation of the facts which have been made by the authorities. The panel has to uphold national authorities' interpretation in cases two or more interpretations are possible.

The article further provides, "the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law." The panel should not disclose confidential information without formal permission from person, body or authorities. However, a brief on non – confidential information is provided after getting authorisation from the person, authority or body (ADA's Article 17.7).

The next section analyses the relationship between the anti-dumping measures of active countries and anti-dumping disputes in WTO DSS.

1.16 Anti-Dumping Measures and Countries as Respondent

The anti-dumping measures are imposed largely by developing countries like India, Argentina, Turkey, Brazil, South Africa and China and developed countries like the USA, the EU, Australia and Canada. India is the only country from middle income

countries that have imposed 656 (2017) anti-dumping measures that equals to 18.4 percent of total anti-dumping measures (Table 1.8). Now if member countries feel that the anti-dumping measures applied are inconsistent with the WTO ADA, it can approach the DSB for analysis of the anti-dumping measures imposed on the targeted product. The anti-dumping measures of the USA have been challenged 55 times (2017) in the DSB of the WTO which demonstrates that the USA has a large number of complaints against its anti-dumping measures. It is a developing country India followed by developed countries, the USA and the EU that have imposed a large number of anti-dumping measures on different products of exporters.

Table 1.8

Anti-Dumping Measures and Countries as Respondent

Reporting Countries	Anti-Dumping Measures by Reporting Country	Percentage (Total number of Anti-Dumping Measures are 3604)	Reporting Countries as Respondent in the Anti-Dumping Disputes
India	**656**	**18.04**	**4**
USA	**427**	**11.8**	**55**
EU(earlier EC)	**325**	**9.01**	**15**
Brazil	**251**	**6.96**	**2**
Argentina	**241**	**6.68**	**4**
China	**197**	**5.46**	**7**
Turkey	**189**	**5.24**	**0**
Australia	**151**	**4.18**	**2**
Canada	**145**	**4.02**	**2**
South Africa	**137**	**3.80**	**5**

Source: WTO (2019)

1.17 Anti-Dumping Measures and Countries as Complainant

The anti-dumping measures have been imposed mostly against developing countries China, Chinese Taipei, Thailand, India and Indonesia. China has become active in the WTO DSS with ten disputes as the complainant (Table 1.9). India has initiated 18.04 percent of anti-dumping measures which is high compared to 3.6 anti-dumping measures imposed on Indian products.

The developing and the LDCs lack the capacities to approach the DSS and the participation is confined to only a few developing countries. There are several reasons for the absence of a large number of developing countries in the DSS which have been discussed in Chapter five of this study.

Table 1.9

Anti-Dumping Measures and Countries as Complainant

Exporters	Anti-Dumping Measures on Exporters	Percentage (Total Number of Anti-Dumping Measures are 3604)	Targeted Countries as Complainant on anti-dumping disputes
China	**926**	**12.6**	**10**
Korea, Republic of	**262**	**7.26**	**10**
Taipei, Chinese	**197**	**5.46**	**3**
USA	**181**	**5.02**	**8**
Japan	**152**	**4.21**	**8**
Thailand	**146**	**4.05**	**4**
India	**130**	**3.60**	**9**
Indonesia	**130**	**3.60**	**8**
Russia	**122**	**3.38**	**4**
EU	**86**	**2.38**	**9**

Source: WTO (2019); Author's Compilation based on the WTO data

1.18 South Asian Countries, Anti-Dumping Measures and Anti-Dumping Disputes

There are eight countries included in the region of South Asia. These are India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, Maldives and Afghanistan (World Bank 2019). India, Pakistan, Bangladesh and Sri Lanka are the founding members of the WTO in 1995. The other members have acquired the membership later; Maldives (31st May 1995), Nepal (23 April 2003) and Afghanistan (29 July 2016). Bhutan is an observer government of the WTO and has not acquired full membership (WTO 2019). The Study is devoted to analyse the role, experiences and challenges of developing countries India, Pakistan and an LDC Bangladesh in the DSB on the ADA. Therefore, the study will be confined to these countries of South Asia.

Table 1.10

Economic Situations of India, Pakistan and Bangladesh (2017)

	India	Pakistan	Bangladesh
GDP (US $ billions)[36]	2600	304.95	249.72
GDP Growth (percent: annually)	6.7	5.7	7.3
GNI (US $ millions)[37]	2,405	311.67	242.75
GNI per capita, Atlas Method (Current US $)	1,800	1,580	1,470
Exports of goods and services (% of GDP)	19	8	15
Imports of goods and services (% of GDP)	22	18	20
Merchandise Trade(% of GDP)	29	26	36
External Debt Stocks (US$ million)	513,209	84,523	47,155
Personal Remittances received (US $ million)	68,967	19,689	13,498
Net Official Development Assistance Received (US $ million)	3,093.6	2,283.3	3,704

Source: World Bank (2018)

As the GNI per capita of India, Pakistan and Bangladesh are $1800, $1580 and $1470; these are included in the lower middle-income economies. The lower middle-income status was given to Bangladesh on 1 July 2015 and it has shifted to lower-income economies from low-income economies (Bhattacharya and Khan 2018). India is much ahead compared to Pakistan in terms of GDP and GNI (Table 1.10). Among South Asian countries, India and Pakistan have only initiated anti-dumping investigations from the period 1995 to 2017.Though both India and Pakistan are categorised as developing countries (UN 2019) and lower middle-income countries (World Bank 2019), India is much ahead and in better economic position compared to Pakistan in terms of its GDP, exports, imports, merchandise trade, remittances and development assistance received (Table 1.10). India's name comes amongst top users of anti-dumping measures and Pakistan has participated in only few anti-dumping actions.

[36]Gross Domestic Product (GDP) is the value of a country's overall output of goods and services (typically during one fiscal year) at market prices, excluding met income from abroad. GDP can be estimated in three ways: (1) Expenditure Basis: How much money was spent, (2) Output Basis: How many goods and services were sold and (3) Income Basis: How much income (profit) was earned (Business Dictionary).

[37]Gross National Income (GNI) is the Gross Domestic Product (GDP) of a country combined with its international income. It consists of government expenditure, net income from international assets. The gross imports and indirect business taxes are deducted (Business Dictionary).

Table 1.11

India and Pakistan: Anti-Dumping Initiations

Year	India	Pakistan
1995-97	40	0
1998-00	133	0
2001-03	206	4
2004-06	80	20
2007-09	133	29
2010-12	81	23
2013-15	97	18
2016-17	118	27
Total	888	121

Source: WTO (2018)

It can be seen that at the time when India was already an active user of the anti-dumping investigations (1995-2003), Pakistan had initiated only 4 anti-dumping investigations (1.11). Though the participation of developing countries has increased in the anti-dumping action, it is confined to only a few countries like India, Indonesia, Brazil, New Zealand and Argentina.

Table 1.12

Anti-Dumping Initiations in South Asia: By Exporters

Year	India	Pakistan	Bangladesh
1995-97	22	3	0
1998-00	36	1	0
2001-03	42	5	1
2004-06	28	1	0
2007-09	17	1	1
2010-12	21	4	0
2013-15	39	6	2
2016-17	22	4	2
Total	227	25	6

Source: WTO (2018)

The products of India, Pakistan and Bangladesh have been targeted for anti-dumping investigations several times. India has faced 227 anti-dumping measures on its products that are far more than compared to Pakistan with 25 and Bangladesh with 5 anti-dumping measures (Table 1.12).

Table 1.13

Anti-Dumping Measures and Anti-Dumping Disputes

Countries	As reporting country	No. of Measures targeted (As Respondent)	As Exporters	No. of measures questioned (As Complainant)
India	**656**	**4**	**130**	**9**
Pakistan	**65**	**2**	**13**	**2**
Bangladesh	**0**	**0**	**5**	**1**

Source: WTO (2018)

India has imposed 656 anti-dumping measures from the period of 1995 to 2017(Table 1.13), out of which its 4 anti-dumping measures on lead-acid battery (Bangladesh), seven products (Chinese Taipei), twenty seven products (EU) and USB flash drive (Chinese Taipei) have been challenged in the DSB of the WTO (WTO 2019). Similarly, India's products have been targeted for 130 anti-dumping measures, out of which India has challenged nine measures on its shrimp (USA), iron and steel (EU), jute bags (Brazil), carbon quality steel plant product (EU), bed linen (EU), pharmaceuticals (South Africa), unbleached cotton fabric (EU), PET (EU) and Byrd Amendment (USA) in the WTO DSS (Table 1.13).

Pakistan has imposed 65 anti-dumping measures and out of these 65, its two anti-dumping measures on papers (Indonesia) and Biaxially Oriented Polypropylene (BOPP) Film (UAE) have been challenged in the DSB of the WTO (Table 1.13). Pakistan's products have been targeted 13 times, out of which Pakistan has challenged two anti-dumping measures on its cement (South Africa) and matches (Egypt).

Bangladesh has been targeted six times for anti-dumping measures and out of which it has challenged one anti-dumping measure of India on its lead-acid battery (Table 1.13). India and Pakistan are both considered as developing countries but there is a vast difference in their level of participation both in anti-dumping measures and anti-dumping disputes.

Against the background, this study undertakes to analyse the position of South Asian countries as respondents and complainants in the WTO DSS on the disputes litigated under anti-dumping measures. The study examines the role and effectiveness of two

developing countries India and Pakistan and one LDC Bangladesh from South Asia. The analysis of anti-dumping disputes initiated in the WTO DSS by South Asian countries will include evaluating the capacities and constraints of South Asian countries in the WTO DSS on disputes litigated under anti-dumping. The study also focuses on the challenges and limitations faced by developing and LDCs in approaching the WTO DSS. The study also highlights how an LDC like Bangladesh has overcome its resource constraints to approach the WTO DSS.

1.19 Rationale and Scope of the Study

This study makes an attempt to examine the role of developing countries and the least developed countries of South Asia in the WTO DSS under the ADA of the WTO. It assesses the challenges, experiences and strategies of these countries to address the central question of how the WTO Institutional System and its arrangement for dispute management and resolution on cases of anti-dumping have effectively served and helped to advance the interests of South Asian countries. The design of the DSU was shaped by politically motivated deliberations and compromise. This reflects asymmetric power which results in rules that favor stronger economies. Against this backdrop, weak actors like developing and least developed countries of South Asia with small and vulnerable economies and limited institutional capacity are left to struggle in order to benefit from the existing multilateral system. The anti-dumping measure has become one of the important contingent protection measures that are used by countries to protect their domestic markets. Such contingent measures hold a high risk of being misused and can be used as a weapon to protect one's market. Though India has, to some extent, been able to approach the WTO DSS, the other South Asian countries are still lagging behind. The analysis of anti-dumping disputes will be helpful in evaluating the capacities and constraints of these countries in the WTO DSS.

The study mainly aims to assess and examine anti-dumping disputes in which the South Asian countries have participated as complainant, respondent or third party. The study will analyse the reason behind effective participation of India compared to other developing countries like Pakistan in South Asia. Thus far only these two developing countries from South Asia have approached the WTO DSS on anti-dumping disputes.

With the emphasis on the disputes related to anti-dumping in the WTO DSS, the research aims to assess the challenges, experiences and strategies of South Asian countries India, Pakistan and Bangladesh in the resolution of anti-dumping cases in the WTO DSS. The case study of Bangladesh becomes important as the only LDC which has approached the DSS against India's imposition of anti-dumping duties on its battery. The decision of Bangladesh was not easy and it had to face several technical and financial constraints. Bangladesh's experience provides an important lesson for other LDCs for utilising the institution of the WTO DSS.

By analysing South Asian participation at the WTO DSS in anti-dumping cases, this study will help present effective strategies that could serve the interests of the developing and LDCs at the WTO and encourage them to make effective useof the WTO DSS.

1.20 Objectives

The study is undertaken with the following objectives:

1. To analyse the practices of dumping and anti-dumping measures in the trade regulations among member countries of the WTO.
2. To focus on the processes involved in the WTO DSS while dealing with anti-dumping disputes.
3. To analyse reasons for differences in participation of the two developing countries India and Pakistan in South Asia under the ADA in the WTO DSS.
4. To examine the role of Bangladesh as an LDC in the WTO DSS when India imposed anti-dumping duties on its lead-acid battery.
5. To investigate the challenges and constraints to the participation of developing countries and the LDCs in the WTO DSS on anti-dumping disputes.

1.21 Research Questions

Given the above-stated objectives, the study seeks to analyse:

1. What is the Anti-Dumping Agreement of the WTO?
2. How the practices of dumping and anti-dumping measures are used to regulate international trade?

3. How the anti-dumping provisions are used by South Asian countries especially India, Pakistan and Bangladesh?
4. What are the implications of the anti-dumping disputes of the WTO DSS for South Asian countries?
5. How did Bangladesh overcome the legal and financial constraints while dealing with the anti-dumping dispute at the WTO DSS?
6. How can the experience of India, Pakistan and Bangladesh at the WTO DSS on the anti-dumping disputes contributes for other developing and LDCs of South Asia?

1.22 Hypotheses

The research aims at examining the following hypotheses:-

1. Overcoming financial constraints was the most important factor for Bangladesh to approach the WTO DSS on the anti-dumping dispute against India.
2. Relative to other developing countries including Pakistan in South Asia, India's economic strength has been a major contributing factor in its frequent use of and success at the WTO DSS on anti-dumping disputes.

1.23 Research Methodology

The methods used in the proposed study are descriptive, statistical, and analytical and are based on an empirical review of the data and literature collected from both primary and secondary sources. These methods are used to understand the dispute settlement system and anti-dumping disputes as well as its implications and analysis on India, Pakistan and Bangladesh. The inductive methodology is used in the analysis to arrive at conclusion regarding strategies of participation for other developing and LDCs in general in the WTO DSS on anti-dumping disputes. The study is conducted with the help of both secondary and primary sources. The primary sources include reports and documents from the government department of India, Pakistan and Bangladesh for understanding its trade disputes and anti-dumping cases in the DSS and also the primary legal documents from the WTO website. The secondary sources include the relevant books, articles, research papers and secondary documents from the WTO website.

1.24 Chapter Scheme

In order to analyse the participation, experiences and challenges of India, Pakistan and Bangladesh in the anti-dumping disputes, the study has been divided into six chapters.

Chapter one is an introductory chapter that discusses theory, concepts and WTO provisions related to dumping and anti-dumping. This chapter provides the conceptual and theoretical understanding of dumping and the anti-dumping provisions. The chapter also presents provisions of the WTO in relation to anti-dumping and the WTO DSS.

Chapter two "India and the Anti-Dumping Dispute Settlement at the WTO" focuses on India as complainant and respondent on anti-dumping disputes. The chapter has been discussed and analysed under the heading "India and Anti-Dumping Dispute Settlement at the WTO". India has initiated nine disputes as complainant, out of which some have been resolved at the consultation stage and others have gone for the panel and the Appellate Body Review. India has played significant roles in several of its disputes and constantly raised concerns of developing countries in its disputes. As a respondent, it has effectively defended its stand and argued effectively with developed countries, the USA and the EU and developing countries, Brazil and South Africa. This chapter analyses the experiences, practices and understanding of India on these disputes in the WTO DSS.

Chapter three "Pakistan as a Complainant and Respondent on Anti-Dumping Disputes" examines the participation of Pakistan as a respondent and complainant in anti-dumping disputes. Pakistan, a developing country, has participated in four anti-dumping disputes litigated under the WTO. The two disputes were initiated by Pakistan when Egypt imposed anti-dumping duties on imports of matches from Pakistan and when South Africa imposed provisional anti-dumping duties on Portland cement form Pakistan. The dispute was initiated in the dispute settlement system against Pakistan by Indonesia on the issue of anti-dumping and countervailing duty investigation on certain paper products that were exported from Indonesia to Pakistan. Similarly, the UAE requested consultations with Pakistan questioning its anti-dumping measures on its BOPP film from the UAE. The analysis of these four disputes of Pakistan is the focus of this chapter.

Chapter four “Bangladesh as a complainant against India: Anti-dumping Duties on Lead-Acid Battery” analyses and examines Bangladesh’s participation in the WTO DSS when India imposed anti-dumping duties on its battery’s exports in 2004. The chapter also examines the financial and other resource constraints that Bangladesh faced while proceeding with the case in the WTO DSS. The chapter is of great significance for the LDCs because Bangladesh is the first and only LDC to approach dispute settlement proceedings as a complainant.

Chapter five “Challenges to participation in the WTO DSS on anti-dumping disputes: Lessons from South Asia” analyses reasons for the lack of effective participation of developing and LDCs in the WTO DSS on anti-dumping disputes. Further, the chapter presents measures and possible strategies to improve their participation.

The final chapter is the conclusion that summarises the research findings as discussed and analysed in the preceding chapters.

1.25 Conclusion

Dumping and anti-dumping have become important matters of International trade. The WTO agreement allows countries to impose anti-dumping duties to check dumping but does not prohibit it through its ADA. The developing countries did not have much role in several negotiations of the GATT/WTO on the anti-dumping code and it was mostly shaped by developed countries. However, the developing countries have in recent years have become active users of the anti-dumping measures along with the traditional users. There has also been shift from developed to developing countries on anti-dumping use. The anti-dumping measures have been misused by countries for their own trade interest. The WTO provides for the DSM to restrict the misuse of anti-dumping measures that hamper trade. The DSM has the largest number of disputes challenged under the ADA compared to other agreements of the WTO. Among the South Asian countries, India is an active user of the anti-dumping measures and has participated in 13 disputes in the DSB challenged under the ADA. Pakistan and Bangladesh have four and one cases in the DSB challenged under the ADA. Separate chapters have been devoted in analysing these disputes of India, Pakistan and Bangladesh.

The next chapter analyses the role of India as complainant and respondent on disputes challenged under the ADA of the WTO.

Chapter 2
India and the Anti-Dumping Dispute Settlement at the WTO

2.1 Introduction

After independence in 1947, India remained a closed economy for almost four decades. India adopted import substitution policies through the use of tariffs, quotas and licensing policy on its imports. India planned for a diversified industrial base that produced different categories of products ranging from capital goods to consumer goods. India with a closed economy has been among GATT's founding member in 1947. The industries proved to be backward and technologically inefficient as it could not keep pace with the changing technology at the global level in terms of quality and cost. An effort was made to liberalise trade in 1991 through structural reforms. The limitation of the government's control over its market, increased role of the private sectors and free and unrestricted flow of trade for greater integration of the world economy were some of the structural reforms in Indian economy.

These reforms in Indian economywent parallel to the Uruguay Round negotiations that paved the way for Marrakesh Declaration of 1994 that established the WTO in 1995. India was not an active player during the initial years of the GATT negotiations subject to its following inward-looking strategy of development based on the Soviet model for many years after independence. India remained skeptical about the vulnerability of its economies because of the sudden exposure to the world economy. The policy of unilateral trade liberalisation was carried out only in the manufacturing sectors and as a result, India was reluctant to include services and Intellectual Property Rights (IPR) in the WTO negotiations. India was considered as 'obstructionist' in Uruguay Round negotiations.

At present, India is an active player and has emerged as a voice for developing countries in the WTO negotiations. India, contrary to the position of obstructionist, and a "force that could throw the negotiation process into disarray", contributed to build a coalition of developing countries. According to Deese (2007), "for the first time, there was also shared structural leadership beyond the United States and the EU at the heart of the international trade negotiations." Deese (2007) referred to the

leadership role of India and Brazil during negotiations in Doha. India was among one of the guiding force as it played leadership role informing several coalitions among developing countries after the Cancun Ministerial Conference (Bhatia 2012). India participated as a confident player and gradually removed its defensive posture in trade negotiations (Panagariya 2005).

India has a significant role and is among the active users of the WTO DSS. The main focus of this chapter is to examine India's position and its experiences in the anti-dumping disputes, the countries in dispute with India, sectors targeted, role of the government, the DGAD and the industries in the dispute. The chapter also examines the evolution of India in terms of human, institutional and stakeholder capacities since the GATT years to its participation in the WTO DSS.

Table 2.1

India in the World Trade

GDP (Million Current US$) (2017)	**2,611,012**
Share in world total exports in Merchandise Trade (%) (2017)	**1.68**
Merchandise Trade Exports: By Main Commodity Group, % (2016)	**Agricultural Products(12.8), Manufacturers (70.5), Fuels and Mining (13.8), Others (2.9)**
Top Exported Products (Agricultural and Non- Agriculture) (2017)	**Agricultural :Rice, meat of bovine animals: frozen, Cotton: not carded or combed, coconuts, Brazil nuts, cashew nuts, other fixed vegetable fats and oils** **Non- Agricultural: Petroleum oils, other than crude, Diamonds, whether or not worked, Articles and parts of jewellery, medications in measured doses, motor cars for transport of persons**
Merchandise Trade Exports:By Main Destination, (%) (2017)	**EU (17.4), USA (16.1), UAE (9.6), Hong Kong, China (5), China (4.2), Others (47.8)**
Share in world total imports in Merchandise Trade (%) (2017)	**2.48**

….continuation of the Table 2.1

Merchandise Trade Imports: By Main Commodity Group (%) 2016	**Agricultural Product (8.1), Manufacturers (51.7), Fuels and Mining product (30), Other (10.2)**
Top Imported Products(Agricultural and Non- Agriculture)	**Agricultural Products: Palm oil and its fractions, Dried leguminous vegetables, soya-bean oil and its fractions, sunflower-seed, and coconut oil, coconuts, Brazil nut, cashew nuts** **Non-Agricultural products: Petroleum oils (crude), Gold, Diamonds, whether or not worked, coal; briquettes, ovoids, Line telephony electrical apparatus**
Merchandise Trade Imports : By Main Origin (%) 2017	**China (16.6), EU (10.4), USA(5.7), UAE (4.9), Saudi Arabia, Kingdom of (4.6), Others: 57.9**

Source: WTO (2018)

India is a major developing country that contributes to the world market in terms of its imports and exports. India's exports, similar to Pakistan, are confined mainly to manufactured goods followed by agricultural and fuels and mining products. This creates a competition between India and Pakistan on several of its products of export. Any preference given by other importing countries to either India or Pakistan can harm the export market of the other competing country. The EC-Generalised System of Preferences dispute was one such example when the EC gave preference to Pakistan on its exports of textile products to the EU's market that hampered the textile industry of India. The major export destinations of India are developed countries like the EU, the USA and the UAE. The manufactured goods, fuels and mining products are mainly imported by India followed by agricultural products. The large share of products is imported from China, the EU and the USA (Table 2.1).

The next section analyses the role of India in the GATT and the WTO DSS challenged under the ADA.

2.2 India and the GATT Dispute Settlement System

India was part of three cases during the GATT years from 1948 to 1995 and had very limited participation like other developing countries.[1] Pakistan initiated first dispute

[1]The GATT was considered as 'rich man's club' and most of the developing members had not even acquired its membership (Lavelle 2005).

against India when it did not grant excise rebate to Pakistan's products.[2] Pakistan also claimed that the same benefit was granted to other countries (GATT 1948). The GATT Working Party ruled in Pakistan's favour (GATT 1948).The second dispute was initiated by India against the USA when it imposed countervailing measures on certain dutiable products of India which was mutually resolved by both the countries after first hearing (GATT 1981). India also challenged Japan's imposition of certain restrictions on its leather which was resolved mutually between the parties. India had also initiated complaints against Pakistan (GATT 1952), EU (GATT 1982) and the USA (GATT 1982) regarding the invocation of Article XXIII of the GATT and responded to complaints brought by the USA twice when India imposed non-tariff barriers on its almonds (GATT 1987). However, these disputes were settled before any formal rulings ofthe GATT dispute settlement procedure.

The low participation of India in the GATT dispute settlement system can be attributed to India's economic policies at one hand and GATT's role on the other hand. India followed import substitution policies through restrictive imports, quota and licensing system on issues of balance of payment and had not opened its economy which lessened the chance of trade disputes. The GATT was mainly dominated by developed countries like the EU and the USA while the role of developing countries was absent. The GATT DSS was weak in comparison to the WTO DSS as it lacked institutional framework, a definite time period for each stage of DSS and an impartial and permanent Appellate Body (Muro and Castro 2004). The Marrakesh Declaration of 1994 provided with "stronger and clearer legal framework" (Das et. al 2016) on international trade with "a more effective and reliable dispute settlement mechanism" (Das et. al 2016).

Though India's participation was not very effective, it would be wrong to say that India had no role to play in the GATT years. India was among those few developing countries that were called for informal Green Room[3] discussion of the GATT. The

[2]Excise Rebate is the rebate of the excise duty granted by the centre on the exported goods; Excise duty is the duty which is levied on the manufactured goods at the time when it is being manufactured rather than on at the time of sale of the product.

[3]The 'Green Room' is a phrase taken from the informal name of the Director General's conference room. It is used to refer to meetings of 20–40 delegations, usually atthe level of heads of delegations. These meetings can take place elsewhere, such as atMinisterial Conferences, and can be called by the minister chairing the conference as wellas the director-general. Similar smaller group consultations can be organized by the chairsof committees negotiating individual subjects, although the term Green Room is not usually used for these.

diplomats and civil servants like B.L. Das, K.B. Lall, Madan J. Mathur, B.K. Zutuchi and A.V. Ganesan played an important role during the GATT years. A. V. Ganeshan, Anwarul Hoda, Hardeep Sigh Puri and Mohan Kumar were active in the Uruguay Round negotiations and had been panelists in several proceedings of the WTO DSS. India had a mission in Geneva that negotiated and deliberated on the GATT matters. India had institutional capacity even during the GATT years and even nowwhile many countries lack permanent mission in Geneva (Bossche 2013).

The Trade Policy Division under the Commerce Ministry was established in 1960 to look after commercial diplomacy. The stakeholder capacity during GATT years was nonexistent in India as the role of industries and private sectors were limited in economy that practiced quantitative restrictions through the use of tariffs and licensing system. India participated effectively in severalof the WTO negotiations and acquired leadership position in WTO Ministerial Conferences of the WTO in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001) and Cancun (2003).

2.3 India and the WTO Dispute Settlement System

Till 15 March 2019, out of the 581 disputes initiated in the WTO DSS, India as complainant in 24 cases, respondent in 28 cases and as third party in 150 cases is among active developing country users of WTO DSS along with Brazil, Mexico and Indonesia and the developed countries[4] (Table 2.2) (WTO 2018).

Table 2.2

India as Complainant and Respondent in the WTO DSS

	1995-97	1998-00	2001-03	2004-06	2007-09	2010-12	2013-15	2016-18	2019	Total
As Complainant	5	6	4	2	1	3	1	2	0	24
As Respondent	8	5	2	3	2	1	2	2	3	28
Total Disputes	13	11	6	5	3	4	3	4	3	52
Percentage of participation[5]	2.2	1.8	1.03	0.86	0.51	0.68	0.51	0.68	0.51	8.9

Source: WTO Database (2019)

[4]The active developed countries in the WTO dispute settlement are USA, EU, Canada and Australia.
[5]Till 15 March, 2019, 581 disputes have been initiated in the WTO dispute settlement system.

India with a participation in nine percent of total WTO disputes is actively involved in WTO DSS (Table 2.2). India has become conscious of its rights and the ability to go ahead with the case (Hoda 2018).[6] In the year 1995 to 1997, India has eight disputes as a respondent. This was the time when India had started opening up its markets but still followed protectionist policies. Therefore, India's economic policies on autos, quantitative restrictions, additional duties and patent protection were challenged by the EU and the USA in the year 1997.[7]

Table 2.3

Countries in Dispute with India (1995 – March 2019)

Countries Involved	India: As Complainant	India : As Respondent	Total Disputes in the DSS
EU	**7**	**10**	**17**
USA	**11**	**7**	**18**
Argentina	**1**	**0**	**1**
Brazil	**1**	**1**	**2**
Poland	**1**	**0**	**1**
South Africa	**1**	**0**	**1**
Turkey	**2**	**0**	**2**
Netherland	**1**	**0**	**1**
Australia	**0**	**2**	**2**
Bangladesh	**0**	**1**	**1**
Canada	**0**	**1**	**1**
New Zealand	**0**	**1**	**1**
Switzerland	**0**	**1**	**1**
Chinese Taipei	**0**	**2**	**2**
Guatemala	**0**	**1**	**1**
Japan	**0**	**1**	**1**
Total	**24**	**28**	**52**

Source: WTO Database (2019)

[6]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[7]These disputes have been discussed in detail in the section titled 'Landmark Disputes of the DSB concerning India' of this chapter.

The group of countries with which India has disputes in the WTO are both the developed and the developing countries (Table 2.3). India has a large number of disputes with the USA (18) and the EU (17) that are developed countries and categorised under high-income economies by the World Bank. Therefore, at the time when most of the developing countries were absent from the DSS due to financial and legal constraints, India's maximum disputes are with the active developed countries the EU and the USA.

Though the focus of this chapter is to analyse disputes of India challenged under the ADA, there are some disputes that require special mention as it initiated change in the trade policies of India.

2.4 Landmark Disputes of India

This section analyses important disputes in the initial years of the WTO that challenged patent protection, quantitative restrictions, additional duties and automotive policies of India that brought about change in its trade policy. Though India lost in these disputes, these disputes are of great importance for India. Though trade liberalisation in India was initiated much before it became a WTO member, these disputes led to trade liberalisation in true sense by compelling India to liberalise its trade and equate with the WTO measures.

2.4.1 India and the USA on Patent Dispute

The India-Patent dispute was concerned with the issue of the TRIPS Agreement. The USA challenged India and claimed that there was an absence of patent protection, means of filing a patent application and any authorities(legal) to provide marketing rights in pharmaceuticals and agricultural products which confirmed to the TRIPS Agreement (Panel Report 1997). India claimed that it has maintained a legal basis for mail box application through "administrative instruction" not made available to the panel and the Appellate Body (Anderson and Raju 2016). The panel and the Appellate Body ruled against India and its mailbox system was considered against the TRIPS Agreement and India was asked to revise its measures to confirm with the

agreementrelated to the TRIPS (Appellate Body Report 1997).[8] This initiated change in India's trade policy related to IPR which was absent in the GATT agreements.

2.4.2 India and the USA on Quantitative Restrictions Dispute

The USA challenged import restrictions of India on its products covering "2,714 tariff lines, in which 710 were agricultural products". These products were considered under the licensing system of India in which government regulated the exports and imports and provided "actual user requirement" for import licenses.[9] India claimed that such restriction was maintained to protect its adverse balance of payment. However, India already had enough foreign reserves by the time panel proceedings for the dispute started (Anderson and Raju 2016) and a testimony was also submitted by the IMF to the Committee on Balance of Payment demonstrating that India did not suffer from the balance of payment problems. The dispute was resolved mutually between the parties and India removed the quantitative restrictions on tariff lines which eliminated licensing system that regulated India's imports (Panel Report 1998).The defeat in the India-Patent and India-QR dispute provided important lessons to authorities to scrutinise India's capability in the WTO DSS.

Earlier, India depended on the Permanent Representative of the WTO and the Attorney General for legal advise and assistance on WTO cases and did not take legal help from foreign lawyers or firms. India lacked the institutional mechanism for responding to the panel proceedings in the early years of dispute. The problem was that the Attorney General post used to be vacant with the change of government in India. The dispute can be initiated at any time period in the WTO and with the vacancy of the post of the Attorney General; India found it difficult to manage the litigation process of the WTO disputes. This happened in India-QR dispute during panel proceedings in which India demanded extra time for making its first submission to the panel as the office of the Attorney General was vacant. This was an important lesson for India as India realised that it needed a separate and permanent group of legal experts to provide legal assistance and advise in the WTO litigation process.

[8]For more details, refer to Raju and Anderson's chapter titled "India's Initial WTO Disputes-An Analysis in Retrospect" in the edited book of Das and Nedumpara, "WTO Dispute Settlement at Twenty: Insider's Reflections on India's Participation".

[9]Import Licensing can be defined as the administrative procedures that require submission of an application or other documentation (other than those required for administrative purposes) to the relevant administrative body as a prior condition for the importation of goods (WTO 1995).

India's capacity to participate has improved since then and the demand of additional time for preparing submissions is unlikely to be raised at present time due to the vacancy of any post. After such incidence, the Attorney General did not participate directly in the WTO proceedings and India realised that specific lawyers who are experts on legal matters and trade were required for the WTO disputes. The domestic lawyers cannot be hired for those disputes as they have cases in domestic courts and the engagement in the WTO dispute is for relatively longer terms.

The Appellate Body in EC-Banana III dispute ruled that countries can hire firms and private lawyers for legal assistance (WTO 1997). The specialised lawyers and firms were used by several developing countries including India in the WTO DSS after such ruling from the Appellate Body. In the US-Shrimp Dispute, the service of Arthur E. Appleton of Lalive and Partners was used. Frieder Roessler provided its legal service in India-QR, India-Patents, and India- Auto disputes. The Vermulst Water and Verhaeghe, a law firm based in Brussels played an important role in the EC- Bed Linen dispute. The Squire Sanders, US law firm, provided assistance in the US-Steel plate dispute. A lawyer based in New Delhi, Krishna Venugopal assisted in disputes like the India-Patents dispute, the EC-GSP dispute, the India- Autos dispute, the India-QR dispute, and the US-Custom Bond Directive dispute. India used the office of the Advisory Centre on the WTO Law (ACWL) in the EC-GSP dispute and US-Rules of Origin dispute. India had to develop domestic legal capacity for effectively participating in the WTO DSS.

2.4.3 India, the USA and the EU on Auto Dispute

India's Automotive Policy of 1995 that required trade balancing and domestic content tied with investment was challenged by the USA and the EU as it was not in accordance with the TRIMS and GATT Agreements (WTO 1995). The dispute went to the panel stage, but by the time panel ruled against this policy, the policy was already in operation for seven years. India had secured enough time for the auto policy to be rooted in the market and achieved exceptedresults. The international makers of the auto (about ten and more) invested in India (Kher 2016). The panel ruled against India and it removed its restrictive measures on the investment of autos (WTO 2002).

2.4.4 India, the USA and the EU on Additional-Duties Dispute

The USA and the EU challenged the duties imposed on their wine and distilled materials by India. The EU also challenged the discriminatory taxation policy of India by some states on imported wines and spirits (WTO Document 2007). India has multi-layered taxation structure in which the taxation power is distributed at different layers in the states (Basu 2013). India's external obligations are carried out by the Central government and a large part of development activity is carried out by the state and local governments (Basu 2013). The USA went for the Panel and the Appellate Body Review. The EU solved the issues through several consultations with the bureaucracies of state governments. India aligned its taxation structure with the GATT commitments that were reflected in the provisions of MFN and National Treatment (Kher 2016). The dispute raised an important issue in India that how the central government should deal with its external actions if the issue is related to the states and how it can be settled without any dispute with the state governments.

Therefore, these disputes initiated reforms in trade policy of India related to the TRIPS, the TRIMS, and import restriction and taxation structure of India.

2.4.5 India and the USA on Shrimp Dispute

The US-Shrimp dispute initiated by India, Malaysia, Thailand and Pakistan has been one of the most important disputes in the WTO jurisprudence as it ruled on balancing the environment with the trade. The US law that prohibited shrimp exports from those countries that did not use sea-friendly turtle excluder devices for harvesting shrimps as certified by the USA was challenged. The Appellate Body ruled that though the US law was justified within the issue of environmental exception according to Article XX (g),[10] it was applied in a discriminatory manner as it provided turtle excluder devices to the Caribbean countries and not to other countries. The decision recognised for the first time that environmental protection was an important issue for the trading system and the trade and environment has to be balanced within the framework of the WTO.

[10]Article XX(g) applies to measures related to conservation of exhaustible natural resources if such measures are made effective in conjunction with the restrictions on domestic production or consumption (WTO 1995).

2.4.6 India and the EU onTariff Preferences Dispute

The EU under its Enabling Clause had provided with tariff preferences to eleven Latin American Countries and Pakistan on conditions of combating illicit drug production. India claimed that such a measure was unjustified by the Enabling Clause and was not consistent with Article I:1 of the GATT.[11] The Appellate Body ruled that drug arrangement was unjustified by Enabling Clause as the drug arrangement programme did not provide a clear objective for eligibility of developing countries for tariff preferences if drug problems are addressed. The Appellate Body concluded that the drug arrangement programme was not consistent with EU's Enabling Clause. The decision made it clear that countries cannot discriminate among member countries in giving preferences clarified under the Most Favoured Nation Provision of the WTO.

2.5 India at the DSU Reviews and Negotiations

It was in 1997 that the DSU review was initiated and later incorporated during the fourth ministerial conference in 2001 under Doha Round. Though the negotiation was to be completed by 2003, it continued in Special Session of the DSB (T.B 2010). India along with other developing countries like Brazil, Argentina and South Africa has been active participant in the DSU negotiations. These countries have joined together and were pressing for the review of the DSU under the Doha Development Agenda. The first submission in DSU review by these countries was made during 1998-99 that covered issues on the DSS (Padmja 2007). The developing countries along with India proposed several reforms concerning the procedures and working of the WTO DSS.

2.5.1 Reforms at the Consultation Stage

The members have to notify about their mutually agreed solution at any stage of the DSS but lack time period for such notification. It also lacks any details on the content of the notification. If a mutually agreed solution is not notified in sufficient detail, there would be a lack of opportunity to assess its impact on trade. Therefore, India has

[11]According to Article I:1 of the GATT, the WTO members have to accord 'Most Favoured Nation' status to like products of WTO members in terms of internal regulations of trade, import and export regulation, internal taxes and tariffs.

proposed several reforms on different issues of the DSU (WTO 2002).[12] India, on the consultation stage, proposed for a time frame of 60 days for notifying mutually agreed solution in sufficient detail to the concerned Committees of the DSB (WTO 2002).[13]

2.5.2 Reforms at the Panel Stage

India, regarding the panel stage, raised concerns about the due process and equal opportunities to examine the arguments submitted for the Panel review. India proposed that the complainants and the respondents should be given three to four weeks time in order to make first and second submissions to the Panel. There were some proposals made by India regarding the adoption of the panel report. It proposed that 60 days period should be provided to the members after panel report's circulation and before their consideration in the DSB (WTO 2003).[14]

2.5.3 Reforms at the Appellate Body Review Stage

India proposed to increase the time period between the circulation of the Appellate Body Report and DSB consideration to 30 days. It also called for improved transparency of the Appellate Body. The time period for the Appellate Body review was proposed to be extended from 60 to 90 days. India, in order to enhance independency and impartiality of Appellate Body members, proposed term of six years which was non- renewable and fixed.[15] India also proposed that the complainant should make all its claims in the first written submission and claims not made in the first written submission should not be entertained at any stage of the panel proceedings.

[12]Dispute Settlement Body ,Special Session: Negotiations on the Dispute Settlement Understanding-Proposals on DSU by Cuba, Honduras, India, Malaysia, Pakistan, Sri Lanka, Tanzania and Zimbabwe, WTO Document TN/DS/W/18 of 2002.

[13]Dispute Settlement Body ,Special Session: Negotiations on the Dispute Settlement Understanding-Proposals on DSU by Cuba, Honduras, India, Malaysia, Pakistan, Sri Lanka, Tanzania and Zimbabwe, WTO Document TN/DS/W/18/Add.1, of 2002.

[14]Dispute Settlement Body, Special Session, Dispute Settlement Understanding Proposals: Legal Text, Communication from India on Behalf of Cuba, Dominion Republic, Egypt, Honduras, Jamaica and Malaysia, WTO Document TN/DS/W/47 of 2003.

[15]The members of the Appellate Body at present are appointed for a term of four years and can be reappointed for one more term.

2.5.4 Reforms at the Implementation level

India, at the implementation level, proposed that retaliatory powers should be distributed unevenly between developed and developing countries. It proposed that developed countries instead of using retaliatory powers should be permitted to take countermeasures under the same agreements in which violation has been done and thus limiting the retaliatory powers against developing countries. The developing countries should be permitted for joint retaliation by all members of the WTO against the non-complying members.

India proposed the maximum time period for implementation of the panel ruling for developing country to be increased from 15 to 30 months and under several circumstances additional time period for implementation should be given. The developing countries should be given 30 days time frame for compliance panel proceedings against the developed countries.

2.5.5 Proposals Regarding the S&DT Provisions

The Special and Differential Treatment provision was also extensively dealt in India's proposal. India explores that S&DT provisions are not specific and there are no ways to ensure that these provisions are accorded to developing countries. India proposed for guidelines and proper implementation of these provisions and it also proposed that the word "should" be used instead of "shall" in the S&D provision for developing countries to make the provisions mandatory for developed countries (WTO 2002).[16]

India proposed that the cases in which developing country is a complainant and developed countries have not brought their measures consistent with rulings of the panel, the complainant should be given right to obtain authorisation for suspending obligations or concession under any sectors or agreements. The developed countries should refrain from using DSS against developing countries if developing countries' measures marginally affected their trade.

India also proposed for an extra time period for respondent developing countries for making submissions and implementation (30 months) in the DSS.

[16]Dispute Settlement Body, Special Session, Negotiations on the Dispute Settlement Understanding, Special and Differential Treatment for Developing Countries, Proposals on DSU by Cuba, Honduras, India, Sri Lanka, Tanzania and Zimbabwe, WTO Document TN/DS/W/19 of 2002.

2.5.6 Proposals for overcoming Financial Constraints

India has raised concerns over the high litigation cost in the DSS. It has proposed that if a dispute is initiated in the DSS by developed countries against developing countries and iftheyfail to prove their claims then the expense of the developing countries during the litigation process should be incurred by developed countries as determined by the Panel and the Appellate Body.

2.5.7 Proposals Regarding the Amicus Curie Brief

The proposal was also made regarding accepting 'amicus curie brief' in the DSB rulings. India claimed that the WTO is intergovernmental institution in nature and allowing non-members participation through 'amicus curie brief' submission would undermine its character and would hamper the effectiveness and participation of member governments. The submission of amicus curie brief would add extra burden not only for developing countries both legally and financially but also for arbitrators, panels and the Appellate Body that are required to follow strict time period. India stressed for clarifying the term 'seek' mentioned under Article 13 of the DSU[17] as Appellate Body has used the term differently in different disputes. It accepted the amicus curie brief in the US-Shrimp Dispute but rejected the same in the US-Bismuth Steel and justified such action by saying that the acceptance or rejection of such proposal was on discretion of the Appellate Body until there is absence of any provision that clarifies the issues related to the 'amicus curie brief'.

India has been active in proposing these amendments in the DSU for developing countriesbut no reforms have been considered till present. It would be interesting to see whether these proposals of India are accepted in the future negotiations of the WTO.

2.6 Anti-Dumping Measures and the Anti-Dumping Disputes of India

India has actively used the anti-dumping provision of the WTO with 656 measures imposed on different countries from the period 1995 to 2017 making India the top initiator of anti-dumping measures followed by the USA with 427 and the EU with 325 measures (Table 2.4) (WTO 2018). However, it has also been targeted by

[17]Article 13 of the DSU says that the panel has right to seek information from any individual or body it thinks appropriate. The provision is used by the panel and the Appellate Body as per their own justification as the article is silent over the word 'seek' and has not been clarified. The acceptance or rejection of the 'amicus curie brief' has become a problem for the rulings as the article is not detailed on this provision.

different countries with 130 anti-dumping measures on its different sectors like steel, pharmaceuticals, textiles and chemicals.

As discussed in the first chapter, under Article 17 of the ADA, the countries can approach the WTO DSS if they feel that the anti-dumping measuresimposed are not according to the WTO ADA. Subsequently, India has approached the WTO DSS against nine measures imposed by the EU, the USA, South Africa and Brazil. Similarly, countries like Bangladesh, Chinese Taipei and the EU felt that the measures imposed by India on their products were not in accordance with the ADA of the WTO and they challenged these measures in the WTO DSS. These disputes are of importance to India as it includes different developed, developing and a least developed countries.

The following section of the chapter has discussed and analysed the role, participation and effectiveness of India in these disputes.

Table 2.4

India and its Anti-Dumping Actions

Total anti-dumping measures imposed on India (2017)	Total anti-dumping measures challenged by India in the DSS (May 2019)	Rate of Challenging imposed anti-dumping measures in the DSS (In percentage)	Total anti-dumping measures imposed by India (2017)	Total anti-dumping measures of India challenged in the DSS (May 2019)	Total number of disputes challenged under the ADA (May 2019)
130	9	6.92	656	4	131

Source: WTO (2019); Author's compilation based on the WTO data.

India challenged the anti-dumping measures imposed by the EU on its exports of unbleached cotton fabric, non-alloy iron and flat-rolled steel, bed linen and Polyethylene Terephthalate and it has 4 disputes with the EU as a complainant in the WTO DSS. Similarly, it challenged the anti-dumping measures imposed by the USA on its steel plate and merchandise products and also the "Byrd Amendment" of the USA according to which anti-dumping duties were to be distributed among the "affected domestic producers." India also challenged the anti-dumping measures on its exports of amoxicillin and ampicillin by South Africa and jute bags by Brazil in

the WTO DSS. Therefore, it has nine disputes as a complainant in the WTO DSS (Table 2.5).

It is important to analyse the rate of challenging anti-dumping measures in the WTO DSS as it demonstrates whether countries have been able to challenge anti-dumping measures in the WTO DSS in comparison to anti-dumping measures imposed on its product (Singh 2018).[18] India's rate of challenging anti-dumping measures can be calculated by taking total anti-dumping measures imposed on Indian products which is equal to 130 and total anti-dumping measures challenged by India in the WTO DSS is equal to 9. The rate of challenging anti-dumping measures is equal to 9 divided by 130 multiplied by hundred that is 6.92 percent (Table 2.4). Though, India is active participant in the WTO anti-dumping disputes, its rate of challenging the anti-dumping measure is low.

Bangladesh and Chinese Taipei challenged India's anti-dumping measures on its exports of lead-acid battery, USB flash drive and its seven different products green veneer tape, caustic soda, sodium nitrite, paracetamol, potassium permanganate, analgin and acrylic fibres. The EU also challenged India's anti-dumping measures on exports of its different sectors like chemicals, pharmaceuticals, textiles, rubber, and base metal. Therefore, India has four disputes as a respondent (Table 2.5).

Table 2.5

India in the Anti-Dumping Disputes: Year wise

year	As complainant	As Respondent
1998	**2 (EU)**	**-**
1999	**2 (EU, South Africa)**	**-**
2000	**2 (USA)**	**-**
2001	**1 (Brazil)**	**-**
2003	**-**	**1 (EU)**
2004	**-**	**2 (Chinese Taipei, Bangladesh)**
2006	**1(USA)**	**-**
2008	**1(EU)**	**-**
2015	**-**	**1(Taipei, Chinese)**
Total	**9**	**4**

Source: WTO (2019); Author's compilation based on WTO data

[18]Personal interview with Harshwardhan Singh, Executive Director, Brookings India on 9 September 2018, JNU; Refer to appendix for questionnaire.

Table 2.6

Countries on the Anti-Dumping Disputes with India

Countries	As Complainant	As Respondent
EU	**4**	**1**
USA	**3**	**-**
South Africa	**1**	**-**
Brazil	**1**	**-**
Bangladesh	**-**	**1**
Taipei, Chinese	**-**	**1**

Source: WTO (2019); Author's compilation based on WTO data

2.6.1 Ratio of India's Participation in the Anti-Dumping Disputes

India is among those few developing countries that are active not only in using anti-dumping laws but also participating in the WTO DSS along with Brazil, Indonesia and South Africa. The sixty percent of the total disputes in the DSS are initiated by these developing countries while other developing countries and least developed countries are completely absent from the WTO DSS (Shaffer 2009). The challenges to developing countries and the LDCs participation have been discussed in Chapter five of the thesis. This section analyses the percentage of India's engagement in the anti-dumping disputes. The total number of India's anti-dumping disputes is 13 and total number of anti-dumping disputes is 131(WTO 2019). Therefore, the ratio of India's participation to the total disputes under the anti-dumping agreement is 10 percent, which makes India an active user of the WTO DSS on anti-dumping disputes (Table 2.7).

Table 2.7

Ratio of India's Participation

India as Complainant	**9**
India as Respondent	**4**
Total Participation	**13**
Total disputes under ADA	**131**
Ratio of India's Participation (Percentage)	**10**

Source: WTO (2019)[19]

[19] The data till May 2019 has been taken from the WTO website, www.wto.org.

2.6.2 Anti-Dumping Measures Imposed and the Anti-Dumping Disputes

The anti-dumping measures can be adopted in three ways like provisional anti-dumping measures, price undertaking and imposition of definite anti-dumping duties (Articles 7, 8 and 9 of the ADA) (WTO 1995). India's disputes are mostly concerned with imposing and collecting definite anti-dumping duties (Table 2.8). It has also challenged the two national laws of the USA, the US-Byrd Amendment and the US-Custom Bond Directives, related to collecting duties on shrimps and will be discussed in the next section of the chapter while analysing these disputes separately. In the EC-PET dispute, India challenged the expiry review conducted by the EU on its exports of Polyethylene Terephthalate and the sunset review conducted by Brazil after span five years of imposition of the anti-dumping duties.

Table 2.8

Anti-Dumping Measures Adopted in different Disputes

Dispute No.	Dispute	Anti-Dumping Measures Challenged	Articles and Annexes of ADA[20] Cited during challenging measures at the DSS
140	EC-UCF	Definite Anti-dumping duties	Articles 2, 3, 4, 5, 6, 7, 9, 12, 15
141	EC-Bed Linen	Definite Anti-dumping duties	Articles 2,2.2.2, 3,3.1, 3.2,3.4, 3.5,4, 4.1, 5,5.2,5.3,5.4,5.8,6, 12, 12.2.2, 15
313	EC-Iron & Steel	Definite Anti-Dumping duties	Articles 3.4,3.5,4.1,9.2
385	EC-PET	Expiry review of anti-dumping measures	Article 6.1, 6.2,6.5,6.6,6.8, 11.1,11.3,11.4,11.5, 18.4, Annex II

[20]The Articles and Annexes of the ADA are available at the WTO website in the PDF form, https://www.wto.org/english/docs_e/legal_e/19-adp.pdf

304	**India-Twenty Seven Products Dispute**	**Definite Anti-Dumping duties**	**Articles1, 3.1, 3.2, 3.5, 6.6,6.8,6.9, 12.2, Annex II**
206	**US-Steel Plate**	**Definite Anti-dumping duties**	**Articles 1,2,2.2,2.4, 3.5,66.8,9.3, 12,15, 18,18.4**
217	**US-Byrd Amendment**	**National laws to collect anti-dumping duties**	**Articles 1, 5.4, 8, 18.1, 18.4**
345	**US-Custom Bond Directives**	**National Laws to collect anti-dumping duties**	**Articles 1, 2.2, 2.3, 2.4, 7.1, 7.2, 7.4, 7.5, 9.1, 9.2, 9.3, 18.1,18.4, 18.5**
168	**South Africa-Pharmaceutical**	**Definite Anti-dumping duties**	**Articles 2, 3, 6, 12, 15**
229	**Brazil-Jute Bags**	**Sunset Review; Definite Anti-dumping duties**	**Articles 1, 2, 3, 5, 6, 11, 12, 17.6(i), 18.3, 18.4**
306	**India-lead-Acid Battery**	**Definite Anti-dumping duties**	**Articles 1, 2.2,2.4,3.1, 3.2,3.4, 3.5, 3.7,5.8, 6.8,6.9,12.2, Annex II**
318	**India-seven products**	**Provisional and definite anti-dumping duties**	**Article 1, 2, 3, 4, 5, 6, 7.4, 12.1, 12.2, Annex II**
498	**India-USB Flash drive**	**Definite anti-dumping duties**	**Articles 2.2, 2.4, 2.6, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 5.10, 6.1, 6.2, 6.4, 6.5, 6.6, 6.9, 6.10, 6.11, 9.3, 12.2.2, Annex II**

Source: WTO (2019); Author's compilation based on the WTO data.

2.6.3 India's Exports, Anti-Dumping Measures and Anti-Dumping Disputes

This section analyses the relation between India's exports, anti-dumping measures imposed on exported product and anti-dumping measures challenged by India in the WTO DSS.

Table 2.9

India's Exports, Anti-Dumping Measures and Anti-Dumping Disputes

Respondent	India's Exports (US $Million)	Percentage share of India's exports	ADM imposed on India's products	ADM Challenged by India in the DSB
EU	**46,848.67**	**17.32**	**21**	**4**
USA	**43,277.98**	**16.01**	**20**	**3**
Brazil	**3,092**	**1.14**	**10**	**1**
South Africa	**3,473.95**	**1.28**	**12**	**1**

Source: WTO (2019); Export Import Data Bank (2019)

India's overall export is US$ 270, 248.07 million (Export Import Data Bank 2019). The EU and the USA are the destination markets for major products for India accounting for 17.32 and 16.01 percent share of India's export (Export Import Data Bank 2019). It can be seen that the EU and the USA together account for 33.33 percent of India's major exports which makes them the top two export destinations for India's products (Export Import Data Bank 2019) (Table 2.9). The largest numbers of anti-dumping measures have also been imposed by the EU (21) and the USA (28) (Table 2.9). Subsequently, India also has the maximum number of anti-dumping disputes with the EU (4) and the USA (3) (Table 2.9).

Therefore, it can be said in case of India that the share of export, imposition of anti-dumping measures and initiation of anti-dumping disputes challenged are directly proportional to each other. The greater the percentage share of export of India, there are chances of more anti-dumping measures leading to more anti-dumping disputes. These are the four countries whose anti-dumping measures were challenged. However, there are other countries that had imposed the anti-dumping measures on India's products (Table 2.10).

Table 2.10

Countries and the Anti-Dumping Measures on India's Products

Countries	ADMs[21]	Countries	ADMs	Countries	ADMs
Argentina	10	Egypt	5	Namibia	12
Australia	1	Eswatini	12	Pakistan	3
Botswana	12	EU	21	Peru	2
Brazil	10	Indonesia	9	Russian Federation	1
Canada	5	Korea, Republic of	5	Chinese Taipei	2
China	7	Lesotho	12	Thailand	1
Colombia	1	Mexico	3	Turkey	11
Trinidad and Tobago	1	South Africa	12	USA	20

Source: WTO (2018); Author's compilation based on the WTO data.

Table 2.11

India's Imports, Anti-Dumping Measures and Anti-Dumping Disputes

Complainant	India's Imports (US $Million)	Percentage share of India's imports	ADMs imposed by India	India's ADMs Challenged in the DSS
Bangladesh	810.90	0.18	3	1
Chinese Taipei	3,846.20	0.88	50	2
EU	49,203.63	11.35	49	1

Source: Export Import Data Bank (2019); WTO (2019)

The total import of India is $US 433,446.56 million (Export Import Data Bank 2019). The percentage share of Bangladesh and Chinese Taipei's import to India is around 0.18 percent and 0.88 percent (Export Import Data Bank 2019). The country with which India has a large import share is the EU with 11.35 percent of its total imports. India has also imposed anti-dumping measures on products of different countries

[21]ADMs isthe abbreviation used for Anti-Dumping Measures.

(Table 2.12) and is the highest user of anti-dumping measures in the world with 656 anti-dumping actions from the period 1995-2017 (WTO 2019) (Table 2.12).[22]

Table 2.12

Countries Targeted for India's Anti-Dumping Measures

Countries	ADMs	Countries	ADMs	Countries	ADMs	Countries	ADMs
Australia	3	Czech Republic	2	Hong Kong, China	8	Mexico	4
Austria	2	Denmark	1	Hungary	1	Italy	3
Bangladesh	3	EU	49	Indonesia	27	Japan	28
Belarus	2	Finland	1	Iran, Islamic Republic of	12	Kazakhstan	2
Brazil	9	Macedonia, FYR	2	Israel	3	Kenya	1
Bulgaria	2	France	3	Italy	3	Korea, Republic of	50
Canada	4	Georgia	2	Japan	28	Malaysia	22
China	167	Germany	6	Israel	3	Mexico	4
Nepal	3	Norway	2	Pakistan	3	Poland	3
Nigeria	1	Oman	2	Philippines	1	Portugal	1
Qatar	2	South Africa	9	Taipei, Chinese	50	U.K	2
Romania	3	Spain	4	Thailand	35	U.S.A	30
Russian Federation	21	Sri Lanka	2	Turkey	6	Vietnam	9
Saudi Arabia	6	Sweden	1	Ukraine	8		
Singapore	20	Switzerland	2	U.A.E	9		

Source: WTO (2018); Author's compilation based on the WTO data.

Out of these 656 anti-dumping measures imposed by India, only 4 measures have been challenged in the WTO DSS that involves a least developed country Bangladesh which became the first LDC country to approach the DSS of the WTO and hence, it becomes an important case of the study. It can be seen that the countries the EU and the Chinese Taipei that have challenged India's anti-dumping measures in the WTO

[22]The data on anti-dumping measures till 2017 is given at the time of writing the chapter (April 2019).

DSS are the countries that have faced largest number of India's anti-dumping measures around 49 and 50 anti-dumping measures (Table 2.12).

As discussed in the first chapter, the disputes go through several stages of the WTO DSS like the consultation stage, the panel stage and the Appellate Body review stage. There are seven disputes of India that have not gone beyond the consultation stage, and these are either still under the consultation process or the request for panel establishment has been received in the DSS. There are two disputes that were mutually resolved outside the dispute settlement system between the disputing parties. There is only one dispute that was solved at the Panel stage and three disputes went for the Appellate Body Review stage (Table 2.13).

Table 2.13

Disputes in Different Stages of the Dispute Settlement System

Dispute no.	Dispute Name	Year	Stages of the DSS	Respondent	Complainant
140	EC-UCF	1998	Consultation process	EU	India
141	EC-Bed Linen	1998	Appellate Body Report circulated	EU	India
313	EC-Iron & Steel	1999	Mutually resolved	EU	India
385	EC-PET	2008	Consultation process	EU	India
304	India-Twenty Seven Products Dispute	2003	Consultation Process	India	EU
206	US-Steel Plate	2000	Panel Report Circulated	USA	India
217	US-Byrd Amendment	2000	Appellate Body Report circulated	USA	India, Australia, Brazil, Chile, European Communities, Indonesia, Japan, Korea, Republic of, Thailand
345	US-Custom Bond Directives	2006	Appellate Body Report circulated	USA	India
168	South Africa-Pharmaceutical	1999	Consultation process	South Africa	India
229	Brazil-Jute Bags	2001	Consultation process	Brazil	India
306	India-lead Acid Battery	2004	Mutually resolved	India	Bangladesh
318	India-seven products	2004	Consultation process	India	Taipei, Chinese
498	India-USB Flash drive	2015	Consultation process	India	Taipei, Chinese

Source: WTO (2019); Author's compilation based on the WTO data.

There are seven anti-dumping disputes of India;the EC-UCF dispute, the EC-PET dispute, the EC-Twenty Seven Products Dispute, the South Africa-Pharmaceutical dispute ,the Brazil-Jute Bag dispute, India-seven products dispute and India-USB flash drive dispute (Table 2.13) that did not go beyond the consultation stage. The Consultation stage (Article 4 of the DSU), also known as pre litigation stage, is an important stage of the WTO DSS in which countries with different levels of development try to solve their issues by coordinating and having dialogues with each other which is not possible at any other global platforms. Director General also provides its good office for conciliation and mediation especially for developing countries and the LDCs (Article 5.6 of the DSU). The disputes, out of these seven cases like EC-UCF, EC-PET, India-Twenty Seven product dispute and Brazil-Jute Bags have been resolved. The other disputes like South Africa-Pharmaceuticals, India-USB and India- Seven products disputes have not been resolved and no further action has been taken. Intwo disputes India-lead-acid battery dispute and EC-Iron and Steel dispute, countries notified the Committee on Anti-Dumping of their mutually agreed resolution. The 'mutually agreed solution' is a useful option available for countries which preventthem from technicalities and high cost of litigation of the WTO litigation process (Das 2016).

If the reasonable disputes have been filed by the countries, they would try to mutually resolve the dispute. There is only one dispute the US-Steel plate which was resolved through the circulation of Panel Report that was in favour of India. The other three disputes the EC-Bed Linen dispute, the US-Byrd Amendment dispute and the US-Custom Bond Directive went for the Appellate Body review and the rulings came in favour of India. Therefore, as a complainant India has a good success rate as most of the rulings are in its favour which will further be analysed in the other sections of the chapter while discussing each dispute separately. As a respondent, most of its disputes are either in consultation process or has been mutually resolved (Table 2.12).

2.7 India and its Anti-Dumping Disputes

2.7.1 India and the EU

India has five anti-dumping disputes with the EU till May 2019 (WTO 2019). The EC-UCF dispute, EC- Polyethylene Terephthalate Dispute, EC-Non Alloy Steel and Flat Rolled Iron Dispute and EC- Linen Dispute are the disputes in which India is a

complainant. As a respondent, it has one dispute with the EU i.e. India-Twenty Seven Products Dispute. These disputes have been discussed in the following section of the chapter.

2.7.1.1 India and the EU on Unbleached Cotton Fabric Dispute

The EU had imposed provisional anti-dumping duties on the unbleached cotton fabric of India in the year 1998.[23] India claimed that the dumping and injury determination and facts establishment by the EU were not consistent with the WTO ADA.[24] Subsequently, it requested for consultations with the EU in the WTO DSS. The panel was not established by the WTO DSS as provisional anti-dumping duties were not continued as definite anti-dumping duties (Davey 2005).

The Eurocoton[25] of the EU played an important role during India-EU dispute on unbleached cotton fabric. The Eurocoton complained that unbleached cotton fabrics were dumped by India, Pakistan, Egypt, Turkey, Indonesia and China which hampered their industry in their particular market. The dumping margin of India was found to be from 8.9 percent to 22.7 percent (Business Standard 1998). The EU industry had suffered material injury from 1992 to 1996 which led to the closing down of 88 plants manufacturing the product with the loss of 8, 625 jobs in EU.[26] The margin for injury removal for India was decided to be from 2.7 percent to 71.4 percent (EU Annual Report 1996). The provisional anti-dumping measures on India's unbleached cotton fabrics were imposed for six months.

2.7.1.2 India and the EU on Polyethylene Terephthalate (PET) Dispute

India approached the DSS for considering the review of expiry term of anti-dumping and anti-subsidy conducted by the EU on India's PET products on 4 December 2008.[27] According to the agreement on anti-dumping and anti-subsidy of the WTO, the

[23] European Communities- Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India, Request for Consultations from India, WT/DS140/1, G/L/252 and G/ADP/D12/1 of 7 August 1998.
[24] European Communities- Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India, Request for Consultations from India, WT/DS140/1, G/L/252 and G/ADP/D12/1 of 7 August 1998.
[25] The Eurocoton is the cotton and textile industry of the EU.
[26] Ibid
[27] European Communities- Expiry Reviews of Anti-Dumping AND Countervailing Duties Imposed on Imports of PET from India, Request for Consultations by India, WT/DS385/1, G/L/877, G/ADP/D77/1 and G/SCM/D80/1 of 10 December 2008

expiry review has to be conducted within five years of imposition of anti-dumping and anti-subsidy duties. The EU had to terminate its measures on the PET from India but the EU kept imposing these measures on the ground that removal of these measures was harmful to the European producers. The imports of PET from India, Malaysia, Thailand, Indonesia, South Korea and Japan faced definite anti-dumping duties. The CVD were also imposed on imports from India, Thailand and Malaysia. The anti-dumping duties imposed on India were 181.7 euro/tonne and the countervailing duty was 41.3 euro/tonne (Nuthall 2000). The anti-dumping duties were imposed in 2000 and the expiry review was announced by the EU on 2005. The anti-dumping duties continued in 2007 for a period of five years.[28]

The expiry review according to India was not initiated within five years of imposition of anti-dumping and anti-subsidy duties. This was a violation of the EU's obligation under the WTO Agreement (Articles 11.3 of the ADA and 21.3 of the SCM).[29] The EU's action was against several agreements of Article VI of the GATT 1994 and the SCM. India claimed that legal standards of expiry review were not applied by the EU and the action of the EU was unreasonable and inadequate and established on abiased examination and a negative verification of the factual basis (Article 3.1 of the AD Agreement and 15.2 of the SCM Agreement).[30] India claimed that the EU had failed to justify its act of continuing the anti-dumping and anti-subsidy measures. Some analysts on trade viewed that the largest producer of PET is the Reliance Industry in India which has suffered major loss due to anti-dumping and anti-subsidy duties on its products (Nuthall 2000).

The review was initiated in the year 2005 but India requested for consultation in 2008.[31] It was in the year 2006 the government authorities were informed about this action of the EU. It should be noted that even if the panel was established for this particular dispute and dispute was resolved in time, it was not possible for the submission of panel findings before the abolition of expiry review on PET. A member of the PET opined that the case was lost for them and it would not make any sense for

[28] Ibid
[29] European Communities- Expiry Reviews of Anti-Dumping AND Countervailing Duties Imposed on Imports of PET from India, Request for Consultations by India, WTO DOCS., WT/DS385/1, G/L/877, G/ADP/D77/1 and G/SCM/D80/1 of 10 December 2008
[30] Ibid
[31] Ibid

them to enquire about the jurisprudence of this particular case in the WTO (Nuthall 2000).

The European Court annulled the anti-dumping duties on the imports of PET MTZ Polyfilms Ltd., a major exporter of PET in India. The court gave the judgment that the calculation of export price by the institution of the EU has breached the anti-dumping laws of the EU (Nuthall 2000).

2.7.1.3 India and the EU onNon-Alloy Steel and Flat-Rolled Iron Dispute

India approached the DSS regarding anti-dumping duties imposed on certain non-alloy steel and flat-rolled iron from India. The width of these products is 600 mm and these are hot rolled (HR Coils) and are not plated, coated or covered.[32]

The anti-dumping investigations against the hot rolled coils of India were initiated by the EU in January 1999 and the definite anti-dumping duties were imposed on 4th February 2000 through decision number 283/2000/ECSC of the commission.[33] India claimed that the measure of the EU was against Article 9.2 of the ADA.[34] The definite anti-dumping duties on hot-rolled coils were not only imposed on the imports of India but also on the imports of South Africa, Bulgaria, Taiwan and Yugoslavia in 2000. In the year 2000, anti-dumping proceedings were initiated on imports of HR Coil from Egypt, Hungary, Slovakia, Turkey, Iran and Libya and in 2003 the EU proposed to imposedefinite anti-dumping duties on the imports of Turkey, Egypt and Slovakia. However, the anti-dumping investigations initiated on the hot rolled coils' imports from Slovakia, Iran, Egypt, Turkey, Libya and Hungary lapsed because the proposal of the Commission was not adopted within the given time limits.

The anti-dumping measures continued on hot rolled coils' imports only from India. There were no anti-dumping measures on imports from Turkey, Egypt and Slovakia even if dumping from these countries were found that injured the domestic markets of the EU.

[32] European Communities- Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India, Request for Consultations by India, WTO, Docs. WT/DS313/1, G/L/682, G/ADP/D55/1 of 8 July 2004.
[33] Ibid
[34] Ibid

Under Article 9.2 of the ADA, the anti-dumping duties have to be collected on the non-discriminatory basis from all those sources which are causing dumping and injury to its industry[35]. However, the action of EU was discriminatory as it imposed anti-dumping measures on one country and did not impose it on other countries even if dumping and injury of hot rolled coils were found against these countries. This discriminatory nature of the EU was strongly condemned by India.

India also claimed that the EU was unsuccessful in examining the effect of dumped products on its industries (Article 3.4 of the ADA) and to establish a link between these dumping from India and injury in its domestic industry (Article 3.5 of the ADA). The EU failed to properly define its domestic industry that produced hot rolled coils in accordance with Article 4.1 of the ADA[36] according to India.

The dispute did not go for the panel stage as it was resolved mutually by both the parties in July 2004.[37] The EU and India informed the WTO DSS about the decision of agreeing mutually to a solution on this issue and the EU removed its anti-dumping measures on India's hot rolled coils. Therefore, the dispute was resolved outside the ambit of the WTO.

2.7.1.4 India and the EU on Bed-Linen Dispute

The EU initiated the anti-dumping investigation on bed linen's imports from Pakistan, Turkey and Thailand in the year 1994 (Graffsma and Rajagopal 2016). It was found that these countries' market share in the bed linen has increased and dumping was found as the domestic market's normal price was more than the importing country's export price. However, this proceeding was terminated on 10 July 1996 (Graffsma and Rajagopal 2016). India claimed that anti-dumping investigation was withdrawn due to lack of cooperation among the EU industries.

However, just after twenty days of the withdrawal of anti-dumping proceedings on bed linen, Eurocoton (the association of national producers involved in the production of cotton textiles in the EU) complained that bed linen's imports from India, Pakistan

[35] European Communities- Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India, Request for Consultations by India, WT/DS313/1, G/L/682, G/ADP/D55/1 of 8 July 2004.
[36] Ibid
[37] European Communities- Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India, Notification of Mutually Agreed Solution, WT/DS313/2, G/L/701 and G/ADP/D55/2 of 27 October 2004.

and Egypt were being dumped in markets of EU that injured their industry. The anti-dumping investigation was initiated in September 1996. The TEXPROCIL[38] represented exporters of India.[39] The provisional anti-dumping duties were extended to definite anti-dumping duties on India's bed linen.

India requested consultations with the EU[40] which claimed that the method of margin calculation and injury measurement of the EUwas not in accordance with the WTO ADA. However, the EU defended by stating that large possibilities for calculating the dumping margin and injury was available under the ADA. Subsequently, the consultations failed to provide any effective result and India requested for the panel establishment.[41] The panel upheld India's claims about 'zeroing' method for calculating dumping margin were valid. The EU appealed for Appellate Body review. The Appellate Body upheld panel's finding that calculation of dumping and injury using 'zeroing' method was flawed and against the ADA. The EU was asked to confirm its measures with the agreement.

The Appellate Body ruled that objective examination has not been made while determining dumped imports' volume for calculating injury. The EU also failed to include all the exporters of the dumped imports. The Panel and the Appellate Body both upheld India's claim on 'zeroing' method and the EU had to bring its measures in conformity with the WTO.[42] A regulation was adopted by the Council of the EU in order to amend the definite anti-dumping duties on India's linen to comply with the Appellate Body rulings (Graffsma and Rajagopal 2016). The Appellate Body ruled that as the EU has claimed that the product considered for dumping is cotton type bed linen; its measure of including all its types and models is against provisions of the ADA.[43]

India again requested for consultations with the EU as it felt that the measures were not brought in conformity with the Appellate Body's rulings. India requested for the

[38] TEXPROCIL is the Cotton and Textile Export Promotion Council of India.
[39]European Communities- Anti-Dumping Duties on Imports of Cotton- Type Bed Linen from India, Request for Consultations from India, WT/DS141/1, G/L/253 and G/ADP/D13/1 of 7 August 1998.
[40] Ibid.
[41] European Communities- Anti-Dumping Duties on Imports of Cotton- Type Bed Linen from India, Request for Consultations from India, Request for the Establishment of the Panel, WT/DS141/3 of 8 September 1999.
[42] European Communities- Anti-Dumping Duties on Imports of Cotton- Type Bed Linen from India, Report of the Appellate Body, WT/DS141/AB/R of 1 March 2001.
[43] Ibid.

Compliance Panel to examine EU's implementation of rulings.[44] The Compliance Panel came to the conclusion that the EU has adopted the ruling of the WTO DSS of the original dispute. The certain matters of law and legal interpretations of the Compliance Panel were appealed by India. The Appellate Body upturned panel's findings and it held that the determination of dumped imports' volume to calculate injury was not examined objectively and the EU has failed to confirm with rulings of the panel. This was first dispute in which EU's anti-dumping measures were challenged in the DSS (Graffsma and Rajagopal 2016).

India for the first time had questioned the concept of 'zeroing' which prohibited 'zeroing' method in calculating the dumping margin (T.B 2010). The method of 'zeroing' for calculating margin of dumping has always been debated in several disputes between the USA and several countries like Canada, Thailand, Japan and the EU. According to the method of 'zeroing', the countries' for calculating the dumping margin, done by weighted average method, treat the transaction having negative dumping margin as the margin equal to zero.

The product under consideration in the EC-Bed Linen dispute for calculating dumping margin was identified as cotton-type bed linen including its several models and types. The EU calculated and compared weighted average normal value and weighted average export price for the different models of the product. The 'positive dumping margin'[45] was established for those models whose foreign market's export price in the domestic market was lower than the domestic market's normal price. The 'negative dumping margin'[46]was found when the export price was more than normal price. The positive dumping margin means that dumping has occurred while the negative margin dumping showed an absence of dumping of products. The amount of both export and normal price was added for calculating the margin of dumping. However, while doing so the 'negative margin dumping' was considered as 'zero' due to which the word 'zeroing' was used. India claimed such a method increased the possibility of dumping as the 'negative dumping margin ' is not used to offset the 'positive dumping margin'

[44]European Communities- Anti-Dumping Duties on Imports of Cotton- Type Bed Linen from India, Recourse to Article 21.5 of the DSU by India, Request for Consultations, WT/DS141/12 of 14 March 2002.

[45] The positive dumping margin referred to those models where the export price was less than the normal price and dumping was found to exist.

[46] The negative dumping margin referred to those models where the export price was more than the normal price and dumping was not found to exist.

and ‘zeroing’ method made much difference and increased the possibility of dumping (Table 2.14).

Table 2.14
Dumping Margin by ‘Zeroing’ method

Models Exported	Sum of CIF Value	Sum of real dumping amount	Dumping amount per EU(The “0” indicates the “zeroed” amount)	% per EU
1	54595034	2444661.168	2444661.17	4.48
2	28379349	-840871.6374	0.00	0.00
3	35119956	787797.5404	787797.54	2.24
4	26940135.47	-1923730.158	0.00	0.00
5	21859280.04	-977723.0105	0.00	0.00
6	19426021.26	2132781.439	2132781.44	10.98
7	15915117.53	-255135.296	0.00	0.00
8	14604200.8	156272.4031	156272.40	1.07
9	12526247.49	225785.7921	225785	1.80
10	10064340.52	391620.1423	391620.14	3.89
11	9195177.3	-2114764.402	0.00	0.00
12	7182757.11	1195525.219	1195525.22	16.64
13	6578793.64	-921095.2336	0.00	0.00
14	7783783.55	73158.60636	73158.61	0.94
15	7355982.32	435593.6285	435593.63	5.92
16	7968378.95	-903413.7129	0.00	0.00
17	6127736.67	-691408.4469	0.00	0.00
18	4812847.04	-239001.1542	0.00	0.00
19	6543607.06	-567224.405	0.00	0.00
22	3552510.28	-188257.2337	0.00	0.00
25	4164049.29	327548.0475	327548.05	7.87
46	1510123.93	-117626.1048	0.00	0.00
63	577254.4	150550.1243	150550.12	26.08
68	869897.26	77215.41208	77215.41	8.88
70	876551.29	13621.79908	13621.80	1.55
Grand total	314529134.1	-1328119.472	8412131.32	2.67
However		The real dumping amount		The real dumping margin
		-1328119.472		-0.42% i.e.0

Source: Graffsma and Rajagopal (2016)

India's first written submission was made to the Panel as Annex I-1. The panel and the Appellate Body rejected practice of 'zeroing'. The Appellate Body referred to Article 2.4.2 of the ADA:

> subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on transaction to transaction basis (WTO 2000).

The Appellate Body ruled that Article 2.1 of the ADA says that ADA is concerned with the product dumped and its calculation of dumping margin as referred in Article 2.4.2 of the ADA. It said that the product investigated was bed linen made of cotton and subsequently the EU had to establish the dumping margin for the specific product and not for its different models. It also made clear that the EU[47]that had not taken into account the export transaction of those models whose normal price was less than the export price. This increased the possibility of dumping to a large extent. The omission of a few export transactions by following the practice of 'zeroing' was not a fair comparison which is necessary under Article 2.4 and Article 2.4.2 of the ADA.

Subsequently, there have been a series of disputes known as 'zeroing disputes' that have discarded the practice of 'zeroing' and has considered it to be incompatible with the WTO ADA. In the Doha Round Negotiation, 'zeroing method' was discussed and the USA and to some extent New Zealand opposed the removal of practice of 'zeroing' (T.B 2004). As a third party also, India joined disputes to oppose the use of 'zeroing' like in the US-Shrimp dispute in which Vietnam opposed zeroing practice in the calculation of dumping margin by the USA.

2.7.1.5 India and the EU on Twenty Seven Products Dispute

A request for consultations was initiated by the EU on 8 December 2003 when India imposed anti-dumping measures on EU's 27 products (Table 2.15).[48] The products included paper, steel, pharmaceuticals, chemicals and textiles (Table 2.15).The anti-dumping measures were imposed from the period 1999 to 2003 (Ramachandran 2003).

[47] The EU while applying the process of zeroing counted the weighted average export price and weighted average normal price to be equal despite the reality that weighted average normal value was less than the weighted average export price.

[48] India-Anti-Dumping Duties on Imports of Certain Products from the European Communities and/or Member States, Request for Consultations by the European Communities, WT/DS304/1, G/L/666 and G/ADP/D51/1 of 11 December 2003.

The dispute is important because it was the first time a dispute involved 27[49] products that faced anti-dumping measures. There is another dispute between the EU and the USA regarding imposition of anti-dumping measures on 31 products, the highest number of products on which anti-dumping measures was applied, and was questioned in the WTO DSS.

Table 2.15

EU's Products facing Anti-Dumping Duties

	Product	Country	Date of Imposition
1	Methyl Chloride	EU	14/08/2003
2	Phenol	EU	13/02/2003
3	Vitamin A Palmitate	EU	23/01/2003
4	D(-) Para Hydroxy Phenyl Glycirine Base(PHPG)- 1	EU	07/03/2003
5	Vitamin AB2D3K	EU	09/09/2003
6	Acrylic Fibre	Germany, U.K.	09/10/2002
7	Sodium Nitrite	EU	12/10/2002
8	Cold Rolled Flat Products Stainless Steel	Spain, Belgium and EU	05/12/2002
9	Flexible SlabstockPolyol	EU	19/09/2002
10	High Styrene Rubber	EU	15/01/2002
11	Vitamin AD3	EU	21/05/2002
12	Acrylic Fibre (below 1.5 denier)	Italy	12/09/2002
13	Purified Terephtalic Acid (PTA)	Spain	30/05/2000
14	Sodium Cyanide	EU	06/06/2000
15	Seamless Tubes	Austria	21/06/2000
16	Oxo Alcohols	EU	18/08/2000
17	Hydroxyl Amine Sulphate (HAS)	EU	28/03/2001
18	Sodium Ferrocyanide	EU	10/05/2001
19	Caustic Soda	France	26/06/2001
20	Aniline	EU	26/06/2001
21	Theophiline& Caffeine	EU	30/07/2001
22	Choline Cloride	EU	14/01/2002
23	Vitamin C	EU	15/09/2000
24	B&W Photographic paper	UK and France	21/12/2000
25	Thermal Sensitive Paper	EU	06/04/2000
26	Acrylonitrile Butadiene Rubber	Germany	30/07/1997
27	Acrylic Fibres	Italy, Spain and Portugal	22/01/1999

Source: WTO (2003)[50]

[49]India initiated most of the anti-dumping measures against the steel and food industry of the EC.

[50]India-Anti-Dumping Duties on Imports of Certain Products from the European Communities and/or Member States, Request for Consultations by the European Communities, WT/DS304/1, G/L/666 and G/ADP/D51/1 of 11 December 2003.

India is the largest initiator of anti-dumping investigations followed by the USA[51], the EU[52] and Brazil[53]. The period 1995 to 2017 marks the initiation of 839 anti-dumping investigations by India which is the highest among all the countries (WTO 2018). The issue of anti-dumping measures has always been a hindrance in the bilateral trade relations between the EU and India. The total number of anti-dumping measures that India has initiated against the EU is 38 between the period 1995 to 2017, which is highest compared to other countries (WTO 2018). The EU decided to approach dispute settlement proceedings against India when it imposed anti-dumping duties on EU's 27 products.

The dispute between India and the EU has its significance because it is the first dispute in which the anti-dumping measures on such a large number of products were initiated and challenged in the WTO DSS. The reasons for India's anti-dumping duties on EU's large number of products can be a counteraction to the EU's imposition of anti-dumping duties on India's several products. The EU from 1995 to 2017 has initiated anti-dumping investigations on 64 products of India which is the highest compared to other countries (WTO 2018). Countries counteract to such actions and therefore India also initiated anti-dumping investigations on several products of the EU.

The EU claimed that India could not impartially examine dumped imports' effects on price and injury and there has been a lack of transparency on Indian side while investigating the dumped products. These measures of India are against its obligation under ADA of the WTO.[54]

The Chinese Taipei and Turkey joined as third parties. Among the 27 products of EU, five products sodium nitrite, caustic soda, flexible slabstockpolyol, acrylonitrile butadiene rubber and acrylic fiber were also exported from Chinese Taipei and subsequently, it had its trade interests in this particulardispute.[55] Similarly, Turkey

[51]The total number of anti-dumping investigations initiated by the USA is 606 from 1995 to 2017.
[52]The EU has initiated 493 anti-dumping investigations from the period 1995 to 2017.
[53]Brazil has initiated 403 anti-dumping investigations from the period 1995 to 2017.
[54]India-Anti-Dumping Duties on Imports of Certain Products from the European Communities and/or Member States, Request for Consultations by the European Communities, WT/DS304/1, G/L/666 and G/ADP/D51/1 of 11 December 2003.
[55]India-Anti-Dumping Measures on Imports of Certain Products from the European Communities, Request to Join Consultations, Communication from Chinese Taipei, WT/DS304/3 of 24 December 2003.

also had trade interest as some of the products in dispute were also exported from Turkey.[56]

The consultations between the countries were held in February 2004. A review process was initiated by India which terminated most of its anti-dumping measures of export interest to the EC like the pharmaceutical and steel industry. This issue was raised in third round of consultation between India and the EU when India imposed certain duties on the EU's spirits and wines.

2.7.2 India and the USA

India has challenged three anti-dumping measures of the USA till May 2019 in the WTO DSS (WTO 2019). The disputes are regarding the US-Steel Plate, the US-Continued Dumping and Subsidy Offset Act (CDSOA) of 2000 and the US- Custom Bond Directive (CBD) for merchandise that faced anti-dumping and countervailing duties (Table 2.5).

2.7.2.1 India and the USA on Steel Plate Dispute

The request for consultation came from India in October 2000.[57] The USA had imposed anti-dumping duties on certain steel plate imported from India. The application for initiating anti-dumping investigations came from different groups of steel producing companies in the USA. These included the United Steel Workers of America, Bethlehem Steel, Tuscaloosa Steel, Gulf States Steel and Ipsco Steel.[58] The investigation was initiated by the USDOC. The Steel Authority of India, Ltd. (SAIL) was the sole respondent from the Indian side. The USDOC came with the final determination of the dumping of steel plate from India which was causing injury to its market as the steel plate was exported at price below the normal price in the Indian market. This was challenged by the SALE in the United States Court of International Trade as it claimed that the USDOC's findings were inaccurate and improper. However, the dumping margin (72.49 percent) which was imposed on the imports of steel plate remained unaltered. India chose to approach the WTO DSS and

[56]India-Anti-Dumping Measures on Imports of Certain Products from the European Communities, Request to Join Consultations, Communication from Turkey, WT/DS304/2 of 24 December 2003.
[57]United States-Anti-Dumping and Countervailing Measures on Steel Plate from India, Request for Consultations from India, WT/DS206/1, G/L/395, G/ADP/D26/1 and G/SCM,D36/1 of 9 October 2000
[58]"United States-Anti-Dumping and Countervailing Measures on Steel Plate from India, Dispute Settlement Report(2002)," *Cambridge University Press*, VI:2073-2082

consultation was held on 21 November 2000.[59] India argued that the USA had not taken into account the information provided by the SAIL and had relied on the "facts available" for calculation of the dumping margin. India requested for the establishment of the panel on 7th June 2001 as consultations failed to provide any effective result.[60] India alleged the USA of violating several provisions of ADA and Article VI of the GATT 1994. India demanded that the USA should confirm its measures to these agreements. The EU, Chile and Japan joined as third parties.

The panel on 28th June 2002 asked the USA to bring its measures in accordance with the ADA of the WTO. The panel ruled,

> [T]he United States acted inconsistently with the Anti-Dumping Agreement in refusing to take into account US sales price information submitted by the Steel Authority of India Limited ("SAIL") without a legally sufficient justification (WTO 2002).[61]

On 19 February 2003, the USA informed that it has implemented panel's rulings.[62]An important jurisprudence was developed by the panel that countries cannot ignore the information provided by a domestic industries and resort to "facts available" which has to be done only after meeting the conditions mentioned under Article 6.8 and Annex II of the ADA (WTO 1995).

According to Article 6.8 of the ADA,

> In cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph (WTO 1995).[63]

This dispute is of utmost importance for all the countries facing anti-dumping investigations. The rulings were significant for India as its products are mostly targeted for anti-dumping investigations and it is one of the frequent users of the

[59]United States-Anti-Dumping and Countervailing Measures on Steel Plate from India, Request for Consultations from India, WT/DS206/1, G/L/395, G/ADP/D26/1 and G/SCM,D36/1 of 9 October 2000
[60]United States-Anti-Dumping and Countervailing Measures on Steel Plate from India, Request for the Establishment of the Panel by India, WT/DS206/2 of 8 June 2001.
[61]United States- Anti-Dumping and Countervailing Measures on Steel Plates from India, Report of the Panel, WT/DS206/R of 28 June 2002.
[62]United-States-Anti-Dumping and Countervailing Measures on Steel Plate from India, Understanding between India and the United States Regarding Procedures under Articles 21 and 22 of the DSU, WT/DS206/9 of 19 February 2003.
[63]GATT (1994), "Agreement on Implementation of Article VI of the GATT 1994", Accessed 10 January 2017, URL: https://www.wto.org/english/docs_e/legal_e/19-adp.pdf

anti-dumping measures (WTO 2018). The dispute demonstrates that the panel and Appellate Body clarify the meanings of different provisions mentioned under the ADA in several WTO disputes. The countries hereafter had a clear understanding of the provision of 'facts available' mentioned under ADA.

2.7.2.2 India Challenged the Domestic Laws of the USA

The members have to follow the WTO rules and their national laws should be in conformity with the WTO laws. Nonetheless, if violations of rules are found in adopting national laws, members can complain against them in the WTO DSS. It was in two instances when India felt that the national laws of the USA were violating Article VI of the GATT 1994. The US Custom Bond Directives for merchandise products and the CDSOA of 2000 were questioned by India. In both the cases, India played a significant part in defending its claims. The Panel ruled against these specific measures as these were against the ADA of the WTO. This has been victory for India as it was able to challenge the laws of a developed country and get the findings in its favour. Such examples encourage developing countries to approach the DSS against developed countries.

i. India and the USA on Customs and Border Protection Dispute

The U.S Customs and Border Protection (CBP) Act in the year 2003 and 2004 determined that there was default on the parts of importers on collecting anti-dumping and countervailing duties which lawfully belonged to the government of the USA. It was becoming difficult to know about these defaults especially in the area of agriculture/aquaculture products. Consequently, the CBP decided to bring new custom bond directives for the merchandise products. They came out with the Extended Bond Requirements (EBR) for merchandise goods which would be categorised under 'special category goods' where the risk of not collecting anti-dumping and countervailing duties prevailed. The importers of these goods would have to obtain higher value bonds which would be collected by the given formula.[64] At the same time, anti-dumping investigations were initiated by the USDOC and USITC on the imports of certain shrimp from India, Thailand, Vietnam, Ecuador and Brazil and definite anti-dumping duties were imposed on India's frozen warm water

[64] for known producers= rate*previous twelve months import value of special category good; for new producers=cash deposit rate*estimated import value of special category goods

shrimp. This was the first anti-dumping duties levied on agriculture/aquaculture merchandise by the USA after the amendment in bond review in 2004. The CBP opined that if default continued in revenue collection on part of importers of shrimps, huge crisis would prevail and it decided to apply the new directives on the shrimps as large default had been seen in agriculture/aquaculture products.[65] Therefore, under the new Extended Bond Review (EBR), the duties imposed on the importers of shrimp were: First, "the deposit of cash for the anti-dumping duties that have been estimated" (WTO 2006). Second, "the basic bond requirement in an amount that is more than US dollar 50,000 or 10 percent of the duties, tax and fees that has been paid in the preceding year that has be rounded to the figure set out in basic bond formula" (WTO 2006). Third, "the EBR in an amount equivalent to 100 percent of the anti-dumping duty rate multiplied by the value of imports of subject shrimp in the previous 12 months" (WTO 2006).[66]

Consequently, India requested consultations with the USA. India claimed that US measures of applying EBR on shrimp imports were inconsistent with provisions of the ADA, Article VI of the GATT 1994 and the SCM. The measure of applying additional bond was unreasonable and discriminatory.

India requested for establishing panel in the year 2006 as negotiations failed to reach mutually agreed solution.[67] Japan, Thailand, Brazil, China and European Communities joined as third parties. The panel report was circulated and it upheld the claims of India.[68]

- The application of EBR on the imports of shrimp from India was inconsistent with Article 1 and 18.1 of the ADA.
- The EBR's application on shrimp prior to imposition of anti-dumping duties was inconsistent with Article 7.2 of the ADA.
- The USA violated the Article 18.5 of the ADA as it failed to notify the committee about the amended Custom Bond Duties.

[65]According to the Standard formula, along with basic requirements of bond, an amount equal to hundred percent of anti-dumping duty rate of the exporters concerned, multiplied by the value of imports of subject shrimp of that importer in the previous twelve months, had to be paid.
[66]United States- Customs Bond Directive for Merchandise subject to Anti-Dumping/Countervailing Duties, Request for the Establishment of the Panel by India, WT/DS345/6 of 16 October 2006
[67]United States- Customs Bond Directive for Merchandise subject to Anti-Dumping/Countervailing Duties, Report of the Panel, WT/DS345/R of 29 February2008.
[68]Ibid

India and the USA requested for the Appellate Body review. The USA notified the WTO DSS on 20th April 2009 that measures have been confirmed with panel's rulings.

ii. India and the USA on Byrd Amendment Dispute

The CDSOA also called 'Byrd Amendment' was a law that was enacted in the USA according to which collected anti-dumping and countervailing duties have to be distributed to 'affected domestic producer' who have made 'qualifying expenditures'. The 'affected domestic producer' includes 'any manufacturer, producer, farmer, rancher or worker representative' or those people who have filed the petition which resulted in the imposition of such duties (Movsesian 2004). The 'Qualifying Expenditures' are the expenditures made by the domestic producers since the imposition and termination of anti-dumping and countervailing measures (Movsesian 2004). These include expenditures on equipment, technology, manufacturing, research and development, raw materials and other inputs required for production and personal training.

The eligibility certification has to be filed by the domestic producers to avail the benefits under 'Byrd Amendment' and there is no obligation for the domestic producers to use these funds in a particular way. An effort had earlier been made in the US Congress to enact laws that would lead to the distribution of these duties directly to the producers. However, the law was enacted by the US Congress when it was proposed by Robert Byrd, Senator of West Virginia in the year 2000 (Chang 2006). The bill did not go through a proper legislative procedure which avoided any debates on the floor of the house. It was put into Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act 2001which was finally signed by the then President of the USA, Bill Clinton. However, he asked the Congress "to override [Byrd Amendment] or amend it to be acceptable" (Sheppard 2002). As a trade policy, the CDSOA was a very unique one because it considers that "the revenue from unfair trade should be used to help those hurt by trade".[69] The revenue which was collected before the enactment of this law was deposited in the General Fund of the US Treasury. But after the enactment, the

[69]This was the statement made by Olympia Snowe in the Senate which was recorded in Congressional Record, Daily Edition in the volume 149 on page number S8234 on 19 the June 2003.

Bureau of Customs and Border Protection of the Department of Homeland Security was directed to deposit these duties to interested parties of anti-dumping investigation and countervailing measures.

It was eleven countries that complained against the CDSOA of the USA as it was considered against the ADA and the SCM.[70] The dispute involved large number of countries as complainants in history of the WTO disputes. India, along with Australia, Brazil, Chile, EU, Indonesia, Japan, Korea and Thailand requested consultations with the USA regarding the CDSOA in December 2000. A separate complaint was filed by Canada and Mexico on the same issue in the year 2001. The complainants claimed that the agreements on anti-dumping and SCM prohibit any member from adopting "specific action against" violation of these measures. Under the ADA and the SCM, there are only three actions that are permissible against the particular country (WTO 1995):

i) imposition of anti-dumping and countervailing duties
ii) price undertaking
iii) imposition of provisional duties

According to these complainants, the CDSOA calls for specific action against dumping and subsidies. The other issue raised by the complainant was that the distribution of these duties according to the CDSOA to the domestic producers provided an incentive to these producers to file a petition for initiating the anti-dumping and anti-subsidy investigation which distort the WTO requirement of the application from domestic producers. The measure has also made it difficult for exporters to secure undertaking with the producers as these domestic producers would oppose such price undertaking as they would benefit from those duties collected.

The consultations with the USA did not provide any effective result and the complainants asked for panel's establishment. The Panel ruled that the CDSOA was a specific action against anti-dumping and countervailing measures and it provided incentives to domestic producers that encouraged such measures. However, the complainants' claim that the act would make suspension of anti-dumping duties

[70]United States- Continued Dumping and Subsidy Offset Act of 2000, Request for Consultations by Australia, Brazil, Chile, the European Communities, India, Indonesia, Japan, Korea and Thailand, WT/DS217/1, G/L/430, G/ADP/D31/1 and G/SCM/D39/1 of 9 January 2001

difficult for the USA was rejected by the panel. Certain measures of the panel's legal interpretation were appealed for the Appellate Body Review. The panel's finding that the CDSOA was a specific action against dumping was upheld by the Appellate Body. However, the Panel's finding that due to incentives the domestic producers would support the investigations on dumping and subsidy was upturned by the Appellate Body. The USA was asked to comply with the measures of the WTO.

The countries adopted the report on 27 January 2003 and the compliance period was to expire on 27 December 2003.[71] However, the USA failed to follow panel's rulings as there was a group in the US Congress which supported the CDSOA. The members can suspend concessions or retaliate against the non complying members. As the USA failed to comply by the given time period, India along with seven other members asked for the authorities to retaliate against the USA. However, Thailand, Australia and Indonesia gave the USA time till 27 December 2004 to comply with rulings.[72]In August 2004, the WTO authorised eight members to impose countermeasures which should be on an annual basis and should be 72 percent of the CDSOA disbursements.[73] Later, Thailand, Australia and Indonesia had entered into an agreement with the USA that they would not seek authorisation to retaliate in the present time but can do that in future.

The Deficit Reduction Act of 2005 repealed the 'Byrd Amendment' (Lopez 2014). This act allows for the period of transition which meant that the distribution of duties to domestic producers would not be stopped at once but will gradually be reduced to the point of zero distribution of duties. The CDSOA was discussed several times in the US Congress which was favoured by diplomats who were reluctant to repeal this act. However, with retaliatory measures in force from so many countries, the USA complied with the WTO Law[74] and the act was repealed by the USA.

The dispute demonstrates the significance of the WTO DSS in several ways:

[71]United States- Continued Dumping and Subsidy Offset Act of 2000, Request by Australia, Brazil, Canada, Chile, the European Communities, India, Indonesia, Japan, Korea, Mexico and Thailand for Arbitration under Article 21.3(c)of the DSU of19 March 2003
[72]Ibid
[73]Ibid
[74]European Commission (2018), "WTO Cases: Cases Involving the EU, WT/DS217-Continued Dumping and Subsidy Offset Act of 2000", [online web], Accessed 5 May 2018, URL: http://trade.ec.europa.eu/wtodispute/show.cfm?id=165&code=1

i. Two or more countries having similar interest can come together as co-complainants and challenge a specific provision of a developed country. The group with developed countries as complainants puts psychological pressure on other developed countries whose measures have been questioned in the WTO DSS.

ii. The process of retaliation proved to be very effective in this particular case as it created pressure on the USA to comply with panel's decision.

iii. The national laws of particular countries should not contradict with the WTO provisions.

iv. If the group of complainants includes both developed and developing countries, it can put psychological pressure on the developed losing country to comply with the panel's rulings.

2.7.3 India and South Africa on Pharmaceutical Dispute

India questioned the anti-dumping measures on its pharmaceuticals by South Africa. South Africa had initiated anti-dumping investigations on India's capsule containing 250 mg of ampicillin and amoxicillin. India requested consultation with South Africa on 1st April 1999. India claimed that the calculation of dumping and its injury by South Africa was biased and not proper. India claimed that action of South Africa was against several agreements of the anti-dumping.[75]

The major manufacturer and exporter of pharmaceuticals in the SACU market is Pharmacare Ltd. that played an important role during India and South Africa dispute on pharmaceuticals. It claimed that the ampicillin trihydrate and amoxicillin trihydrate were dumped in the South African market which was causing injury to its industry. The International Trade Administration Commission (ITAC) of South Africa handled the investigation. It was found that there was dumping of 200mg and 500mg of ampicillin and amoxicillin which caused material injury in the market of SACU. This followed recommendation by the South African Board on Tariffs and Trade (BTT) under its report number 3799 of 3 October 1997 to impose duties on imports of India's pharmaceutical products (Brink 2012). The dispute is in the consultation stage of the WTO DSS.

[75]The anti-dumping measure by South Africa was against articles 2, 3, 6, 12, 15 of the Anti-Dumping Agreement (Art.VI of GATT 1994).

2.7.4 India and Brazil on Jute Bag Dispute

India questioned Brazil's anti-dumping duties on its jute bags and approached the DSS in the year 2001.[76]

The anti-dumping duties were imposed by Brazil on India and Bangladesh's jute bags on 30th December 1992.[77] The percentage of duties imposed on India was 24.8 on those bags which were made of jute yarn and 56 percent on jute bags which were imported from India.[78] With the expiration of the period of five years, Brazil conducted the sunset review and the duty of 38.9 percent was re-imposed on the imports of jute bags from India for other five years.[79] It was found that Brazil had relied on two fake invoices from an Indian company which had no existence that is DADJ and Bag Manufacturing Company which indicated a greater value in the domestic market to prove the existence of dumping.[80] The issue was brought to the notice of Brazil and a criminal investigation was initiated by the Federal Police of Brazil in 1999 but the result of this investigation never came to the forefront.[81] The two delegations of India represented by secretary, Textile and Honorable Minister of Textile visited Brazil in 1999 and 2000 to discuss about anti-dumping duties but such efforts were unsuccessful.[82]

India approached the WTO DSS after considerable internal deliberations as the BRICS provided the platform for India and Brazil to enhance and strengthen their diplomatic relations. India claimed that the imposition and review of anti-dumping duties were based on the forged document from the non-existent company of India. Brazil refused to reconsider the imposition of anti-dumping duties despite the information about the forged company was brought to its notice by the Indian authorities. Brazil failed to consider the fresh evidence regarding the sales, cost and export price of the jute bags. The action of Brazil was against several anti-dumping

[76] Brazil- Anti-Dumping Duties on Jute Bags from India, Request for Consultations by India, WT/DS 229/1, G/L/447 and G/ADP/D35/1 of 17 April 2001
[77] Ministry of Textiles, "Jute Exports to Brazil get a Boost", Accessed 1 May 2018, [online web], URL: http://pib.nic.in/newsite/erelcontent.aspx?relid=6677
[78] Ministry of Textiles, "Jute Exports to Brazil get a Boost", Accessed 1 May 2018, [online web], URL: http://pib.nic.in/newsite/erelcontent.aspx?relid=6677
[79] Ibid
[80] Ibid
[81] Ibid
[82] Ibid

agreements of the WTO.[83] Nonetheless, the local investigation and scrutiny were conducted by Brazil on the jute mills of India. It was found that the export price of the Jute bags in India was higher than the domestic price and the exporters did not dump in the Brazilian market. Brazil withdrew its anti-dumping duties from five jute manufacturer and exporter (Cheviot, Ganges, Howrah, Birla and Gloster) and for other companies it reduced its duties from 38.9 percent to dollar 0.22 kg or 27.8 percent.[84]As the anti-dumping duties from Indian jute bags were removed by Brazil, the dispute was resolved at the consultation stage of the DSS.

The JMDC played an important role in the dispute between India and Brazil as it sent two review petitions to Brazil which was turned down by Brazil in 1999 and 2000.[85] Brazil conducted a second sunset review in 2003 for the continuation of anti-dumping duties on India's jute; it was contested by the JMDC by engaging the lawyers of both countries. India was represented by Mr. Krishnan Venugopal[86] and Mr. A.K.Gupta.[87] Brazil was represented by Carvalho De Frietas E Ferreira. The Consulate General and Ministry of Textile also supported the JMDC in Brazil (Pal 2007).

The dispute demonstrates that countries have initiated dispute against each other at the WTO DSS even if they are working together at other platforms. Their political relations have not been a hindrance in the dispute initiation. The dispute was initiated at the time when India and Brazil worked together at different forums like the BRICS and the WTO (Das and Nidumpara 2016) as both countries coordinated together for the ministerial conference to be held at Doha. Subsequently, their cooperation at other platforms did not come in way of approaching the WTO DSS against each other.

2.7.5 India and Bangladesh on Lead-Acid Battery Dispute

The request for consultation was initiated by Bangladesh in 2004 against India's imposition of anti-dumping duties on its lead-acid batteries.[88] This is the first case initiated by an LDC in the WTO DSS since the WTO formation.

[83]Ibid
[84]Ibid
[85]Brazil- Anti-Dumping Duties on Jute Bags from India, Request for Consultations by India, WT/DS 229/1, G/L/447 and G/ADP/D35/1 of 17 April 2001
[86]He was a senior advocate in the Supreme Court of India.
[87]He was a member of Trade Promotion Management consultants Pvt. Ltd.
[88]India- Anti-Dumping Measure on Batteries from Bangladesh, Request for Consultations by Bangladesh, WT/DS306/1, G/L/669, G/ADP/D52/1 of 2 February 2004.

The anti-dumping duties harmed the lead industry of Bangladesh to an extent that its exports came down to zero. Rahimafarooz, the largest exporter of lead-acid batteries in Bangladesh played a significant role in lobbying the government for challenging India's anti-dumping measures (Taslim 2006). It not only lobbied the government but also provided financial assistance in dealing with India at the WTO DSS. Bangladesh also used the service of the ACWL in this dispute. Bangladesh is an LDC and it is very difficult for a LDC to approach the DSS because of its financial and legal constraints. However, Bangladesh with the help of government, Rahimafarooz and the ACWL played an important role. This particular case provides an example for other LDCs that are absent from the WTO DSS as they can learn fromthe experience of Bangladesh and challenge the unfair trade practice of other countries at the WTO DSS.

Bangladesh claimed that the anti-dumping duties on its batteries were against the WTO ADA. Though the consultations failed to provide any effective result, India and Bangladesh informed the WTO DSS that a mutually agreed solution was achieved by them on 20 February 2006.[89] India finally agreed to remove its anti-dumping duties from Bangladesh's batteries. Being an LDC, this was a great victory for Bangladesh.

This dispute between India and Bangladesh has been discussed and analysed in detail in Chapter four of the thesis under the heading "Bangladesh as a complainant against India: Anti-dumping Duties on Lead Acid Battery".

2.7.6 India and Chinese Taipei

India's anti-dumping measures on seven products and USB flash drive were challenged by Chinese Taipei in the WTO DSS.

2.7.6.1 India and Chinese Taipei on Seven Products Dispute

The request for consultations came from Chinese Taipei in the year 2004 when India imposed provisional and definite anti-dumping duties on seven products which were exported from Taiwan, Penghu, Kinmen and Matsu.[90] The products were

[89]India- Anti-Dumping Measure on Batteries from Bangladesh, Notification of Mutually Agreed Solution, WT/DS306, G/L/669/Add.1 and G/ADP/D52/2 of 23 February 2006.
[90]India-Anti-Dumping Measures on Certain Products from the Separate Custom Territory of Taiwan, Penghu, Kinmen and Matsu, Request for Consultations, WT/DS318/1, G/L/702, G/ADP/D56/1 of 1 November 2004.

Analgin,[91]Potassium permanganate,[92] Sodium Nitrite[93], Acrylic Fibres[94], Paracetamol[95], Caustic Soda[96] and Green Veneer Tape[97] (Table 2.16).

Table 2.16

Chinese Taipei's Products facing Anti-Dumping Duties

	Product	Case No.(investigation by DGAD)	Date of Imposition of duties
1	Green Veneer Tape	14/50/2002	9th February 2004
2	Caustic Soda	14/39/2002	14th November 2003
3	Sodium Nitrite	54/1/2001	29th November 2002
4	Paracetamol	60/1/2000	27th March 2002
5	Potassium Permanganate	46/1/2000	1st November 2001
6	Analgin	66/1/2000	8th October 2001
7	Acrylic Fibres	27/1/99	18th July 2000

Source: WTO (2004)[98]

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu claimed that the imposition of provisional anti-dumping measures and definite anti-dumping duties on its seven products were against the WTO ADA.

There were several claims made against India's anti-dumping measures. First, India rejected the information given by its exporters without any valid reasons. Second, it did not provide any opportunities to its exporters to provide any further information on the cost and profit of these seven products. Third, the investigation period did not include any imports of these products from the Chinese Taipei. Fourth, India used the 'best available information' data to calculate the export and the normal price of the products under consideration but it failed to provide the reliability of the source. Fifth, export price, normal value and dumping margin calculation and injury were not

[91]Analgin is a medicine which is used to treat traumatic and chronic pains.
[92]Potassium Permanganate is a chemical used to remove iron and hydrogen sulphide (smell of rotten egg) from well water, also used as medication for cleaning wounds and dermatitis.
[93]Sodium Nitrite is an anti-oxidant and salt which is used for curing meats like hot dogs, bacon and ham.
[94]Acrylic Fibre is a synthetic fibre which is made from polymer.
[95]Paracetamol is a drug used for treatment of fever.
[96]Caustic Soda is an alkali used in manufacture of paper, pulp, soaps, petroleum and alumina.
[97]Green Veener Tapes are adhesive tape used for avoiding peeling problems during the manufacture of furniture.
[98]India-Anti-Dumping Measures on Certain Products from the Separate Custom Territory of Taiwan, Penghu, Kinmen and Matsu, Request for Consultations, WT/DS318/1, G/L/702, G/ADP/D56/1 of 1 November 2004.

objectively examined. Sixth, the determination of injury by India in the domestic market of Chinese Taipei was not based on facts but only on allegations. Seventh, India failed to provide any information on laws and facts concerning anti-dumping duties.

The request for consultation was received on 28 October 2004[99] and no further action has been taken on this particular dispute.

2.7.6.2 India and Chinese Taipei on Universal Serial Bus Dispute

The India-USB dispute occurred recently in the year 2015. The Separate Custom Territories of Taiwan, Penghu, Kinmen and Matsu requested consultations regarding anti-dumping duties imposed on its flash drives.[100][101]

The anti-dumping duties were imposed at the rate of USD 3.06 and USD 3.12 per piece for five years (Srivats 2015). The Central Board of Excise and Customs of India had imposed anti-dumping duties on the USB flash drive. It was found by the DGAD that the product from Taiwan was exported at the price lower than the normal price which injured its industry. The official of Finance Minister said, "Findings of the Directorate General of Anti-Dumping and Allied Duties revealed that these products were being imported to India at below cost prices, which would impact the domestic market. Hence, anti-dumping duties need to be imposed" (Ghose 2015).

There were several claims made by the Chinese Taipei against the anti-dumping measures on its USB flash drive. It claimed that India did not make an objective assessment of the facts. India's anti-dumping investigation was not based on information provided by the industries of Chinese Taipei and it was not even provided with sufficient time to defend their case. The calculation of the dumping margin and the injury by India were flawed. Therefore, the Chinese Taipei claimed that the anti-dumping measures imposed were not according to ADA of the WTO.[102] The Storage

[99]India-Anti-Dumping Measures on Certain Products from the Separate Custom Territory of Taiwan, Penghu, Kinmen and Matsu, Request for Consultations, WT/DS318/1, G/L/702, G/ADP/D56/1 of 1 November 2004

[100]The USB flash drive is a device used to store data. It uses the USB interface and the flash memory in order to connect with other multimedia devices for exchanging data. They are also referred as USB sticks, jump sticks, keychain drives, key drives, USB keys, flash sticks or memory keys.

[101]India-Anti-Dumping Duties on USB Flash Drives from the Separate Custom Territory of Taiwan, Penghu, Kinmen and Matsu, Request for Consultations by the Separate Custom Territory of Taiwan, Penghu, Kinmen, Matsu and, WT/DS498/1, G/L/1121 and G/ADP/D111/1 of 29 September 2015.

[102]Ibid

Media Products Manufacturers (SMPA) and Marketers Welfare Association (MWA) provided application for initiating investigations on behalf of India's domestic producers which has been represented by Moser Baer India ltd. A bilateral consultation was held between India and Taiwan following the Chinese Taipei's request for consultation in the WTO DSS. During the consultation, India contested the claims of Taiwan and no effective solution was reached by both countries.

According to one of the officials, "Now, either they can again request for another consultation with India if they come back with more queries or they can approach the WTO's dispute settlement panel" (Srivats 2015). There has not been any further progress on this dispute. Similar to this dispute, there are large numbers of disputes that are pending in the WTO DSS without any further action by the WTO DSS.

2.8 Countries in Dispute with India

The group of countries includes developed countries and the high-income economies the EU and the USA, the high-income economy and a developing country Chinese Taipei, developing countries and upper-middle economies Brazil and South Africa and a least developed country and upper middle-income economy Bangladesh (UNO 2019; World Bank 2019). The time when most of the developing countries are missing from the WTO DSS and the anti-dumping disputes, the largest number of India's disputes is with the developed countries the EU (5) and the USA (3). Therefore, India has experience of disputes with different countries that are completely at different developmental levels.

Table 2.17

India's Trade with Respondent/Complainant Countries

Countries	Exports(US$ Million)	% Share	Imports(US$ Million)	Percentage share
EU	**4,6848.67**	**17.33**	**49,203**	**11.35**
USA	**43,277.98**	**16.01**	**29,656.91**	**6.84**
Brazil	**3.092.42**	**1.14**	**3,785.23**	**0.87**
South Africa	**3,473.95**	**1.28**	**5,576.50**	**1.28**
Chinese Taipei	**2,360.84**	**0.87**	**3,846.20**	**0.88**
Bangladesh	**7,283.49**	**2.69**	**810.90**	**0.18**

Source: Export Import Data Bank (2019)

The EU and the USA are a major export destination for India's products as it accounts for 17.33 and 16.01 percent of India's total export whereas the imports from the EU and the USA to India are 11.35 and 6.84 percent of its total imports (Export Import Data Bank 2019). The export share of India to Brazil and South Africa is around 1.14 and 1.28 percent of its total export and import share is around 0.87 and 1.28 percent of its total imports. Similarly, India shares 2.69 percent and 0.87 percent of its exports with Bangladesh and Chinese Taipei and the import share with these countries is 0.18 and 0.88 percent of its total imports. Therefore, some of the countries in the dispute like the EU and the USA are important trade partners of India with which India shares a large percentage of its exports and imports.

It is necessary to analyse trade relation between India and these countries at the time when disputes were initiated in the WTO DSS. India has disputes with the EU in the year 1998, 1999, 2002, 2003 and 2008. So, it is important to analyse the trade relation between these two countries during these years.

Table 2.18

India and the EU

Dispute	Year of dispute initiation	Complainant	Year of (Export/ Import)	Export (US4$ million)	% share of total exports	Import(US4$ million)	% share of total imports
EC-UCF; EC-Bed Linen	**1998**	**India**	**1997-98**	**9,341.72**	**26.85**	**10,880.84**	**26.22**
EC-Flat Rolled Iron and Steel	**1999**	**India**	**1998-99**	**9209.81**	**27.72**	**10,886.59**	**25.68**
India-27 products dispute	**2002**	**EU**	**2001-02**	**10,160.71**	**23.18**	**51,413.28**	**20.71**
EC-PET dispute	**2008**	**India**	**2007-08**	**34,607.89**	**21.21**	**51,413.28**	**1.74**

Source: WTO (2019); Export-Import Data Bank (2019)

The time when disputes were initiated at the DSS of the WTO, India and the EU had major share of their exports and imports with each other (Table 2.18). A good trade

relation between the countries did not stop them from approaching the WTO DSS for resolving their trade disputes related to anti-dumping measures.

Table 2.19

India and the USA

Dispute	Year of dispute initiation	Complainant	Year (Export/ Import)	Export (US4$ million)	% share of total exports	Import(US4$ million)	% share of total imports
US-Steel Plate; US-Byrd Amendment	2000	India	1999-2000	8,395.61	22.80	3,560.22	7.15
US-Custom Bond directives	2006	India	2005-06	17,353	16.83	9,454.74	6.33

Source: WTO (2019); Export-Import Data Bank (2019)

The USA was also a major trading partner of India at the time of dispute initiation as major share of India's exports and imports was with the USA (Figure 2.19).

Table 2.20

India and South Africa, Brazil, Chinese Taipei and Bangladesh

Dispute	Year of dispute initiation	Complai-nant	Year (Export/ Import)	Export (US$ million)	% share of total exports	Import(US$ million)	% share of total imports
South Africa-Pharmaceuticals	1999	India	1998-99	387.72	1.16	1,351.8	3.18
Brazil-Jute Bags	2001	India	1998-99	226.05	0.50	145.17	0.28
India-USB Flash dive dispute	2015	Chinese Taipei	2014-15	2178.70	0.70	448,033	0.89
India-seven products dispute	2004	Chinese Taipei	2003-04	532.45	0.83	768.94	0.98
India-Lead Acid Battery dispute	2004	Bangladesh	2003-04	1,740.74	2.72	77.6	0.09

Source: WTO (2019); Export-Import Data Bank (2019)

2.9 Sectors Targeted in the Disputes

There are several sectors that were targeted by India and against India on disputes challenged in DSS of the WTO. These sectors include textiles, chemicals,

pharmaceuticals, base metal especially steel, machinery and electrical equipments and agricultural and aquaculture products.

Table 2.21

Sectors targeted for Anti-Dumping Measures

Dispute No.	Dispute	Year	Sectors Targeted
140	EC-UCF	1998	Textiles; Unbleached cotton
141	EC-Bed Linen	1998	Textile; Bed Linen
313	EC-Iron & Steel	1999	Base metal; Iron and Steel
385	EC-PET	2008	Chemical; Polymer
304	India-Twenty Seven Products Dispute	2003	Pharmaceuticals; steel; textile; chemicals
206	US-Steel Plate	2000	Base metal; steel
217	US-Byrd Amendment	2000	All kind of products on which anti-dumping measures are imposed
345	US-Custom Bond Directives	2006	Agriculture and Aquaculture products
168	South Africa-Pharmaceutical	1999	Pharmaceutical; ampicillin and amoxicillin
229	Brazil-Jute Bags	2001	Textile; Jute
306	India-lead Acid Battery	2004	Chemical; Lead Acid Battery
318	India-seven products	2004	Chemicals; textiles; pharmaceuticals
498	India-USB Flash drive	2015	Machinery and Electrical Equipment; USB Flash drive

Source: WTO database (2019)

A large number of investigations have been initiated against engineering products which include steel products (32 percent of total cases) followed by textile and article products (Table 2.20).[103] The anti-dumping measures by the EU on India's unbleached cotton fabrics, cotton type bed linen and PET was a target on its textile industry. Similarly, Brazil's anti-dumping duties on India's jute bags for ten years hampered its textile industry. These are some of the industries in which India enjoys a large export market which will be analysed in detail by taking each sector separately.

[103] The anti-dumping measures on the textile industry have already been discussed in chapter one of the thesis.

2.9.1 Textiles

The removal of the Multifiber Arrangement and inclusion of Agreements on Textile and Clothing in the global trade was an important objective of India in the Uruguay Round. In India, the textile industry provides employment opportunities to more than 35 million people (IBEF 2018; India Today 2018). In the financial year 2017-2018, the overall textile export of India was about US$ 39.2 billion (IBEF 2018; India Today 2018).

The time when the EU imposed anti-dumping measures on India's unbleached cotton fabric, the export to the EU wasUS$ 35.32 million (1997-98) and US$ 24.66 million (1998-99) (Export Import Data Bank 2019). The EU imposed anti-dumping measures on India's linen. The export of bed linen at that time from India was aboutUS$ 0.46 million and US$ 0.14 million. Therefore, the application of anti-dumping measure hampers the export of this particular product affecting its textile industry.

The removal of the Multifiber Arrangement led to two waves of textile cases against India. The cotton yarn,[104] PSF[105] and polyester yarn[106] was the target in the first "wave". The second "wave" targeted cotton fabrics, unbleached cotton fabrics-I (UCF I), unbleached cotton fabrics-II (UCF II), synthetic fiber ropes, polyester fabrics, PTY-I, PTY-II and Bed Linen-I and Bed Linen –II. The anti-dumping investigations against linen (Bed Linen-II) and Unbleached Cotton Fabric (UCF- II) were conducted together by the EU. The unbleached cotton fabric, unlike bed linen, is a major export product of India. The cotton industry was targeted in these disputes. India has been the largest producer and consumer of cotton with US$6.2 million and US$5.3 million (Ministry of Textile 2018) in the year 2017-2018.[107] India is also a major exporter of cotton with exports of US$1.14 million in the year 2017-2018 (Ministry of Textile

[104] Cotton Yarn from Brazil, Egypt, India, Thailand, and Turkey, Initiation: [1990] OJ C72/3; Termination for India: [1991] OJ L271/17.
[105] Synthetic Fibres of Polyesters from Korea and India, Initiation: [1990] OJ C291/20; definitive duties: [1993] OJ L9/2.
[106]Polyester Yarn (Man-Made Staple Fibers) from Korea, Taiwan, Indonesia, India, China and Turkey, Initiation: [1990] OJ C80/6;Definitive duties: [1992] OJ L88/1
[107] Ministry of Textiles (2018), "Production and Consumption in Major Countries", Accessed 24 December 2018, [online web], URL: http://texmin.nic.in/sites/default/files/ProdConsMajorCountries.pdf

2018).[108] Therefore, imposing anti-dumping measures on cotton would affect its export, employment and output.

Brazil targeted the jute industry of India by imposing anti-dumping duties on its jute. The total export of jute goods from India in 2017-2018 is about 114.7 million valuing 1449.1 Crores (rupees) (Ministry of Textiles 2018).[109] Brazil is a major producer of cocoa and coffee and it needs jute bags for packing these beans. The removal of duties would encourage the export of jute bags and a survey was conducted which opined that there was a market for 25,000 tonnes of food grade jute bags in Brazil.

2.9.2 Pharmaceuticals

During the financial year 2016-17, the annual turnover of the Indian pharmaceutical industry was estimated to be about 219755Crores (rupees) (Annual Report 2017-2018).[110] For the financial year 2016-17, the export's share of drug intermediate, bulk drugs, biological and drug formulation was Rs. 107618 Crores (rupees) (Annual Report 2017-2018).[111] India provides drugs at a cheaper rate for AIDS to several countries like Rwanda, Mozambique Tanzania and South Africa. There are about 33 percent of the people living with AIDS (Annual Report 2017-2018) in Africa and consequently, these drugs become important for them. The total export of pharmaceuticals in the year 2016-2017 was about 1, 12,915.48 Crores (rupees) (Annual Report 2017-2018).[112]

The export of ampicillin and amoxicillin from India to South Africa was about US$0.09 million and US$0.06 million (1997-98) and US$0.26 million and US$0.37 million (1998-99) (Export Import Data Bank 2019). This was the time when anti-dumping measures were imposed on the pharmaceutical industry of India by South Africa. The pharmaceutical industry of India is very important and imposition of anti-dumping measures affected its trade. Ranbaxy Laboratory Ltd is a major manufacturer

[108] Ministry of Textiles(2018) "Major Cotton Exporting Countries: Export Data from 2007-08 to 2017-18", Accessed 24 December 2018, [online web], URL: http://texmin.nic.in/sites/default/files/Major%20Cotton%20Exporting%20Countries.pdf
[109] Ministry of Textiles(2018), Office of the Jute Commissioner, "Exports of Jute Goods", Accessed 24 December 2018, URL: http://jutecomm.gov.in/exports.htm
[110] Government of India (2018), Annual Report (2017-2018), Department of Pharmaceuticals, Accessed 24 December 2018, URL: http://pharmaceuticals.gov.in/sites/default/files/Annual%20Report%202017-18.pdf
[111] Ibid
[112] Ibid

and exporter of pharmaceuticals in India and it had a significant role in the dispute between India and Brazil.

2.9.3 Base Metal

The EC and the USA targeted the steel industry of India by imposing anti-dumping measures on its exports. India has been the third largest producer of steel in the world in 2017.[113] This is due to the presence of raw materials in abundance like iron ore and labour in India which is cost effective.[114] The steel industry of India is a major contributing factor to the manufacturing output of India (IBEF 2018). The exports of finished steel were about 1.3 million tonnes.[115]Targeting the steel industry means hampering the trade of India.

The steel industry was targeted when the EU initiated anti-dumping investigations against its non-alloy steel and flat-rolled iron in 1999. This was the time when India's export in this particular product was about US$30.33 million (1998-99) and US$ 35.88 million (1999-00).

The anti-dumping measures on these products demonstrate that the investigations were mostly against those products in which India had a major share of export with the other country initiating the dispute.

India had imposed anti-dumping measures on 27 products of the EU, 7 products and USB flash drive of Chinese Taipei and lead-acid battery of Bangladesh. These products on which anti-dumping measures were imposed included different sectors like chemicals, textiles, rubber, steel and paper. India mostly targeted the chemical sector of the EU and Chinese Taipei. "India is the seventh largest producer of chemical in the world and third largest in Asia" (IBEF 2018). The total export of chemicals stood at US$28.32 billion (2017-18) (IBEF 2018). It can be said that India, in order to protect its domestic industry of chemicals, imposed anti-dumping measures on chemicals from the EU and Chinese Taipei as it is a major exporter of the chemicals in the world.

[113] This is the latest data that was accessible at the time of writing the chapter.
[114] The things which are effective or productive in relation to its cost are considered as cost effective.
[115] Ibid

2.10 Conclusion

India has evolved over the years from being an obstructionist in the Uruguay Round negotiations to become a voice for major developing countries. It has developed its human, institutional and stakeholder capacities over the years through its participation in the WTO DSS. At the time when it was difficult for developing countries to approach the DSS of the WTO due to financial and legal constraints, India played an important role as a complainant and respondent on the disputes challenged under the WTO ADA.

The disputes like the India-Quantitative Restrictions, India-Patent and India-Autos played a significant role in shaping India's trade policies that confirmed with the WTO agreements on trade. India has been involved in few high profile cases such as US-Shrimp, US-Byrd, EC-Bed Linen and EC-Tariff Preference disputes that have cleared several vague measures of the WTO. India is the largest initiator of the anti-dumping measures and has the largest number of anti-dumping disputes. India has also played a significant role in all of these disputes challenged under the ADA.

The analysis of these disputes has led to several findings. First, India has disputes with countries that are at different developmental level and income. Second, the sectors that have been targeted like textiles, pharmaceuticals and metals are of trade interests of India as they constitute major export interest for India. Third, India has raised concerns for developing countries in several of its disputes to consider the S&DT provisions by developed and more powerful countries. India has participated effectively in several negotiations of the WTO.

As India and Brazil are active participants in the WTO DSS and they have evolved over the years by participating in several WTO disputes, India along with Brazil can play a significant role in encouraging and mobilising developing countries in the WTO and enhancing their participation in the WTO DSS. The leadership role of India and Brazil has been witnessed during the Doha Round negotiations in which issues of trade interests for developing countries were raised. These countries can hold training and workshops for developing countries on effective participation in the WTO DSS. They can help other non-active developing and least developed countries in overcoming constraints to approach the WTO DSS. Both the countries should constantly raise issues concerning developing countries at the WTO forum. Till

present, the developed countries have led the WTO negotiations on different matters; the need is to develop another group led by India and Brazil to participate effectively in the WTO negotiations. This would make the WTO DSS a platform for all the countries in a real sense where both developed and developing countries would have an equal and effective role.

The next chapter examines and analyses Pakistan's participation in anti-dumping disputes of the WTO DSS.

Chapter 3
Pakistan as a Complainant and Respondent on Anti-dumping Disputes

3.1 Introduction

Pakistan, a developing country of South Asia has India on its Eastern side, China on the northern side, Iran and Afghanistan on the western side and its southern borders meet the Arabian Sea. It is categorised under middle-income economies group of countries (World Bank 2019). Pakistan has the 6th largest population in the world and ranks 25th in terms of GDP Purchasing Power Parity. Pakistan's low level of foreign investment and decades of internal political conflicts have resulted in its underdevelopment. Pakistan was Britain's colony during the negotiations of the ITO[1] and the GATT. The negotiations on the International Trade Organisation (ITO) were completed successfully in Havana Conference in 1948. However, the charter never came into force as it was not approved by the US Congress. The effort to establish the ITO led to the signing of the GATT by 23 contracting parties that included Pakistan. As Pakistan became independent on 14 August 1947, it became GATT's member without participating in its negotiations for accession.

Pakistan at the time of independence had a small number of infant domestic industries comprising of 34 industrial units and few cement factories, textiles and sugar industries (Khan 1998) and subsequently, it protected its industries from foreign imports. During the 1950s and 1960s, Pakistan focused on industrialisation through import substitution policies (Afzal 2006). Pakistan's economic policies were mainly guided by high tariff rates, a licencing system for imports, quantitative trade restrictions and restricted imports on the issue of balance of payments like other developing countries including India (Khan 1998).The nine of fourteen developing countries of the GATT including Pakistan were using balance of payment issue for restricting imports.[2] In the late 1950s, out of the 16 GATT developing countries, 13 countries applied Balance of Payment restrictions that included Peru and Nicaragua also (Hudec 1987). During the GATT years, Pakistan remained a closed economy that

[1]The ITO negotiations were successfully completed in the Havana Conference in 1948.
[2]The five developing countries not using the balance of payment restrictions were Cuba, Haiti, Nicaragua, Peru and the Dominion Republic.

focused on protecting its domestic market by restricting imports. The maximum tariff rate of Pakistan was 225 percent (Khan 1998). By 1988, Pakistan's "customs duties remained one of the highest in the world and non-tariff barriers continued to be pervasive" (GATT Secretariat Report 1994).[3] Under Article XVIII of the GATT, Pakistan restricted its imports to check its balance of payment.

> As required by GATT law, balance of payments restrictions remained under periodic legal review. But… the developing country reviews became increasingly pro forma as their balance-of-payments problems remained drearily the same (Hudec 1987).

The IMF provided loans to low income countries by the mid-1980s, under an arrangement programme of three years, which were given at 0.5 percent interest rate per year and could be repaid after five and half years which would end in ten years.[4] However, the IMF had certain conditions for providing loans to these countries. These conditions were:

> ….[A]ll or most of the following measures: [1] Privatization of government owned enterprises and government provided services. [2] Reduction in government spending. [4] Orientation of economies for the promotion of exports. [3] Liberalization of trade and reduction of tariffs for imports. [4] Liberalization of trade and reduction of tariffs for imports. [5] Increase in interest rates. [6] Elimination of state subsidies on consumer items such as foods, fuels and medications. [7] Taxation increase. [8]Currency devaluation and control of monetary supply (Bhutta 2001).

It can be said that the structural adjustment programs of the IMF pressurised low income countries to adopt an economic strategy which is market oriented (Gera 2004). In 1986, Pakistan asked from IMF loans just after the introduction of structural adjustment programs as its fiscal balance had become weak and there was the absence of foreign assistance. In the 1990s, Pakistan's deficit balance of payment continued and two more structural adjustment programs of the IMF were implemented by Pakistan and it had to bring reforms to liberalise its trade in 1993-96 and 1997-2000 (Kemal 2003). The non-tariff barriers were replaced with tariffs and the taxes were decreased from 225 to 90 percent and the tariff slab was decreased from 17 to 10 (Noshab 2006).

[3] Trade Policy Review Mechanism-Pakistan, Report of the Secretariat, GATT Document C/RM/S/50 of 4 November 1994.

[4]International Monetary Fund (2004), "IMF Concessional Financing through the ESAF", [online web], Accessed 20 December 2018, URL:http://www.imf.org/external/np/exr/facts/esaf.htm

Pakistan was active in the Uruguay Round of the WTO in 1994.[5] Pakistan emphasised on integrating agriculture, textile and clothing sectors in global trade rules as it enjoys a comparative advantage in these sectors. It also emphasised on the S&DT provisions for developing countries. The Uruguay Round provided with Agreement on Agriculture and Agreement on Textile and Clothing Sector (the Multi- Fiber Arrangement was gradually phased out) that liberalised trade on agriculture, textile and clothing. Through the agreements like GATS, TRIMs and TRIPS; the services, intellectual property rights and investment measures were included in global trade. Pakistan demonstrated concerns about the outcome of the Uruguay Round like delay in the removal of the MFA and lack of definite time period for removing agricultural subsidies in production and exports.

Pakistan became the WTO's founding member and opened its economy to the world for implementing WTO commitments. However, trade liberalisation had already been started by Pakistan during the structural adjustment program of the IMF.

> … Pakistan did not feel many implementation obligations under WTO rules. Since liberalization under the WTO was a continuation of the reforms under SAP (Structural Adjustment Program), it is difficult to segregate the impact of the liberalization under the WTO from that of the former (Noshab 2006).

Pakistan reduced its MFN and maximum tariff rate to 20.4 percent and 25 percent by 2002 after becoming a WTO member.[6]According to Tan (2008)[7],

> …Pakistan's general trade policy objectives were [remained] focused on reduced protection, a more outward oriented trade regime, increased market access for exports, and general global integration, aimed at increasing economic efficiency, competitiveness and export led growth.

Trade in Pakistan is conducted by different bodies like the Ministry of Commerce,[8] Trade Development Authority,[9] Institute of Trade and Development,[10] National Tariff

[5] Trade Review Mechanism-Pakistan, GATT Document C/RM/S/50.
[6] WTO (2002), Trade Policy Review, WTO Document WT/TPR/M/95 of 8 March 2002.
[7]Ms Karen Tan of Singapore was a discussant in the third Trade Policy Review of Pakistan in 2008.
[8] The Ministry of Commerce administers trade related matters like formulation of trade policies, promoting international trade and conducting trade agreements with foreign countries and international agencies and handles WTO disputes.
[9] Trade Development Authority is the transformed form of Export Promotion Bureau promotes exports by encouraging exporters to exhibit their products nationally and abroad.
[10] The Foreign Trade Institute of Pakistan (FTIP) was created to conduct research on trade issues but its role was confined to provide training to newly recruited government officials from the department of commerce and industry.

Commission and Intellectual Property Organisation,[11] Foreign Commercial Sections[12] and Permanent WTO Mission at Geneva (Baig 2009).

The National Commission Act 1990 established the National Tariff Commission (NTC) which is a quasi-judicial body that administers the laws related to dumping and subsidised imports. The Anti-Dumping Duties Act 2015 and the Countervailing Duties Act 2015 provides mandate to the NTC to govern defense laws of trade that confirm with the WTO laws. It conducts investigations and imposes the required measures for protecting its industries from unjust practices of trade. In this study the Act is important as the focus of this chapter is on anti-dumping disputes of Pakistan as a complainant and respondent.

Table 3.1

Pakistan in the World Trade

GDP (Million Current US$) (2017)	**304.95**
Share in world total exports in Merchandise Trade (%)	**0.12**
Merchandise Trade Exports: By Main Commodity Group, % (2016)	**Agricultural Products(19.5), Manufacturers (78.2), Fuels and Mining (2.2), Others (0)**
Top Exported Products (Agricultural and Non-Agricultural)	**Agricultural :Rice, alcohol, Cane or beet sugar, dates, figs, pineapple, avocados, citrus fruit, fresh or dried** **Non- Agricultural: Bed, table, toilet and kitchen Linen, Men's or boy's suits, cotton yarn(85% or more of cotton), woven fabrics(85%cotton big) and leather accessories of clothing**
Merchandise Trade Exports : By Main Destination, % (2017)	**EU (34.3), USA (16.3), China (6.9), Afghanistan (6.4), UAE (4)**
Share in world total imports in Merchandise Trade (%)	**O.32**
Merchandise Trade Imports: By Main Commodity Group (%) 2016	**Agricultural Product (16.4), Manufacturers (59.2), Fuels and Mining products (23.9), Other (0.6)**
Top Imported Products(Agricultural and Non-Agricultural)	**Agricultural Products: Palm oil and its fractions, Dried leguminous vegetables, cotton (not carded or combed), Soya beans (whether or not broken) and tea** **Non-Agricultural products: Petroleum oils (other than crude), Petroleum oils (crude), Petroleum gases, Ferrous waste and scrap and Motor cars for transport of persons.**
Merchandise Trade Imports : By Main Origin % 2017	**China (26.8), UAE(13.1), EU (10), USA (4.9)**

Source: WTO (2019)[13]

[11]The Intellectual Property Organisation of Pakistan regulates its intellectual property rights in accordance with the WTO rules.

[12]The Foreign Commercial Sections are involved in certain trade related activities like export promotion and other issues related to diplomatic trade.

The service sector of Pakistan contributes as a major source of economic growth accounting for 59.59 percent of the GDP in the FY 2017 (Pakistan Economic Survey 2017- 2018). The commodity sector (both agriculture and industry) of Pakistan contributes to 40.41 percent of the GDP in the FY 2017 (Pakistan Economic Survey 2017- 2018). In terms of global trade, Pakistan is a minor exporter contributing to 0.12 percent share in world's total exports (Table 3.1). The country is ranked 150 in the Human Development Indicators and is included in the lower group of countries (UN Data 2018). The main source of livelihood of Pakistan is agriculture which plays an important role in its export's earnings. Agriculture is a prominent source of raw material for industry and contributes majorly to nation's exports. The subsectors of agriculture that play an important role in country's export earnings are livestock and crops. In the textile sector, cotton is the main source of raw materials that acquires major export share of the country. In addition to these products, wheat and rice also contribute to the nation's growth. Pakistan has mineral resources like rock salt and coal, precious metals and industrial minerals especially in its Baluchistan province. However, these reserves have not been utilised to their fullest potential because of a lack of law and order, infrastructure and technical incapacities. The industrial sector also plays a significant role in Pakistan's economy and relies on agricultural raw materials. The largest manufacturing sector is the textile industry which contributes majorly to Pakistan's exports.

Trade liberalisation is considered as "an important part of Pakistan's development and poverty-reduction strategy".[14] However, modest trading profile is enjoyed by the country; Pakistan's share in world total export is 0.12 percent which is very small in terms of global trade. The textile sector contributes mainly to its exports, GDP and Employment. Rice and leather are extensively exported goods by Pakistan[15].

Pakistan faces a negative balance of trade as its share of exports (0.12) are less compared to its share of imports (0.32 percent) and has a difference of around 20 percent(Table 3.1). Pakistan has a weak economy that has suffered because of war against the Taliban. Pakistan ranks 150 in Human Development Index as 31.2 percent

[13] The data is till 2017 as it is the latest data available at the WTO website (2019).
[14] Trade Policy Review of Pakistan, Report by the Secretariat, WTO Document WT/TPR/S/193 of 10 December 2007
[15] Rice and leather are the second and third largest exporting sectors of Pakistan.

of Pakistan's population is poor and the country does not have proper health care to address primary needs of its people (UN Data 2018).

Pakistan has a Permanent Mission in Geneva for handling the WTO matters which has the functions like "presenting its position on trade in WTO meetings, conducting meetings with trade delegations of different countries and handling the WTO disputes" (WTO 2018). At present, Dr.Taquir Shah is Pakistan's ambassador or permanent representative of the WTO who leads the mission in the WTO (WTO 2018). The mission's responsibility is shared by the economic counselor, trade development officer, economic minister or deputy permanent representative, research officer, commercial secretary and commercial counselor (WTO 2018).The mission also has the responsibility to improve Pakistan's trade capacity. The fourteen government trade officials from the Ministry of Commerce (MOC), National Tariff Commission (NTC) and Trade Development Authority (TDA) of Pakistan were sent for two weeks internship programme to Pakistan's WTO Mission in Geneva for their deeper understanding on trade related matters (WTO 2007).

Pakistan has also participated in the GATT and the WTO DSS of the WTO. The analysis of Pakistan's participation in the GATT and the WTO DSS, experiences of Pakistan in anti-dumping disputes, the countries involved in disputes, the sectors targeted, the government and the role of private sectors in these disputes are the main focus of this chapter. The next section analyses the role of Pakistan in the GATT DSS.

3.2 Pakistan and the GATT Dispute Settlement System

During the GATT years, Pakistan was complainant only in two disputes. The first complaint was filed against India in 1948(already discussed in the Chapter 2 while discussing India's disputes in the GATT). It challenged India's measure of not granting excise rebates to some Indian goods that were exported to Pakistan under Article I:1 of the GATT 1947 while the same benefit was provided to other countries. Pakistan got the ruling in its favour by the GATT Working Party and India was asked to comply with the GATT rules. The second complaint was initiated in 1992 against Turkey challenging its anti-dumping measures on Pakistan's cotton yarn. The matter was mutually resolved as Turkey agreed to withdraw the anti-dumping measures from

its cotton yarn. It was in June 1993 that Pakistan reported about the mutually agreed solution to the GATT Council (GATT 1993).[16]

Pakistan was a respondent in only one dispute which was initiated by India. In October 1952, India challenged the validity of Pakistan's specific licence fee on raw jute exported by Pakistan to India. Subsequently, with the help of suggestions made by Chairman of the contracting parties to India and Pakistan, the matter was resolved mutually (GATT 1952, 1953).[17]

Pakistan's recourse to the GATT DSS was limited as it followed import substitution policies and had limited external market accession. There are other factors that can be attributed to Pakistan's limited participation in the GATT DSS. First, Pakistan has a competitive advantage in sectors like agriculture and textiles that were not included under the GATT agreements. The trade on textile and clothing was kept out of the purview of the GATT and was governed under the Multifiber Arrangement that followed the quota system. Second, the GATT DSS was as weak as compared to the WTO DSS. The 'rule based' WTO DSS with proper time frame and an independent and impartial Appellate Body considered the interests of smaller countries compared to 'power based' GATT DSS as it was mainly dominated by developed countries and was known as 'rich men's club' (Lavelle 2005) dominated by powerful countries.

3.3 Pakistan and the WTO Dispute Settlement System

Pakistan, in its 24-year history of the WTO membership, has initiated five complaints in the WTO DSS. The first complaint was filed in 1996 against the ban on shrimp imports by the USA.[18] Pakistan's second WTO case was initiated in 2000 in which it challenged the USA's safeguard measures on Pakistan's combed cotton yarn. In 2005, Pakistan challenged Egypt's anti-dumping measures on its matchboxes. After nine years of its third WTO complainant, Pakistan filed complaints in the EC-PET case

[16] GATT (1993), Minutes of Meeting, GATT Document C/M/264 of 14 July 1993; GATT (1993), Trade Policy Review Mechanism-Pakistan, GATT Document C/RM/S/50 of 1993

[17] GATT (1952), Pakistan Licence Fee and Duty on Exports of Jute, GATT Document L/82 of 19March 1953; GATT (1953), Pakistan Export Fee and Duty on Raw Jute, GATT Document L/82/Add.1 of 26 March 1953

[18] United States-Import Prohibition of Certain Shrimp and Shrimp Products, Request for Consultations by India, Malaysia, Pakistan and Thailand, WTO Document WT/DS58/1,G/L/116 of 14 October 1996.

that is currently in the Panel stage.[19] In November 2015, Pakistan complained against South Africa's anti-dumping measures on its cement which is currently in the consultation stage.[20]

Table 3.2

Rate of Pakistan's Participation in the Dispute Settlement System

	1995-97	1998-00	2001-03	2004-06	2007-09	2010-12	2013-15	2016-18	2019	Total
As Complainant	**1**	**1**	**0**	**1**	**0**	**0**	**2**	**0**	**0**	**5**
As Respondent	**2**	**0**	**0**	**0**	**0**	**0**	**1**	**1**	**0**	**4**
Total	**3**	**1**	**0**	**1**	**0**	**0**	**3**	**1**	**0**	**9**
Percentage*of participation	**0.51**	**0.17**	**0**	**0.17**	**0**	**0**	**0.51**	**0.17**	**0**	**1.54**

Source: WTO (2019); Author's compilation based on the WTO data

Pakistan, unlike India, Brazil and Mexico, is not active in the WTO DSS as discussed in chapter one of the thesis while analysing developing countries' participation in the WTO DSS.Since1995 to April, 2019, Pakistan has initiated five complaints whereas India has initiated 24 complaints. Pakistan has responded to four disputes whereas India in 28 disputes which makes India an active user of the DSS compared (WTO 2019). Pakistan's participation in the WTO DSS is 1.54 percent which is very less as compared to India's participation of 8.9 percent (Table 3.2).

Pakistan initiated its first complaint against the USA's prohibition of shrimp imports.[21] Pakistan along with India, Thailand and Malaysia initiated the complaint. This was an important case which challenged the USA's measures of imposing a prohibition on the imports of shrimps from few countries. The second complaint of

[19]European Union-Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, Request for Consultations, WTO Documents WT/DS486/1, G/SCM/D103/1, G/L/1089 of 7 November 2014.
[20]South Africa- Provisional Anti-Dumping Duties on Portland cement from Pakistan, Request for Consultation, WTO Document WT/DS500/1, G/L/1139, G/ADP/D112/1 of 12 November 2015.
[21]United States-Import Prohibition of Certain Shrimp and Shrimp Products, Request for Consultation, WTO Document WT/DS58/1, G/L/116 of 14 October 1996.

Pakistan was also against the USA challenging its transitional safeguard measures on Pakistan's combed cotton yarn.[22] The complaint was also initiated against the EU when it imposed countervailing measures on certain PET from Pakistan.[23] Egypt was also called for consultation when it imposed anti-dumping duties on Pakistan's matches.[24] Similarly, Pakistan challenged South Africa's provisional anti-dumping duties on Pakistan's Portland cement which is currently in the consultation stage of the WTO DSS[25] (Table 3.3).

Table 3.3

Pakistan: As Complainant

Dispute no.	Title of the Case	Respondent	Year of initiation
DS 58	**Import Prohibition of Certain Shrimp and Shrimp Products**	**USA**	**1996**
DS 192	**Transitional Safeguard Measures on Combed Cotton Yarn**	**USA**	**2000**
DS 327	**Anti-Dumping Duties on Matches from Pakistan**	**Egypt**	**2005**
DS 486	**Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan**	**EU**	**2014**
DS 500	**Provisional Anti-Dumping Duties on Portland Cement from Pakistan**	**South Africa**	**2015**

Source: WTO (2019)

There have been several measures of Pakistan that have been challenged by other WTO members in the WTO DSS. The complaint was initiated by the USA against

[22]United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan, Request for the Establishment of the Panel, WTO Document WT/DS192/1 of 3 April 2000.
[23]European Union — Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, Request for Consultation, WTO Document WT/DS486/1, G/SCM/D103/1, G/L/1089 of 7 November 2014
[24]Egypt — Antidumping Duties on Matches from Pakistan, Request for Consultation, WTO Document WT/DS327/1, G/L/731, G/ADP/D61/1 of 24 February 2005
[25]South Africa — Provisional Anti-Dumping Duties on Portland Cement from Pakistan, Request for Consultation, WTO Document WT/DS500/1, G/L/1139, G/ADP/D112/1 of 12 November 2015

Pakistan's patent protection[26] for pharmaceuticals and agricultural chemical products. The EU challenged the export measures of Pakistan regarding hides and skin and requested a consultation with Pakistan in the WTO DSS. Indonesia approached the WTO DSS against Pakistan's anti-dumping and countervailing duty investigation on its paper products. The UAE also complained against Pakistan's anti-dumping measures on BOPP film from the United Arab Emirates (Table 3.4).

Table 3.4

Pakistan: As Respondent

Dispute no.	Title of the Case	Complainant	Year of Initiation
DS 36	Pakistan- Patent Protection for Pharmaceuticals and Agricultural Chemical Products	USA	1996
DS 107	Export Measures Affecting Hides and Skin	EU	1997
DS 470	Anti-Dumping and Countervailing Duty Investigation on Certain Paper Products from Indonesia	Indonesia	2013
DS 538	Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates	UAE	2018

Source: WTO (2019)

Pakistan's disputes in the WTO are confined to a few countries (Table 3.5). Pakistan has disputes with developed countries the EU and the USA and developing countries South Africa, Egypt and Indonesia. Pakistan and India have the largest number of disputes with the USA and the EU but their number of disputes varies to a large extent. Pakistan has 3 disputes with the USA and 2 disputes with the EU whereas India has 18 disputes with the USA and 17 disputes with the EU.

[26] Patent Protection is a form of protection that provides a person or entity with an exclusive right of making, using and selling a concept or innovation and excludes others from doing the same for the duration of the patent.

Table 3.5

Countries in Dispute with Pakistan

Countries Involved	Pakistan as Complainant	Pakistan as Respondent	Total
EU	**1**	**1**	**2**
USA	**2**	**1**	**3**
South Africa	**1**	**0**	**1**
Egypt	**1**	**0**	**1**
UAE	**0**	**1**	**1**
Indonesia	**0**	**1**	**1**
Total	**5**	**4**	**9**

Source: WTO (2019)

3.4 Pakistan and Disputes Challenged under the Anti-Dumping Agreement

Pakistan, from the period 1995 to April 2017,[27] has imposed 65 anti-dumping measures on different products from different countries like Brazil, Bangladesh, Indonesia, Belgium, China, Chinese Taipei, Finland, UK, USA and Germany (WTO 2019) (Table 3.6). Out of these 65 anti-dumping measures imposed by Pakistan, its two measures have faced confrontation in the WTO DSS. Indonesia and the UAE challenged Pakistan's anti-dumping measures on its paper products and the Biaxially Oriented Polypropylene (BOPP) film (Table 3.6). Similarly, Pakistan's products have also faced the anti-dumping measures by different countries like the USA, the EU, Egypt, Indonesia, India and South Africa. Pakistan out of these 13 measures has challenged two measures in the WTO DSS (Table 3.6). The measures inflicted by Egypt on its exports of matches and South Africa on its Portland cement were challenged by Pakistan. Therefore, Pakistan has two disputes as complainant and two disputes as respondent challenged under the anti-dumping measures of the WTO.

[27] The data given on the WTO website is till December 2017 at the time of writing the chapter.

Table 3.6

Pakistan and Anti-Dumping Actions

Total anti-dumping measures imposed on Pakistan	Total anti-dumping measures challenged by Pakistan in the DSS (As Complainant)	Rate of Challenging imposed anti-dumping measures in the DSS (In percentage)	Total anti-dumping measures imposed by Pakistan	Total anti-dumping measures of Pakistan challenged in the DSS (As Respondent)	Total number of disputes challenged under the ADA
13	2	15.38	65	2	131

Source: WTO (2019)

Pakistan's rate of challenging anti-dumping measures is 15.38 (Table 3.6) which is more as compared to India as it has less number of anti-dumping measures that have been imposed on Pakistan's products as compared to India.

Table 3.7

Countries in Anti-Dumping Disputes with Pakistan

Year	As complainant	As Respondent
2005	1 (Egypt)	-
2013	-	1 (Indonesia)
2015	1 (South Africa)	-
2018	-	1 (UAE)

Source: WTO (2019)

Pakistan's disputes related to the anti-dumping measures are with countries from different regions and income groups (Table 3.7). Out of these four countries, Egypt, South Africa, Indonesia and the UAE; Egypt and the UAE are from the Middle East region whereas South Africa belongs to Sub Saharan Africa region and Indonesia from East Asia and Pacific region (UN Data 2019). Egypt and Indonesia, like Pakistan, belong to the lower-middle-income group of countries whereas South Africa belongs to the group of upper middle-income economies and the UAE is included in the group of high-income economies (World Bank 2019). However, these countries have been included under the developing economies group (UN Data 2019).India on

the other hand has anti-dumping disputes with developed countries the USA, the EU, developing countries South Africa, Brazil, Chinese Taipei and a least developed country Bangladesh. Pakistan's anti-dumping disputes with only the developing countries both as respondents and complainants provide it with experiences of disputes with only developing countries. Pakistan's participation is low even in disputes related to the anti-dumping measures as unlike 4 disputes of Pakistan; India has 13 disputes challenged under the WTO ADA.

Table 3.8

Ratio of Pakistan's Participation in the Anti-Dumping Disputes

Pakistan as Complainant	**2**
Pakistan as Respondent	**2**
Total Participation	**4**
Total disputes under ADA	**131**
Ratio of Pakistan's Participation (Percentage)	**3.05**

Source: WTO (2019)

The ratio of Pakistan's participation in disputes challenged under the ADA is 3 percent which is very low as compared to 10 percent of India's participation (Table 3.8).

The next section analyses the anti-dumping disputes of Pakistan by taking each case separately.

3.4.1 Pakistan and Egypt on Matches Dispute

Egypt inflicted safeguard measures on Pakistan's matches in 1998.[28] After three years of expiration period, the export of matches from Pakistan resumed in 2001. However, the authorities initiated an anti-dumping investigation on matchboxes' imports from Pakistan in August 2002 which ultimately led to the imposition of anti-dumping duties on 18th November 2003 (Dawn 2006). The anti-dumping duties were imposed at the rate of 29 percent, 26 percent and 29 percent against the Khyber Match Factory (Pvt) Ltd, Mohsin Match Factory (Pvt) Ltd and against other manufacturers and exporters in Pakistan.[29] The anti-dumping duties were based on constructed normal value for five years' period. The complaint for the injury in Pakistan was initiated by

[28]Brief on Anti-Dumping Duty on Pakistan Export of Matches in Boxes to Egypt (Pakistan, MOC files)
[29]Ibid

Ready Wooden House and Nile Company for matches.[30] During this period, 83 percent of total Pakistan's match market was shared in Egypt which was approximately US$5 million.[31] The match industry of Pakistan provided employment to about 5,000 people in the Khyber Pakhtunkhwa Province of Pakistan.[32] There were several claims made by Pakistan against the anti-dumping duties imposed by Egypt.

The manufacturers of matches in Egypt, Ready Wooden House and Nile Match Company alleged in their complaints to the Egyptian Investigating Authority that the Pakistan's matches were dumped which caused injury to its domestic industry. All Pakistan Match Manufacturer Association provided several evidences, explanations and documents to the Egyptian Investigating Authority in order to clarify the injury claims made by the two manufacturers of match boxes in Egypt.[33] The manufacturers in Pakistan claimed that the matches were exported not only to Egypt but also to other countries of the world and no allegation of such dumping has come from them. The manufacturers of matches in Pakistan argued that the most important factor was that they used major raw materials which was available to them locally that also with low conversion cost[34] and on the other hand Egyptian companies have to import the raw materials which are majorly used in making the matches. The manufacturers of match boxes in Egypt on the other hand had to import all the major inputs due to which they failed to compete with the matches of Pakistan in the Egyptian market. According to Ahmed (2009), Pakistan Ambassador to the WTO, "Egypt imposed anti-dumping duties just to protect its domestic market which failed to compete with the imports of matches from Pakistan." Therefore, imposing anti-dumpy duty was a protection measure for Egypt's domestic market from competing with Pakistan's matches.

Consequently, they failed to compete with Pakistan not only in Egypt but also in the rest of the world. Saifullah Khan, an expert on anti-dumping issues and a Khyber Match Factory's consultant said, "match manufacturers had provided all the necessary cost and other required data along with the copies of accounts to the EIA and also requested for verification of data provided to the EIA." The manufacturers and

[30]These are the major manufacturers of matches in Egypt.
[31]Brief on Anti-Dumping Duty on Pakistan Export of Matches in Boxes to Egypt (Pakistan, MOC files
[32]http://archives.dailytimes.com.pk/business/17-Apr-2009/egypt-removes-anti-dumpingduty-on-pakistani-matches
[33]Egypt-Anti-Dumping Duties on Matches from Pakistan, Request for the Establishment of Panel by Pakistan, WTO Document WT/DS327/2 of 10 June 2005
[34]The cost of production excluding the cost of raw materials is called conversion cost.

exporters in Pakistan were clear that dumping has not been done by them in the Egyptian market and they were willing to disclose their data related to cost accounting[35] to the Egyptian Investigating Authority. Mr. Khan further said, "Egypt did not send its representatives to Pakistan in order to verify the records of the exporters of Pakistan."

Another instance that questions the dumping of matches in the market of Pakistan is that the domestic industry in Egypt was provided protection by their government under the Safeguard measures from 19-02-1999 to 04-08-2001 (Ahmed 2009). During this time also, Pakistan was exporting its matches to the Egyptian market and there was no allegation of any kind of dumping taking place in the markets of Egypt. The Safeguard measures were applied for three years and the Adjustment Plan was given to the domestic industry of Egypt so that they can improve their production and exports. It was alleged that Egypt instead of following the adjustment plan, resorted to the anti-dumping allegation against Pakistan. This clearly reveals the misuse of the anti-dumping provision of the WTO.

Pakistan claimed that anti-dumping duties imposed by Egypt were not consistent with the obligation of Egypt under the GATT and the Anti-Dumping Agreements of the WTO (Table 3.10).[36] Pakistan requested consultations with Egypt on 21st February 2005, after a year of the imposition of anti-dumping duties.[37] Pakistan claimed that the duties imposed by Egypt on its match boxes were against the GATT 1994 and Anti- Dumping Agreement of the WTO pursuant to degree number 667/2003 of 18th November 2003[38]. The consultations between Pakistan and Egypt were held on 21st March and 3rd June in Geneva.[39] This provided an opportunity to Egypt to provide information regarding the anti-dumping duties to its Pakistani counterpart. But, this consultation failed to provide any mutually agreed solution to Pakistan and Egypt. As the first stage of WTO DSS failed to provide any effective result, Pakistan took the

[35] Cost Accounting is the recording of all costs incurred in a business in a way that can be used in order to improve its management.
[36] Egypt-Anti-Dumping Duties on Matches from Pakistan, Request for Consultations by Pakistan, WTO Documents WT/DS327/1, G/L/731 and G/ADP/D61/1 of 24 February 2005.
[37] Egypt-Anti-Dumping Duties on Matches from Pakistan, Request for Consultations by Pakistan, WTO Documents WT/DS327/1, G/L/731 and G/ADP/D61/1 of 24 February 2005.
[38] ibid
[39] Government of Arab Republic of Egypt (2012), The Results of the Anti-Dumping Investigation against the Imports of Matches (in boxes) Originating in or Exported from Pakistan, Ministry of Industry and Foreign Trade (12), Arab Republic of Egypt

dispute to the second stage that is to the Panel stage. The establishment of the panel was requested on 9th June 2005 and the panel was established on 20th July 2005.[40] China, Japan, the EU and the United States joined as third party.

The provisional anti-dumping duties on matches were only for six months which had expired but duties for the period of another five years was imposed. This demonstrates that the cases in the WTO DSS are lengthy and time taking which can bring loss to the particular industry. The gains from the WTO DSS would be low compared to the loss in its particular industry. This prevents some of the developing countries from approaching the WTO DSS. Further, developing Countries suffer from lack of legal experts to address technical issues like anti-dumping provisions that require the scientific and factual knowledge in this specific area. In such case, developing countries hire lawyers from developed countries or from the WTO. Pakistan hired the services of Stanbrook Hopper, a famous law firm in Brussels (Dawn 2006). Pakistan even got suggestions from reputed Brussels' law firms through its embassy. Being a developing country, Pakistan gained from such law firms. The representative of the firm, Clive Stanbrook visited Pakistan and researched on this particular dispute. He gave his comments in favour of Pakistan but EIA imposed duties on its matches. Pakistan even used the services of Advisory Centre on WTO Law (ACWL) in this particular dispute which is the special provision that is granted only to developing countries (Bown et al. 2010).

Both the countries continued their consultations at the informal level outside the ambit of the WTO. The producers of match boxes had requested the interim review investigation on the imports to review the anti-dumping duties' imposed on Pakistan's matches. The conclusion of the interim review investigation by the Egypt Investigation Authority led to the dispute resolution. Egypt and Pakistan informed the WTO DSS on 27 March 2006 that they have agreed mutually under Article 3.6 of the DSU.[41] The agreement was reached in form of price undertaking between exporters of

[40]Egypt-Anti-Dumping Duties on Matches from Pakistan, Request for the Establishment of Panel by Pakistan, WTO Document WT/DS327/2 of 10 June 2005

[41]Egypt-Anti-Dumping Duties on Matches from Pakistan, Notification of Mutually Agreed Solution, WTO Document WT/DS327/3, G/L/731/Add.1 and G/ADP/D61/2 of 29th March 2006.

Pakistan and the Egypt Investigation Authority which was agreed at US$6.75 per carton consisting of 1,000 match boxes from Pakistan on CIF basis.[42]

3.4.2 Pakistan and South Africa on Cement Dispute

The request for consultation was initiated by Pakistan in the WTO DSS with South Africa on 10th November 2015[43] when South Africa imposed provisional anti-dumping duties on Pakistan's Portland cement (CNBC Africa 2015). Pakistan alleged that provisional anti-dumping duties imposed were against several provisions of Article VI of the GATT 1994 and the Anti-Dumping Agreement (Lange 2015; Khan 2015). Pakistan claimed that export prices and normal prices were not compared fairly by South Africa. It has not properly defined the concept of 'like product' as the product which was subjected to the anti-dumping duties was Portland cement. The Portland cement includes both bulk and bagged cement. Nevertheless, South Africa has only taken the bagged cement under consideration. This is the reason that South Africa was unsuccessful in making any objective assessment of injury analysis as it has kept bulk cement out of its calculation of injury. South Africa has failed to make any objective assessment and proper calculation of dumping and its effects on its domestic industry. It has even not given an opportunity to Pakistan to defend its interest.[44] Pakistan alleged that the methods of investigation of the International Trade Administration Commission (ITAC) of South Africa is not in accordance with the ADA because it used four years period for investigation while only three years period is allowed for causation analysis by the WTO.[45] During Pakistan's Trade Policy Review in 2015, Dr. Tauqir Shah, Secretary of Commerce and Permanent Representative of Pakistan, met the ambassador of South Africa, Xavier Karim and they discussed about the duties on portland cement of Pakistan. Similarly, in the meeting of the OECD (Dawn 2015), the Commerce Minister of Pakistan, Dastgir Khan discussed the issue with its counterparts in South Africa (Dawn 2015). This

[42]Cost, Insurance and Freight (CIF) is an expense paid by a seller to cover the costs, insurance, and freight against the possibility of loss or damage to a buyer's order while it is in transit to an export port named in the sales contract. Until the loading of the goods onto a transport ship is complete, the seller bears the costs of any loss or damage to the product. Further, if the product requires additional customs or export paperwork or requires inspections or rerouting, the seller must cover these expenses. Once the freight loads, the buyer becomes responsible for all other costs.

[43] South Africa- Provisional Anti-Dumping Duties on Portland Cement from Pakistan, Request for Consultations by Pakistan, WTO Document WT/DS500/1, G/L/1139 and G/ADP/D112/1 of 12 November 2015

[44] Ibid

[45] Ibid

demonstrates that Pakistan participated actively in this particular issue and discussed about it to its counterparts wherever it was possible.

There are a large number of cement producing companies in Africa like Lafarge, AfriSam, Pretoria Portland Cement (PPC) and NPC Cimpor which claimed that bagged cement imported from Pakistan were dumped in the market of South Africa. These cement producers represent the industry of South Africa Custom Union (SACU) (*Aggregate Business*2015). SACU comprises of South Africa, Botswana, Lesotho, Namibia and Swaziland. The dumping was about 48 percent below the price in the home country. The claim was made to the ITAC that carried out further investigation on the issue. According to PPC, "Cement is being dumped at between 14.29 and 77.15% less than the ex-factory selling price in Pakistan. Pakistan cement manufacturers also enjoy structured tax benefits in their country." According to Foster Mohale, manager of the Communication service at ITAC, "Pakistan's exports to its traditional markets are declining and imports from Pakistan into SACU increased more than 600 % between 2010 and 2013"(Aggregate Business 2015). According to the director of Aggregate and Sand Producers Association of South Africa, Pienaar (2015),

> Of concern is the growing influx of cement imports especially from Pakistan. The imports of cement from Pakistan annually grew from 362, 350 tonnes in 2011 to 1.1 million tonnes in 2014. On the other hand, the value of these cements increased from US $15.2 million to US $53.36 million (Aggregate Business 2015).

He further said, "this has further squeezed local producers' cash flows, their return on investment and their employment numbers"(Aggregate Business 2015).However, recently there has been decline in the export of cement from Pakistan and the downfall trend has gone up to minus 67.4 per cent (Aggregate Business 2015).

In defending against such allegation of anti-dumping duties Ganny (2015), the CEO of Lucky Cement (the manufacturer and exporter of cement in Pakistan) said,

> These allegations are only going to strengthen our resolve to stay ahead of the industry in innovation and strategy. We face similar issues in the Indian market and have asked our governments to solve it, to make Pakistani cement accessible to Indian consumers (Aggregate Business 2015).

The ITAC inflicted provisional anti-dumping duties on the Portland cement for six months from 15 May 2015 to 13 November 2015 after which the recommendation

was to be sent for imposing anti-dumping duties for five years. This product is categorised under HS Code 252329.[46] The imposition of duties ranged from 14 percent to 77 percent (ITAC 2015).

Table 3.9

Anti-dumping Duties Faced by Exporters

Manufacturers of Portland cement in Pakistan	Provisional Anti-Dumping Duties imposed (in percentage)
Lucky Cement Ltd.	**14.29**
Bestway Cement Ltd.	**77.15**
D.G.Khan Cement Ltd.	**68.87**
Attock Pakistan Cement Ltd.	**63.53**
Other Portland cement manufactures	**62.69**

Source: ITAC (2015)[47]

The implementation of provisional measures mark the conclusion of a particular anti-dumping investigation but in this particular case, the conflict arose after the anti-dumping duties were imposed on its Portland cement. Pakistan challenged the action of ITAC at two levels. Pakistan challenged South Africa's action at the domestic court in accordance with the International Trade Administration Act of 2002 and the International Trade Administration Commission Anti-Dumping Regulations and at the adjudicatory WTO DSS. There has been a fall of 30 percent to its Portland cement since the imposition of anti-dumping duties (Mehtab 2015).

3.4.3 Pakistan and Indonesia on Paper Dispute

Indonesia requested consultations with Pakistan on 27 November 2013[48]. Indonesia claimed that Pakistan has failed to terminate the anti-dumping investigation and countervailing investigations on Indonesia's paper products within 18 months period (WTO 1995). This was the first dispute initiated by Indonesia against Pakistan.

[46] The Harmonised Commodity Description and Coding System (HS Code) is the standarised system to classify the products which are traded internationally.
[47]ITAC (2015), "Anti-Dumping Duties on Portland Cement", Ministry of Trade, South Africa.
[48]Pakistan-Anti-Dumping and Countervailing Duty Investigations on Certain Paper Products from Indonesia, Request for Consultations by Indonesia, WTO Document WT/DS470/1, G/ADP/D99/1 and G/SCM/D99/1 and G/L/1059 of 2 December 2013.

The anti-dumping and countervailing duty investigation on writing and printing paper were initiated by Pakistan on 10th November 2011 and 23 November 2011. Even after two years of initiation of investigation by November 2013, the investigation was still pending and had not been terminated. According to Article 5.10 of the Anti- Dumping Agreement and Article 11.11 of the SCM Agreement, any investigation has to be terminated within 18 months of its initiation (WTO 1995). Pakistan had not terminated the anti-dumping and countervailing duty investigation even after two years of its initiation which is against its WTO obligations which forced Indonesia to approach WTO DSS for consultations with Pakistan.

The ACWL assisted Indonesia in this particular dispute (ACWL 2013). The antidumping investigation was initiated by the National Tariff Commission of Pakistan on Indonesia's paper products on 10th November 2011. The investigation was carried out by the Asia Pulp and Paper (APP) and the Riau Andalan Pulp and Paper (RAPP). These were major manufacturers of paper in Indonesia. The Islamabad High Court suspended the investigation on the pretext that it was against the domestic law of Pakistan and the investigation was suspended on 12th December 2011. However, the decision of the High Court has been appealed (ICSTD 2014).

According to Norwan (2014), the Trade Minister of Indonesia, "the investigations by Pakistan has caused concerned for the Indonesian exporters as it was not completed within the given time limit." He further said, "The uncertainty regarding the investigations is putting our paper producers in a difficult position and they fear that their purchase contracts will be halted" (ICSTD 2014).

Indonesia had earlier requested Pakistan to halt the probe but Pakistan responded by saying that they waited for final decision of the appeal. Norwan (2014) said,

> this is not the response that we expected. Our firms were cooperative by providing necessary information throughout the investigation, but all we got in return was indecisiveness." He further said, "During the anti-dumping and countervailing duty investigation, the export market has dried up because importers in Pakistan have been hesitant to place orders (ICSTD 2014).

He was pointing to the loss that Indonesia has suffered due to initiation of anti-dumping investigations.

A bilateral meeting was held between Indonesia and Pakistan in the consultation process of the WTO DSS. Director General of Foreign Trade, Bachrul Chiri and

Indonesian Ambassador to the WTO, Syafri A. Baharuddin, represented Indonesia whereas Pakistan was represented by Shahid Bashir, Pakistan's Ambassador to the WTO (Ministry of Commerce 2014). Indonesia claimed that such action of Pakistan has led to a great loss to the Indonesian paper exports amounting to US$1 million per month (Ministry of Commerce 2014). Shahid Bashir of Pakistan expressed his hope to resolve the dispute bilaterally but the countries did not reach at any solution during the consultation period. Even in 2010, the National Tariff Commission of Pakistan had questioned the Indonesian producers on the production and exports of coated and uncoated paper and paperboard on the allegation of dumping taking place. Nevertheless, the allegation was dropped when the Lahore High Court gave the judgement that the action of the commission was unlawful. This move was welcomed by Indonesia on the pretext that it would allow the trade to flourish. Since consultation did not bring any effective result, Indonesia on 12th May 2014 requested for establishing the panel in this particular dispute but the request was deferred by the Dispute Settlement Body.

3.4.4 Pakistan and the UAE on Biaxially Oriented Polypropylene Film Dispute

The request for consultations came from the United Arab Emirates (UAE) regarding the anti-dumping measures of Pakistan on its exports of Biaxially Oriented Polypropylene (BOPP) film to Pakistan (Khan 2018). The request for consultation came on 24th January 2018. The UAE claimed that Pakistan's measures were against several provisions of the ADA (Table 3.10).

Pakistan initiated an anti-dumping investigation on the BOPP films imported from the UAE, China, Saudi Arabia and Oman on 27 September 2010. The product on which investigation was initiated was classified under HS Code: 3920.2010 and 3920.2030.[49] The initiation was challenged in Islamabad High Court and on the court's order it was reinitiated in April 2012(The Express Tribune 2018). Pakistan claimed that the imports from these countries caused injury to its domestic industry.These products are plastic films which are basically used for printing, textiles and packaging of food.

[49] The Harmonised Commodity Description and Coding System is the standarised system to classify the products which are traded internationally.

The provisional anti-dumping duties were imposed by the National Tariff Commission (NTC) of Pakistan on the imports of BOPP film from the UAE, Saudi Arabia, China and Oman with the range of 22.92 percent to 62.7 percent which was applicable from 14 August 2012 to 13 December 2012 (the provisional anti-dumping duties are imposed for six months). The duty for Tagleef, exporter in the UAE, was 29.70 percent and 57.09 percent was imposed on other exporters of BOPP film and definite anti-dumping duties were imposed on its imports from these countries on 7th February 2013. The rate for anti-dumping duties ranged from 29.70 percent to 57.09 percent for the UAE which differed among the exporters (The Express Tribune 2018). After the imposition of definite anti-dumping duties for five years, sunset review is conducted by the countries concerned, in order to testify whether the anti-dumping duties should be continued or not. Pakistan initiated the sunset review and the definite anti-dumping duties on these products were renewed on 1st December 2016 (Hussain 2018). This particular dispute went through a different process of anti-dumping investigation to the imposition of definitive anti-dumping duties. It is represented below (Figure 3.1) (Global Trade Alert News 2012).

Figure: 3.1

Different stages of Anti-Dumping Provisions on BOPP Film

Initiation of the Investigation (27th September 2010)

↓

Imposition of provisional anti-dumping duties (14th August 2012)

↓

Imposition of definitive anti-dumping duties (7th February 2013)

↓

Sunset Review (4 August 2015)

↓

Renewal of the Anti-Dumping Duties (1 December 2016)

↓

Request for Consultation by UAE in the WTO DSS (24th January 2018).

Source: WTO (2018)

Table 3.10

Anti-Dumping Measures Adopted in Different Disputes

Dispute No.	Name	Anti-Dumping Measures Challenged	Articles of ADA Cited during the challenge of measure
327	Egypt-Matches	Definite Anti-dumping duties	Articles 1, 2.1,2.2, 2.2.1.1, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 6.1, 6.1.3, 6.2, 6.4, 6.5, 6.5.1, 6.5.2, 6.6, 6.8, 6.9, 6.13, 12.1, 12.2, 12.2.2, 18, Annex II, GATT 1994: Art VI: 1, XXIII:1(a), VI:2
500	South Africa-Cement	Definite Anti-dumping duties	Articles 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 6.1.3, 6.2, 6.5, 6.8, 7.1, 12.1.1 (i), 12.2.1, Annex II, GATT 1994: Art. VI
470	Pakistan-Paper	Terms of anti-dumping investigations	Articles 1, 18.1, 5.10, Subsidies and Countervailing Measures: Art.10, 11.11, 32.1,32.5, 18.4
538	Pakistan-BOPP	Definite Anti-dumping duties	Articles 1, 2.1, 2.2.1, 2.2.1.1, 2.4, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.8, 5.10, 6.2, 6.4, 6.5, 6.5.1, 6.8, 6.9, 9, 11.1(a), 11.2, 11.3, 11.4, 12.1, 12.2, 12.3, 18, Annex II. GATT 1994: Art. VI:1, VI:2

Source: WTO (2019)

The anti-dumping disputes of Pakistan involved the imposition of anti-dumping duties in three out of four cases and in only one dispute with Indonesia on paper products, the tenure of anti-dumping investigation were challenged (Table 3.10).

Table 3.11

Outcome of Pakistan's Anti-Dumping Disputes

Dispute no.	Name	year	Stages of DSB	Complainant	Respondent
327	Egypt- Matches	2005	Mutually Resolved (27 March 2006)	Pakistan	Egypt
500	South Africa-Cement	2015	In consultation (9 November 2015)	Pakistan	South Africa
470	Pakistan- Paper	2013	In consultation (27 November 2018)	Indonesia	Pakistan
538	Pakistan-BOPP	2018	Panel established but not yet composed (29 October 2018)	The UAE	Pakistan

Source: WTO (2019)

The anti-dumping disputes involving Pakistan have not gone for the panel and the Appellate Body review. India, as discussed in the preceding chapter has the experience of all stages of the WTO DSS like the consultation stage, the Panel Stage, the Appellate Body, Retaliation and Compliance Panel but Pakistan does not have the experience of all these stages on issues of anti-dumping as none of the disputes in which Pakistan is involved has gone beyond the consultation stage (Table 3.10).

3.5 Why is Pakistan's Participation Low in the WTO Dispute Settlement System?

3.5.1 Modest Trading Profile of Pakistan

The trading profile of a country contributes mainly in the participation in the WTO DSS. Countries are likely to have more trade friction globally if their trade is large both in volume and diversity. This leads to more WTO disputes as compared to countries with a small and less diversified trade (Horn et. al 1999; Francois et. al 2008). The smaller developing countries have modest trading profiles with fewer claims in the WTO disputes. These countries face economic and political pressures from the more developed and stronger countries, and face trade capacity constraints and lack of abilities to use retaliatory measures of the DSS against the trading partner (Shaffer 2009; Shaffer 2006; Nordstorm and Shaffer 2008; Bown and Hoekman 2005). Therefore, small developing countries would refrain from filing the WTO complaint if it faces trade barriers as the cost of WTO litigation outweighs the benefits from such litigation (Bown and Hoekman 2005; Shaffer 2006; Nordstorm and Shaffer 2008;Shaffer 2009). Shaffer (2006) has given reasons for less participation of few countries. The exports of these countries are of low aggregate value and they would benefit less from the WTO complaints.

Pakistan's share of export with Latvia is US$ 12.8 million which is around 0.05 percent of its total exports. So, if Pakistan feels that any of Latvia's measures against Pakistan are in consistent to the WTO provisions, it will not approach the dispute settlement system as its loss from the measure will not be much as it shares fewer exports with Latvia. The countries lack domestic legal capacities to hire foreign firms for the litigation process of the WTO that needs a clear understanding of WTO laws.

3.5.2 Pakistan Lacks Trade Capacity to Utilise the WTO DSS

Though the Uruguay Round provided with a rule-based WTO dispute settlement system, the trade capacity of countries is important to manage legalisation of the processes in the DSS (Blouin 2002). The trade rules of the WTO are more elaborate and complicated. The WTO contains "a complex web of over 20 agreements, together with the attached member-specific schedules of concessions and commitments which cover more than 20,000 pages" (ACWL 1995). In addition to this, there are detailed and numerous Panel and the Appellate Body reports (Shaffer 2009; Shaffer 2003). In order, "just to read through and understand the growing WTO case law is an immense task, including for specialised academics" (Shaffer 2009; 168).

Pakistan lacks the capacity to identify its trade claims which is the initial step in order to approach the dispute settlement system. Pakistan, even if identifies its trade injury and decides to approach the dispute settlement system, does not have the competent trade lawyers for submission and representation of case before the WTO panel (Khan 2016).

The knowledge on anti-dumping measures needs more understanding and expertise for calculating dumping margin and conducting and understanding the anti-dumping measures of the WTO. The Ministry of Commerce of Pakistan responsible for handling trade matters does not have any in-house legal expert for advising the government on trade matters (Khan 2016).[50] There are few local private lawyers to deal with WTO disputes and they are also incompetent in dealing with WTO disputes (Khan 2016).[51] According to one of the domestic trade lawyers of Pakistan,

> Local law firms are less interested in investing to Develop trade law expertise. Because of the government's limited usage of the system and little attention towards WTO matters, local firms do not perceive any real incentive or market opportunity in doing so (Khan 2016).[52]

[50]Parvez Khan gathered this information through an interview with a high ranking official of the Ministry of Commerce (MOC) WTO Wing in Islamabad, Pakistan on 24 July 2012; He also got the information by interviewing a senior representative of the All Pakistan Textile Mills Association in Lahore, Pakistan on 16 August 2012.

[51]Parvez Khan gathered this information by interviewing an ex-senior representative of the APTMA on 15 August 2012 in Lahore and domestic trade lawyer on 24 December 2014.

[52] The statement was given by a domestic trade lawyer of Lahore, Pakistan on 24 December 2014 to Parvez Khan.

3.5.3 Few Courses on Trade Laws in Pakistan

In addition to this, there are very few courses on trade laws in colleges and universities of Pakistan. Pakistan offers only a few subjects in its LLB courses that are limited to business or local commercial laws. Subsequently, there is not a single course or subject related to international trade or WTO related laws (Khan 2016).[53] Pakistan has only a few institutes like Punjab Law University College (University of Punjab, Lahore)[54] and Faculty of Shariah and Law, (International Islamic University, Islamabad)[55] that offer LLM and diploma in international trade.

3.5.4 Financial Constraints of Pakistan

Pakistan faces financial constraints that prevent the country from meeting the litigation cost of the WTO (Latif 2007). As Pakistan lacks legal experts, foreign lawyers from developed countries are hired whose fees are very high (Shaffer 2009; 16). Developing Countries can normally afford the legal fees ranging from US$200 to US$600 per hour, or even more if foreign lawyers are approached for dealing in the WTO disputes (Shaffer 2009). The WTO disputes if taken to the Appellate Body stage would cost around US$500,000 as legal fees (Nordstorm and Shaffer 2008). Nordstorm and Shaffer (2008) opined that "[a complex] case that goes the full three-year course with appeal and subsequent contestation over the respondent's implementation of the decision may cost millions of dollars" in legal fees only, excluding other expenses such as for travel and accommodation. These legal costs of the WTO are high for a small economy like Pakistan.

The government body in Pakistan for building trade capacity is Pakistan's Institute of Trade and Development (PITAD). However, PITAD provides basic training to newly recruited officers on trade matters but does not produce legal experts at international or local levels and as a result, there is a lack of legal experts at the level of government. PITAD School of Economics & Trade (PSET)[56] provided courses on international trade for developing human capital. However, the school has not begun

[53]Parvez Khan has been a student of LLB in Pakistan in 2006.

[54] International Islamic University, Faculty of Shariah& Law, Islamabad, [Online Web], Accessed 12 December 2018, URL:https://www.iiu.edu.pk/?page_id=86

[55] University of Punjab, Punjab University Law College, Lahore, [Online Web], Accessed 12 December 2018, URL: https://www.iiu.edu.pk/?page_id=86http://pu.edu.pk/home/department/37/Punjab-University-Law-College

[56] PSET was established in 2010 that provided M.Phil and Ph.D courses on International trade.

any course apart from a Post Graduate Diploma in applied quantitative research techniques.[57]

In the US-Patent Protection Dispute (WTO/DS/36), Pakistan requested the USA to hold consultations in Islamabad in place of Geneva as it faced financial problems of incurring representative's expenses for travel and accommodation in Geneva. However, the request was rejected and the consultations were held in 1996 in Geneva.[58]

Pakistan has used the service of the ACWL for overcoming its litigation cost as its services are provided at US$150 per hour which is less compared to legal services provided by private law firms which is equal to US$200 to US$600 per hour or even more. In the US-Cotton Yarn dispute, Pakistan used the services of the ACWL. The total amount of dispute calculated by the US law firm was around US$ 200,000 and the ACWL's charge for litigation process was about $125,000. The amount was far less than the cost of US-based firms according to the Ministry of Commerce, Pakistan (Hussain 2005). The service of the ACWL was the main reason for Pakistan filing and litigating the US-Cotton Yarn dispute (Bown and McCulloch 2009).

The ACWL also assisted in Pakistan's dispute with Egypt on anti-dumping measures on its exports of matches which helped Pakistan commercially. The sales of matches by exporting firms in Pakistan accounted for just US$2.6 million annually to Egypt. The benefit from the WTO claim would have been less as compared to the litigation cost of the WTO (Bown and McCulloch 2009). Pakistan has also availed the services of the ACWL in the EU-PET (WTO/DS/486) and South Africa Cement dispute (WTO/DS/500).[59] Though, the services of the ACWL have been provided to Pakistan in different WTO disputes, the ACWL has its own limitations and has failed to address the legal constraints of Pakistan.

Pakistan faces trade capacity constraints and the institutions like the Secretariat and the ACWL have been inadequate in addressing its trade capacity constraints.[60]

[57]Pakistan Institute of Trade and Development, School of Economics and Trade, [Online web], Accessed 13 December 2018, URL: https://edirc.repec.org/data/pitadpk.html
[58]Minutes of Meeting, Dispute Settlement Body, WTO Document WT/DSB/M/21 of 5 August 1996
[59]Advisory Centre on WTO Law, WTO Disputes , [Online Web], Accessed 21 December 2018, URL: http://www.acwl.ch/wto-disputes/
[60]The limitations of the ACWL and the Secretariat have been discussed in Chapter Five of the Thesis.

3.5.5 Fear of Losing Benefits from Developed Countries

The WTO DSS is ruled based and less affected by economic and political pressure contrary to the GATT DSS and calls for effective participation by developing countries. However, there is fear among small countries of the political punishment from more powerful respondent. The disputes can affect the development assistance, foreign aid and preferential market access that smaller countries receive from the large developed countries (Bown and Hoekman 2005, 865-66; Shaffer 2008, 17; Busch et.al 2009; Ochieng and Majanja, 2010; Shahin 2010). "The more a complaining Member is dependent on the potential respondent (whether for trade, security, or development assistance), the larger the political dimension likely becomes" (Evans and Shaffer 2010). The countries can withdraw foreign aid and other preferences at their wish as these are not legally bound by the WTO (Bartels and Haberli 2010; Ozden and Reinhardt 2005). Therefore, political pressures matter for countries for approaching the WTO DSS.

Pakistan has politically and economically stronger trade partners like the USA, the EU and China (Table 3.1). The EU is a major trade partner of Pakistan accounting for 10 percent of its imports and 34.3 percent of its exports (WTO 2019).[61] The USA has provided $20 billion aid since 2000 to fight against the Taliban. China supplies modern armaments to Pakistan's defense forces. China is providing funds to develop infrastructure by building roads, power plants and ports. China and Pakistan on 20 April 2015 signed agreements in which China would invest US$46 billion in the country (BBC News 2015).

Pakistan's limited participation can be attributed to its fear of losing benefits from these countries. Pakistan delayed for almost five years before initiating a dispute against the EU in the EU-PET dispute. The countervailing duties were imposed on Pakistan's PET by the EU in 2010. Pakistan at that time had trade negations with the EU for gaining preferences in the EU market for its 74 products.[62] Pakistan feared that the ongoing trade negotiations with the EU would be disturbed if it takes the matter to

[61] The data on exports and imports are given till 2017 in the WTO website at the time of writing the chapter.

[62] Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 Imposing a Definitive Countervailing Duty and Collecting Definitely the Provisional Duty Imposed on Imports of Certain Polyethylene Terephthalate Originating in Iran, Pakistan and the United Arab Emirates [2010] OJ L 254/10.

the dispute settlement system against the countervailing measures of the EU at that time. After five years, Pakistan approached the DSS when EU extended the term of countervailing measures for another five years.

However, some hold the view that the legal challenges do not affect the diplomatic relations among countries. In the US Cotton Yarn dispute, Pakistan was initially reluctant in approaching the WTO DSS against the US as it could have brought political repercussions for Pakistan.

The Joint Secretary at the MOC, Mr. Qureshi supported the All Pakistan Textile Mills Association's (APTMA) that suffered injury due to US measures, to approach the WTO DSS against the USA. He persuaded the government that the legal challenge is a normal practice between trading countries and it would not affect their diplomatic relations (Khan 2016).[63]Mr. Qureshi argued, "the dispute was the question of Pakistan's principles and rights. Pakistan received the blow in international trade and it was justified to seek its redress."[64] Mr. Munir Akram, Pakistan's Ambassador to Geneva also supported Pakistan's participation in the WTO DSS. Pakistan participated and got the panel and the Appellate Body ruling in its favour and did not experience any repercussions by the USA.

3.5.6 Pakistan Lacks Trade Capacity to Identify and Pursue Disputes

The capacity of member states to recognise and pursue legal opportunities as complainant encourages the respondent to resolve the issue mutually or through consultations (Busch and Reinhardt 2003). It prevents countries from the high cost of litigation and increases the possibilities of concessions from the respondent and also prevents their friendly diplomatic relations. In this context, the Egypt Anti-Dumping case is a good example. In Egypt Anti-Dumping case, when Pakistan and Egypt failed to achieve an outcome acceptable to both countries, Pakistan decided to approach the panel for resolution of the dispute. As a result, Egypt agreed to resolve the issue through negotiations. According to Pakistan's Embassy in Cairo, "the Egyptians have finally realised that their anti-dumping actions were not based on any evidence and they wish to avoid the embarrassment of losing their case at WTO". The dispute was

[63]Parvez Khan got the information by interviewing high ranking official of the MOC in Islamabad, Pakistan ON 20 July 2012 and ex senior representative of the APTMA.
[64] Ibid.

resolved through mutually agreed settlement. The DSB was notified of settlement on 27 March 2006 and dissolution of the panel was requested by the parties.

Trade capacity is not only important for achieving a settlement with countries but countries with good litigation capacity are targeted less with trade restrictive measures like anti-dumping duties (Busch, Reinhardt and Shaffer 2008). Therefore, improving trade capacities at one hand engages countries actively in disputes and on the other hand prevents its trade partners from imposing trade restrictions.

3.5.7 Pakistan lacks the Ability to Use Retaliatory Measures

Pakistan's decision to approach the WTO DSS is also affected by the fear that respondents may not follow the panel and the Appellate Body rulings and the country lacks the ability to use retaliatory remedies due to its small market size against the losing member. If the countries do not follow WTO rulings within the given time period, the other countries that have got the rulings in their favour can either ask for trade compensation or get the authorisation to retaliate against non-complying countries. The trade compensation can only be given if the non-complying members agree on its implementation. The granting of trade concession is a rare phenomenon as till date there has been only one example of Japan- Alcoholic Beverages II in which compensation was agreed by parties.[65] The countries can ask for authorisation for retaliating against non-complying countries by suspending concessions on trade or other commitments which it owed to the non-complying countries under the covered agreements. The retaliation unlike compensation is binding in nature and based on the "negative consensus" approach. The DSS of the WTO is considered as 'compliance-retaliation' rather than 'compliance-compensation' model (Wilson 2007).

Pakistan lacks the ability to retaliate effectively against larger countries this contributes for its lesser participation in the DSB of the WTO (Latif 2007). Pakistan with a small market and the poor economy will not be able to effectively use

[65]In Japan — Alcoholic Beverages II, as trade compensation, the parties mutually agreed on temporary additional market access concessions for certain exporting items of the original complainants in the respondent's (Japan's) markets; Japan – Taxes on Alcoholic Beverages, Status Report by Japan, WTO Document WT/DS8/18, WT/DS10/18, WT/DS11/16 of 15 September 1997; Japan - Taxes on Alcoholic
Beverages, Mutually Acceptable Solution on Modalities for Implementation, WTO Document WT/DS8/19, WT/DS10/19, WT/DS11/17 of 12 January 1998; Japan - Taxes on Alcoholic Beverages, Mutually Acceptable Solution on Modalities for Implementation, WTO Document WT/DS8/20, WT/DS10/20, WT/DS11/18 of 12 January 1998.

retaliation as the gains from retaliation are less than the loss from retaliation. For example, in Pakistan and Egypt's dispute on matches, Pakistan preferred mutual settlement instead of approaching for the panel and the Appellate Body to overcome the feeling that Egypt might not comply with the rulings of the WTO. Pakistan would not have retaliated effectively as both countries shared small volume of trade as Pakistan's total export to Egypt is 0.37 percent (Trading Economics 2017) and import is 0.27 percent (Trading Economics 2017). The opinion was shared by Pakistan's WTO Mission in Geneva to Ministry of Commerce, Islamabad, Pakistan when Egypt requested to resolve the issue through mutual negotiations,

> We [Pakistan's WTO Mission] feel that the negotiated solution would be faster and have certainty of implementation. On the other hand, the process of DSU is lengthy. Even if we are successful, and if Egypt opts not to comply with the decision, Pakistan might not retaliate through suspension of concession on account of low trade volume between the two countries (WTO 2005).[66]

The WTO provides for the process of cross retaliation in which countries suspend concessions or obligations in different sectors under the same agreement questioned in the dispute or even other agreements of the WTO (DSU 1995).[67] However, the authorisation of cross retaliation is complicated and difficult to be implemented by developing countries including Pakistan (Zdouc 2010; Spadano2008; Bodien 2008).

Pakistan and other developing countries like India, Cuba, Zimbabwe, Tanzania, Malaysia, Sri Lanka, Honduras and Indonesia in special negotiation of the DSU on 9 October 2002 proposed on the issue of retaliation that:

> …[A] complaining developing-country Member should be permitted to seek authorization for suspending concessions and other obligations in sectors of their choice. They should not be required to go through the process of proving that, (1) it was not "practicable or effective" to suspend concession in the same sector or agreement where the violation was found; and (2) the "circumstances are serious enough" to seek suspension of concessions under the agreements other than those in which violation was found exist (DSU 2002).[68]

[66]Correspondence between Pakistan WTO Mission Geneva and Pakistan MOC, 15 July 2005 (Pakistan, MOC files).
[67]Article 22 (3) of the DSU
[68]Negotiations on the Dispute Settlement Understanding: Special and Differential Treatment for Developing Countries, WTO Doc TN/DS/W/19 (9 October 2002)

The other proposals from developing countries are of collective retaliation or monetary compensation for improving remedies in the WTO (Charnovitz 2001; Anderson 2002;Bronckers and Broek 2005).[69]

Pakistan has not experienced any disobedience by countries of the panel and the Appellate Body Ruling. But, this can be attributed to Pakistan's low participation in the WTO DSS and not to the process of compliance.

3.6 Trade Profile of Countries in Dispute

3.6.1 Egypt

Egypt had imposed two anti-dumping measures on Pakistan's matches which Pakistan challenged in the DSS (WTO 2018).If the profile of Pakistan and Egypt are analysed, it is observed that both countries are at an equal developmental level and are categorised under Low Middle Income Economies[70]. Pakistan, like Egypt, has also not been very active in the WTO DSS. Egypt has not initiated any dispute to the WTO DSS but as a respondent, it has participated four times (WTO 2019), including Pakistan. Though, as a third party, it has been more participatory with eleven WTO disputes. Pakistan's share in world total export is 0.13 percent and its share in world total imports is 0.29 percent (WTO 2018). Similarly, Egypt's share in world total export is 0.16 percent and total import is 0.34 percent (WTO 2018). This case demonstrates that both countries are at equal footing and this moreover illustrates that the developing countries mostly initiate a complaint against other developing countries in the WTO DSS.[71]

[69]See, eg, Negotiations on the Dispute Settlement Understanding, WTO Doc TN/DS/W/15 (25 September 2002) (Proposal by the African Group); Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding WTO Doc TN/DS/W/23 (4 November 2002) (Proposal by Mexico); Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding, WTO Doc TN/DS/W/33 (23 January 2003) (Proposal by Ecuador); Text for LDC Proposal on Dispute Settlement Understanding Negotiations, WTO Doc TN/DS/W/37 (22 January 2003) (Communication from Haiti). WTO member states' proposals can be found at World Trade Organization, Dispute Settlement <https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm>.

[70]The World Bank's classification is based on the Gross National Income (GNI) where countries with GNI per capita between $3,956 and 12,235 are classified under Middle Income Economies. GNI: It is the total domestic and foreign output which has been claimed by the residents of the country.

[71]The dispute between South Africa and Pakistan on cement, India and Brazil on jute bags, India and South Africa on pharmaceuticals and Pakistan and Indonesia on paper are all examples of disputes initiated by developing countries against other developing countries.

3.6.2 South Africa

Pakistan and South Africa are two developing countries of Asia and Africa. South Africa had imposed two anti-dumping measures on Pakistan till 2017 (WTO 2018) and Pakistan challenged South Africa's one anti-dumping measure on its Portland cement. South Africa's share in world total export is 0.47 percent and total import is 0.56 percent (WTO 2018) South Africa is categorised under the upper middle-income economies whereas Pakistan comes under lower middle-income economies (WTO 2019). A recent trend has been seen in the WTO DSS that the disputes are majorly initiated by developing countries against other developing countries. This case is the example of such disputes against developing countries. If the participation of both countries in the WTO DSS is compared, Pakistan is ahead of South Africa as South Africa has not approached Dispute Settlement Mechanism till now as complainant whereas as a respondent it has five cases and 19 cases as a third party, (WTO 2019).

3.6.3 Indonesia

Pakistan had imposed seven anti-dumping measures on different products of Indonesia (WTO 2018). Indonesia challenged Pakistan's anti-dumping measures on its paper products. This was the first dispute that Indonesia had initiated against Pakistan. Indonesia and Pakistan are developing countries of South East Asia and South Asia respectively. If the participation of Indonesia and Pakistan at the WTO DSS is compared, Indonesia is much ahead as compared to Pakistan with 11 disputes as complainant, 14 disputes as a respondent and 38 disputes as a third party and is among the active developing country participants in the WTO DSS (WTO 2019).

3.6.4 The UAE

Pakistan has imposed one anti-dumping measure on the UAE's BOPP film and the UAE challenged the same in the WTO DSS. If the participation of Pakistan and the UAE is compared in the WTO DSS, UAE has very low participation. As a complainant and respondent, UAE has participated in only one case and as a third party in three cases (WTO 2018). The UAE's share in world total exports and imports are 1.37 percent and 1.69 percent (WTO 2018). Though its share in world's total exports and imports are high compared to Pakistan, its involvement with the WTO DSS is low. This is the first and only dispute in which it has approached the WTO

DSS as complainant even after so many years of becoming the WTO member. It acquired the membership of the WTO on 10th April 1996 (WTO 2019). This dispute is a recent development in the WTO. The fate and outcome of this dispute would be an interesting subject in the cases of the WTO DSS as it is the first dispute initiated by the UAE as a complainant.

The countries involved with Pakistan on anti-dumping disputes are Egypt, South Africa, Indonesia and the UAE which belong to the developing countries group. Developing countries have been targeted by both developed and developing countries. According to Busch and Reinhardt (2003), a developing country "is up to five times more likely to be subject to complaint under the WTO". The reason for developing countries being targeted for most of the WTO disputes is that these countries have assumed legal obligations more under the WTO as compared to the GATT, where developing countries were not subjected to side "codes" and had few binding tariff commitments.[72]

3.7 Products under Consideration

3.7.1 Matches

In the dispute between Pakistan and Egypt, the product under consideration was matches imported from Pakistan. The steady growth has been maintained by Pakistan in the export of matchbox industry because of its good quality which can compete with other best matches in the market. There are fifteen match factories in Pakistan out of which six are in Khyber Pakhtunkhwa, five in Sindh, three in Punjab and one in Azad Kashmir (Dawn 2005). Pakistan is exporting its matches all over the world and its main destinations are Egypt, New Zealand, South Africa, Durban, Congo, Angola and Central Asia (Dawn 2004). The manufacturers use locally available raw materials whose conversion cost is very low. There was an increase in its exports in the Middle East, the Far East and Africa in the year 1996 and the exports reached US$5.4 million annually (Dawn 2004).

[72] Under Article II of the GATT, the number of tariff lines bound following the negotiations on Uruguay Round and creation of the WTO increased from 78% to 99% for developed countries and 22% to 72% for developing countries. The Agreement Establishing the WTO created a single package where the new substantive agreements and old codes (as revised) were included as annexes to the agreement under a single institutional umbrella.

In the year 2005, when the anti-dumping duties on matches were imposed, Pakistan's export to Egypt was US$5 million (Dawn 2004). The export industry of the NWFP employs around 5000 workers. In such a situation imposing anti-dumping duties affected the agriculturists and farmers who provided with the woods for the match industry. The anti-dumping duties imposed on Khyber Match Factory (Pvt.) and Mohsin Match Factory (Pvt.) were 29 percent and 26 percent respectively.[73] Before the imposition of anti-dumping measures, the export of matches to Egypt was about US$2,608,283. The loss was about US$2,453,799 (Dawn 2004).This exhibits that anti-dumping duties initiated a great loss to the match industries of Pakistan.

3.7.2 Portland Cement

Pakistan is among 15 major exporters of cement in the world exporting cement of value around US$185.6 million that is approximately 2 percent of total exports (Daniel 2017). South Africa has become the second largest export destination for Pakistan's cement since 2012. According to the ITAC Trade statistics, Pakistan was a major supplier of cement in South Africa followed by China and the United Kingdom. The supply increased on the demand of South Africa in 2013 and 2014 to 98.5 percent and 99.5 percent. The compound growth rate of Pakistan's exports increased to 99 percent from 2010 to 2013 and by 74 percent from 2010 to 2014. As a destination market, the importance of South Africa has increased over the last seven years (Daniel 2017).

This demonstrates that imposing provisional anti-dumping duties on the Portland cement initiated loss to its industry as Pakistan won't be able to supply at the same level in Egyptian market. The exports of Portland cement from Pakistan declined by 26 per cent after the imposition of provisional anti-dumping duties by Egypt (Dawn 2015). The provisional anti-dumping duties were for six months but it was decided by the ITAC that the duty period would extend to five years if there were no reviews of the duties by the respective authorities of South Africa. The recent development in this particular dispute was that Lucky Cement, Pakistan's major cement producer and manufacturer of cement, has decided to withdraw the dispute from Gauteng North High Court because, by the time the court date was set, the provisional duties had expired (FTW News 2016). Pakistan wants to continue the case in the WTO DSS.

[73] These two industries are the major manufacturers of matches in Pakistan.

3.7.3 Paper

Indonesia is among top producers of pulp and paper. The paper industry plays an important role in its economy. It contributes to 6.7 percent of the country's GDP and employs 26,000 direct workers and 1.1 million indirect workers. In the year, 2016, this industry was ranked seven in terms of foreign exchange earners (Araminta 2017). The local industry produces paper and pulp effectively because of the abundant supply of raw materials in Indonesia. Indonesia claimed that the investigation by Pakistan has hurt the producers of paper in Indonesia. The commercial director of Asia's Pulp and Paper, Arvin Gupta said that the investigation has initiated about US$1 million loss to its company each month. He said, "Customers are cautious about placing an order with the paper mills because they do not know when the Pakistan government will decide upon the case" (ICSTD 2014).

Pakistan carried out the investigation for more than two years and clearly violated the ADA as eighteen months is the specified period for anti-dumping investigations. Indonesia claimed that initiation of anti-dumping investigation has injured their domestic market of paper. This dispute demonstrates that initiating anti-dumping investigation harms the industry even if it does not lead to the imposition of the anti-dumping duties. There has been a delay in this case as the request for consultation was initiated in 2012 and no further improvements have been seen in this particular case. The loss of the industry in a developing country becomes more than gain from the WTO DSS as it takes a long period to deal with the dispute. Due to this, many developing countries refrain from filing a dispute. Pakistan as a respondent has played an important role as it has defended itself in the consultation process. When Indonesia claimed that the initiation of investigation has injured its domestic industry, Pakistan countered this and said that investigation has not been detrimental to the economy of Indonesia and the share of Indonesia's import market has grown from 53 percent to 58 percent during the investigation period (ICSTD 2014).

3.8 Conclusion

Among the South Asian countries, Pakistan is the only developing country other than India that has participated in the WTO DSS in the disputes challenged under the ADA. Pakistan has only four disputes out of the total anti-dumping disputes. The four disputes with South Africa, Egypt, Indonesia and the UAE have not gone beyond the

consultation stage and Pakistan lacks the experiences of the panel and the Appellate Body proceedings in anti-dumping disputes. Pakistan's low participation in the dispute settlement system can be attributed to its lack of technical capacity, absence of institutions to encourage research on issues of international trade, financial constraints, and weakness of the Secretariat, the S&DT Provisions and the ACWL.

Pakistan challenged the anti-dumping measures on its matches and cement which are products of major export interests for Pakistan. The dispute with Egypt was mutually resolved as Egypt removed its anti-dumping measures from Pakistan's matches. The dispute with South Africa is still in the consultation process since 2015 and this shows that the procedures are time taking hence hampering the trade of countries. Indonesia and the UAE challenged Pakistan's anti-dumping measures on Indonesia's paper and the UAE's BOPP product. The disputes are still in the consultation process and no further information has been provided on the outcome of the dispute.

Though India and Pakistan are two developing countries from the region and are categorised under the middle-income economies, their participation in the anti-dumping disputes varies to large extent. India is much ahead compared to Pakistan in terms of its GDP and share in world trade. India has evolved in its participation at the WTO over the years by developing its human, institutional and stakeholder capacities by participating in several disputes and Pakistan should also try to develop these capacities if it wants to be an active member at the dispute settlement system of the WTO. The active participation of countries in the WTO DSS is beneficial for countries' trade interests. The countries would refrain from imposing unfair trade practices on other countries if they feel that the other countries are capable of approaching the WTO DSS. The WTO DSS is a platform where other countries are also present together with complainants and respondents and countries would not want to present their image of hindering process of trade liberalisation in front of other WTO members. The effective participation of countries would develop their legal capacities by participating in several disputes and they would be able to present their positions as a complainant and defend their interests as a respondent at the WTO DSS.

The next chapter analyses the role of Bangladesh in the WTO DSS as the only LDC to approach the WTO DSS against India's imposition of anti-dumping duties on its lead-acid batteries.

Chapter 4
Bangladesh as a Complainant against India: Anti-dumping Duties on Lead-Acid Battery

4.1 Introduction

Bangladesh is a LDC of South Asia that borders Burma and India (UNO 2018). Bangladesh is categorised under developing economy and is included under the lower middle-income group (UNO 2018). The GDP of Bangladesh is US$249.72 billion which is very low compared to the GDP of India (US$2,600.82 billion) and Pakistan (US$ 304.95 billion) (World Bank 2018). After Independence in 1972, Bangladesh followed import substitution trade policies that were dominated by public sectors. Major industries like textiles, jute and sugar were nationalised and as a result, 86 percent of the industries were controlled by the government. High tariffs were imposed on imported goods to protect domestic industries. The public sector enterprises were found to be inefficient due to high debts and the government started de-nationalising several enterprises in the 1970s. In the year 1976, the public-private partnership and foreign investments were encouraged. Since the early 1980s, efforts were made for trade liberalisation in Bangladesh. The ownership of the private sector increased in industries to 59 percent in 1982 from 25 percent in 1981. The investment of the private sector was encouraged without any limitations and public-private partnership in different sectors like jute, textile, cotton and sugar, etc. were encouraged. Trade liberalisation was further deepened in the 1990s that accelerated after 2000. The custom duties and tariff barriers were reduced in 1990 resulting in the reduction of import duties. In the Financial Year (FY) 2000, the tariff rate was reduced to 37.5 percent that further decreased to 25 percent in the FY 2007(CPD 2008). The GDP from 1990 to 2017 has also increased from US$31.60 billion (1990) to US$249.72 billion (2017) (World Bank 2018). Therefore, Bangladesh liberalised its economy through tariff reduction and import substitution. Due to several reform measures taken by Bangladesh since 1980, Bangladesh has now become “trade-dependent country” from being “aid-dependent country” (CPD 2008). Bangladesh has recorded growth in its GDP, reduction of poverty and an increase in its

exports. Bangladesh has graduated from the group of 'low-income' countries to 'lower middle-income' countries in the year 2015 as it has shown improvements in its economy over the years (Ahasan 2019).[1]

> The Bangladesh economy continues to perform well with robust and stable growth. GDP growth has averaged more than 6.0 percent over the last decade, significantly lifting GDP per capita. Thanks to the ready-made garment (RMG) sector, the economy has diversified away from an agrarian to a more manufacturing-based economy, supported by abundant low-cost labor. Poverty has declined steadily and other social indicators have improved. As a result, Bangladesh is now emerging from a low-income to lower-middle income country status. More recently, broadly sound macroeconomic policies have contributed to robust growth, stable inflation, moderate public debt, and greater resilience to external shocks (IMF 2018).

In the financial year 2017-18, the GDP growth rate of Bangladesh reached to 7.86 percent that was slightly more than 7.28 percent of the FY 2016-17(Economic Survey 2017-18). The contribution of the agriculture and service sector to the GDP was around 14.23 percent and 52.11 percent whereas the contribution of the industry sector was 33.6 percent (Economic Survey 2017-18). The growth of 4.19 percent was registered by the agricultural sector due to good performance by sectors and sub-sectors like crop and horticulture, animal farming and fishing (Economic Survey 2017-18). The industry sector of Bangladesh grew by 12.06 percent as the manufacturing sectors like electricity, gas and water supply experienced growth of 13.40 percent, 9.19 percent and 9.92 percent (Economic Survey 2017-18). The GDP of Bangladesh has shown an upward trend and has reached to US$1,675 in FY 2017-18 from US$1,544 million in FY 2016-

[1]Bangladesh, for the first time in history, has fulfilled the eligibility criteria as set by the United Nations, to be recognised as a developing country. The three criteria, on which countries are categorised, under developed, developing and the LDCs are the Gross National Income (GNI) per capita, Human Assets Index (HAI), and Economic Vulnerability Index (EVI). The country should have GNI per capita of $1,230 or more for graduating in the category of developing nations. Bangladesh has GNI per capita of $1,274 (Dhaka Tribune 2018). The country should have the 64 points or more for graduating from the LDC category. Bangladesh holds 72 points in the HRI (Dhaka Tribune 2018). The EVI should be below 32 points and the current EVI of Bangladesh is 25.5 points (Dhaka Tribune 2018). In July 2015, Bangladesh graduated from low income to lower-middle income group of countries (World Bank 2018).The CPD in March 2018 found that Bangladesh had met the criteria for graduation from the LDC group for the first time. If the graduation criteria are met for the second time by Bangladesh in the next triennial review in 2021, it will be recommended for graduation by Bangladesh from the LDC category by the CPD in 2024.

17(Economic Survey 2017-18). The national per capita income also increased to US$ 1,751 million (Economic Survey 2017-18). In every aspect of its economy, Bangladesh has shown improvement in terms of GDP, exports, poverty reduction and recovered the economic loss of 2017 in the year 2018. The agriculture, service and industry sector have shown improvements in the year 2018 compared to FY 2016-17(Economic Survey 2017-18).

4.2 Bangladesh in the World Trade

The share of Bangladesh in world export is 0.20 percent and its total import is 0.29 percent (WTO 2018). The export earnings of Bangladesh in the FY 2017-18 are US$ 36,668 million which is 5.81 percent higher than its export earnings of the FY 2016-17 recorded at US$34,656 million (Economic Survey 2017-18). The growth in export earnings was due to an increase in exports of agricultural products, handicrafts, cotton, textiles, jute and chemicals etc. The major products exported are manufactured products especially readymade garments and its main destination markets are the EU followed by the USA and Canada (WTO 2018).

The import payment of Bangladesh in the FY 2017-18 was US$58,865 million, which was 25.23 percent compared to import payment of US$ 47,005 million for the FY 2016-17. The manufactured products followed by agriculture products are major products imported by Bangladesh (Figure 4.1). The products are majorly imported from China followed by India, Singapore and Hong Kong (Figure 4.2). As percentage of imports is more than its exports, Bangladesh faces a negative balance of payment. In the FY 2017-18, the trade deficit of Bangladesh increased to US$18,258 million from US$ 9,427 million (FY 2016-17) because of large payments for its imports(Economic Survey 2017-18). Bangladesh is categorised under a least developed country based on the indicators of socio-economic development and the Human Development Index (UNO 2018).[2]

[2] Human Development Index (HDI) is a statistical tool which is used to measure the achievement of the country in the social and economic dimensions.

Table 4.1

Bangladesh in the World Trade

GDP (Million Current US$) (2017)	**249.72**
Share in world total exports in Merchandise Trade (%)	**0.20**
Merchandise Trade Exports: By Main Commodity Group, % (2016)	**Manufacturers (93.9), Agricultural Products(3.4), Fuels and Mining (0.7), Others (2)**
Top Exported Products (Agricultural and Non- Agriculture)	**Agricultural :Fruit and vegetable juice, vegetables provisionally preserved, unmanufactured tobacco, bread, pastry, other bakers' wares and malt extract** **Non- Agricultural: T-shirts, singlets and other vests, Men;s or boys' suits, women's or girl's suits, jerseys, pullovers, cardigans and men's or boy's shirts**
Merchandise Trade Exports : By Main Destination, % (2017)	**EU (54.5), USA (19.3), Canada (3.3), Japan (3), China (2.3), others (17.5)**
Share in world total imports in Merchandise Trade (%)	**O.29**
Merchandise Trade Imports: By Main Commodity Group (%) 2016	**Agricultural Product (26.3), Manufacturers (64.7), Fuels and Mining product (9), Other (0)**
Top Imported Products(Agricultural and Non- Agriculture)	**Agricultural Products: cotton (not carded or combed), Palm oil and its fractions, Soya beans oils and its fractions, cane or beet sugar** **Non-Agricultural products: Petroleum oils (other than crude), woven fabrics (85% cotton small), woven fabrics (85% cotton big), cotton yarn (85% or more of cotton) and other made-up clothing accessories**
Merchandise Trade Imports : By Main Origin % 2017	**China (21.5), India(12.2), Singapore (9.2), EU (6.2), Hong Kong, China (5.5), Other (45.3)**

Source: WTO (2019); World Bank (2019)

Bangladesh acquired the WTO membership on 1 January 1995 and became a member of the GATT on 16 December 1972 (WTO 2018). As the GATT (now the WTO), was an effort to liberalise trade among countries, it was considered to benefit small economies like Bangladesh in terms of trade. Hence, Bangladesh after being independent on 16thDecember 1972 became one of the signatories to the GATT. The WTO was based on rules and emerged as a promising platform for small countries.

Bangladesh and the other LDCs[3] joined the WTO in 1995 for two reasons. First, the international trade rules would be fairly applied under the WTO with the 'Special and Differential Treatment' provisions for developing and least developed countries. The developing countries are given special rights and favourable treatment by other members under 'Special and Differential Treatment' provisions (SDT or S&T). The provisions are: 1) the longer time period is given to the LDCs for implementation of agreements and commitments. 2) These countries would be provided with measures to increase their trading opportunities. 3) The WTO members should safeguard the trade interests of developing countries. 4) The developing countries would be provided with support to develop their infrastructure for undertaking WTO work, handling disputes and implementing technical standards. In the Doha Round negotiations, the African Group[4] and the Group of LDCs[5] proposed to improve provisions related to the SDT. Second, the participation would help in their own national development as involvement in the multilateral trading system would promote their own trade. At present (April 2019), 36

[3]The LDC members of the WTO are Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo; Democratic Republic of, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Island, Tanzania, Togo, Uganda, Vanuatu, Yemen and Zambia.

[4]The African group of countries are Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Egypt, Eswatini, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

[5]The group of LDCs includes Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, Gambia, Guinea, Guinea-Bissau, Haiti, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Vanuatu, Yemen and Zambia.

LDCs[6] including Bangladesh are the members of the WTO and eight LDCs[7] are its observer states.

Bangladesh enjoyed Duty Free Quota Free (DFQF) market access in developed countries like the EU and the USA since 2001 proposed during the Singapore Ministerial Declaration in 1995 (UNCTAD 2017). Bangladesh has granted Most Favoured Nation (MFN)[8] status to its trade partners. It receives benefits under the SDT provisions[9] from member countries which are the WTO's provisions for the LDCs and developing countries. Bangladesh is a member of three groups; Asian Developing Member, G-90 and group of the LDCs in the WTO negotiations (WTO 2019). It has actively participated in the works of the WTO since it became its member in 1995 by serving twice as the coordinator of the LDC group in Geneva in the years 2007 and 2011. It advocated several issues of interests to the LDCs in the WTO like greater market access, increase in the flexibility in the rules of the multilateral trade and getting assistance from developed countries in improving trade infrastructure. The withdrawal of the quota system[10] on imports of textile and clothing and expiration of the Multifiber Arrangement[11] were important for the garment industries of Bangladesh. Readymade Garments are the largest export products of Bangladesh and the exports increased further with the expiration of Multifiber Arrangement (Figure 4.1).

Bangladesh participated effectively in the WTO Uruguay Round negotiations. Bangladesh advocated the implementation of the S&DT provisions to benefit the LDCs and stressed on the LDCs problems in International trade. The LDCs were given a longer period for implementation of WTO rules in different areas like agriculture, services and

[6]Refer to footnote 3.
[7]The LDCs observers of the WTO are Bhutan, Comoros, Ethiopia, Sao Tomé and Principe, Somalia, South Sudan, Sudan, Timor-Leste.
[8]This is a provision under the WTO where countries cannot discriminate among their trading partners such as providing a reduction in tariffs for any commodity from a particular country. It has to give equal favour to all its trading partners. The countries which achieve the status of the most favoured nation are given specific trade advantages which means reduction of tariffs on the imported goods.
[9]Under this Special and Differential Treatment, developed countries may deviate from the basic provisions of the WTO and grant special treatment to developing and the Least Developed Countries.
[10]According to the quota system, the restrictions were imposed on the quantity of the goods imported in the country within the given time period.
[11]It was an International agreement of trade on clothing and textiles which was active from 1974 to 2004. It imposed quota on the amount of yarn, clothing and fabric that developing countries could export to developed countries.

intellectual property rights and Bangladesh has made efforts to meet its obligation of liberalising trade especially in areas of agriculture. Bangladesh participated actively in the Doha Round negotiations in areas like agriculture, Non-Agriculture Market Access (NAMA) and dispute settlement. The LDCs along with Bangladesh were concerned over removal of farm subsidy in developed countries as these countries are major food importing countries and removal of subsidy would increase the food price in the global market. In the NAMA negotiations, concerns of the LDCs was on reducing import duties in developed countries at the level which will affect LDCs exports to developed countries. The LDCs also demanded preferences in the dispute settlement that would improve their involvement in the WTO DSS. The LDCs demanded that their products should be exempted from the imposition of anti-dumping duties. The LDC's Trade Ministers Meeting was held in Maseru, Lesotho on 28-29 February 2008 where these issues related to the LDCs were raised.

The pharmaceutical industry of Bangladesh is benefited with the waiver of TRIPS until 2033[12]. Bangladesh has ratified the Trade Facilitation Agreement of the WTO and became the 94th member of the WTO and is the 12th member among the LDCs to ratify this in 2016. The Instrument of Acceptance was submitted by Bangladesh's WTO Ambassador Shammem Ahsan to Roberto Azevado, the Director General of the WTO on 27 September 2016.[13]

As discussed in the preceding chapters, the WTO DSS, unlike the GATT, is rule-based that provides a platform for low-income countries to challenge trade measures of high-income countries. However, the WTO DSS has been dominated by traditional users and large countries like the USA, the EU and few developing countries like China, India, Argentina, Brazil and South Africa. A large number of developing and the LDCs are missing from the DSS platform. Approaching the WTO DSS was not an easy task for Bangladesh because of its low GDP, low per capita income and a small share in world trade. There are several challenges that the LDCs face while approaching the WTO DSS

[12]The WTO Committee on Intellectual property rights has allowed LDCs not to enforce Intellectual Property Rights on pharmaceutical products.
[13]The Instrument of Acceptance is an agreement which facilitates trade through release and clearance of goods including goods in transit that would expedite the movement.

and it is very difficult for them to overcome these challenges. Therefore, it is a rare phenomenon witnessing an LDC approaching the WTO DSS. The GDP value and share in world trade of the LDCs are very low. Bangladesh's GDP is US$249.72 billion which is very low compared to the GDP of the active participants in the WTO DSS. Bangladesh's share of world export is 0.20 percent and world import is 0.29 percent which demonstrates that its share in the world trade is very low (Figure 4.1). The relations of the GDP and the share of world exports with the DSS participation have been analysed in Chapter five of the thesis. The countries lack the human, financial, legal and institutional capacities to identify and approach the WTO DSS (Shaffer 2008) which have also been discussed and examined in chapter five.

The focus of this chapter is on the dispute between Bangladesh and India on lead-acid battery. Bangladesh complained that India's imposition of anti-dumping duties on its lead-acid battery was against the WTO ADA and Bangladesh under Article VI of the GATT 1994 approached the WTO DSS. Bangladesh is the first and the only LDC that has approached the WTO DSS as a complainant. The matter had reached the consultation stage but was resolved before going to the panel stage as anti-dumping duties from Bangladesh's lead-acid batteries were withdrawn by India before the establishment of the panel. Bangladesh had also acted as a third party along with the European Union when India approached dispute settlement proceedings as a complainant against the USA concerning the rules of origin on textiles and apparel products adopted in 1994 and 2000 (WTO 2000).

Bangladesh approached the WTO DSS against India's anti-dumping duties on its lead-acid battery in 2004. The chapter examines the conditions that encouraged Bangladesh to approach the WTO DSS. How Bangladesh overcame its financial and legal constraints not only after initiating the dispute but also before filing the dispute is the focus of this chapter. The role of the ACWL, private industry and the government of Bangladesh in this particular dispute has also been analysed and examined in the chapter.

4.3 Factors Responsible for LDCs Participation in the Dispute Settlement System

There are certain factors that contribute to the LDCs' ability to initiate WTO disputes. First, a single statutory authority is required to address the dispute whose responsibilities should be clearly defined (Taslim 2007). If there is more than one government department involved in the issue, it can lead to a difference of opinion that further delays the process of anti-dumping disputes resulting in inaction.

Second, there should be cooperation between the industries which have suffered due to measures of exporting country and the governmental departments dealing with the dispute. The private industries play significant role by lobbying government for dispute initiation, providing financial assistance and supporting government in participating and presenting the dispute in the WTO. Therefore, public-private cooperation becomes important for initiating and handling the proceedings in the WTO disputes.

Third, it becomes important to have a proper understanding of the technical issues that need scientific and technical knowledge before approaching the WTO DSS. Anti-dumping and Sanitary and Phytosanitary Measures are technical issues that require experts to understand the litigation process related to these measures. The lack of knowledge on these technical issues hinders participation in the WTO litigation process.

Fourth, there should be adequate funds in order to approach WTO DSS. Approaching the WTO DSS is a costly affair as the LDCs do not have experts on the litigation process and they need to hire experts from developed countries. The services of these lawyers are very expensive and even high if the disputes demands technical and scientific understanding of the subjects like dumping, anti-dumping and Sanitary and Phyto-sanitary (SPS) Measures.

Finally, there must be a political will on the part of the government to support the industry which has been hampered due to anti-dumping duties. The complaint to the dispute settlement proceedings can only come through the government of that particular country whose industries have been affected because of anti-dumping measures. The officers or people designated by the government can only participate in the deliberation of the WTO and subsequently, the support and encouragement of the government become

even more important for initiating a dispute in the dispute settlement proceedings. The private industry has to lobby the government in order to initiate the dispute in the WTO DSS and the final decision to initiate a WTO dispute lies with the government.

As stated, Bangladesh has only one dispute that also related to anti-dumping measures in the WTO DSS. The total number of anti-dumping measures imposed on Bangladesh's products is five (Figure 4.2 (a); 4.2 (b)). Out of these five anti-dumping measures Bangladesh has challenged only one measure of India on its lead-acid battery. The products of Bangladesh have faced anti-dumping measures from developing countries, India and Pakistan coming from the same South Asian region and Brazil from Latin American region. India and Pakistan are from lower middle-income group of countries and Brazil is from upper middle-income group (4.2 a).

Table 4.2

Anti-Dumping Measures on Bangladesh's Products (1995-2017)

Table 4.2 (a) Year-wise

Year	Anti-Dumping Measures on Bangladesh's products
2001	**1**
2008	**1**
2016	**1**
2017	**2**
Total	**5**

Source: WTO (2019)

Table 4.2 (b) Country-wise

Reporting Country	Anti-Dumping Measures on Bangladesh's Products
Brazil	**1**
India	**3**
Pakistan	**1**
Total	**5**

Source: WTO (2019)

Table 4.3

Bangladesh and Anti-Dumping Action

Anti-dumping measures imposed on Bangladesh's products	Bangladesh as complainant challenging anti-dumping measures	Rate of Challenging imposed anti-dumping measures in the DSS (In percentage)	Anti-Dumping Measures Challenged by Bangladesh	Total number of anti-dumping disputes	Ratio of Bangladesh's Participation in WTO DSS (in percentage)
5	1	20	0	131	0.76

Source: WTO (2019)

The participation of Bangladesh not only in anti-dumping disputes but its overall participation in the WTO DSS is very low as the ratio of Bangladesh's participation in the WTO DSS is 0.76 percent.

Though the rate of Bangladesh challenging its anti-dumping measure is more (20 percent) as compared to India and Pakistan,[14] the ratio of approaching the WTO DSS (0.76) compared to total anti-dumping disputes (131) is very low. The rate of challenging anti-dumping measures imposed on its products is more (20 percent) because there have been very less anti-dumping measures imposed on Bangladesh's products from the period 1995 to 2017 (4.3). Bangladesh has no dispute as respondent because there are no anti-dumping measures imposed by Bangladesh on any country's product.

As the trade dispute is between Bangladesh and India, it is also important to analyse the trade relationship between Bangladesh and India.

[14] The ratio of India and Pakistan's participation in the anti-dumping disputes compared to total anti-dumping disputes filed in the WTO have been discussed and analysed in chapter one and chapter two of the thesis.

4.4 Trade between Bangladesh and India

India and Bangladesh are two countries of the SAARC with shared history, culture and civilization. India was the first country to recognise Bangladesh as an independent country in 1972 and soon after a "Treaty of Friendship, Cooperation and Peace" was signed on 19 March 1972 in Dhaka between India and Bangladesh that regulated trade between countries for one year. The agreement identified raw jute, fish, naphtha and newsprint as major products of export interest of Bangladesh to India and cement, coal, machinery and manufactured tobacco were India's major export items to Bangladesh. The trade between the countries was at their respective government level (Madaan 1996). The agreement also allowed for free trade within 16 km of borders of both countries in certain products (Hasan 2002). There were several trade agreements signed between the countries from 1973 to 1990 to improve their trade relations (Rahman 2005).

A large number of unrecorded or informal trades[15] both in commodity and services are an important feature of India-Bangladesh bilateral trade relations (Pohit and Taneja 2003, Eusufzai 2000). The porous border between these two countries facilitates informal trade which is equivalent to the formal trade that happens between India and Bangladesh.

There are several reasons for such informal trade between India and Bangladesh. First, the machinery used during the formal trade is outdated which causes delay and leads to an increase in cost during the transaction of goods. The informal trade avoids such delays and expenses. Second, there are bribes and other demands in the formal trade from the government officials which unnecessarily increase expenses of the transaction. Third, there is inadequate transport infrastructure which sometimes leads to high expenditure during the process of transit in the formal trade. Fourth, informal trade prevents the goods from tariff and non-tariff barriers.

Bangladesh has experienced a growth rate in terms of trade with India since the 1980s. From1980 to 1985, the average annual growth rate of Bangladesh's trade with India was much higher as compared to other SAARC countries and the world. During this period,

[15]The informal trade is a trade which is neither taxed nor monitored by any form of the government. It is illegal transaction which includes smuggling of goods across borders. The informal trading enterprises are those that are neither registered nor licenced.

Bangladesh's average annual growth rate with India was 9.72 percent which was much higher compared to Bangladesh's trade with the world (2.46 percent) and SAARC countries (0.11 percent). During 1990-95, the growth rate of Bangladesh in terms of trade with India was 20.63 percent which was higher compared to the world (7.98 percent) and the SAARC countries (18.68 percent).

In recent years, from 2013 to 2018, India's export growth to Bangladesh has increased from 19.86 percent to 24.05 percent. The export share from India to Bangladesh has also increased from 1.71(2012) to 2.79 percent (2018). The goods are imported mainly from China and India to Bangladesh (Table 4.1).

On the import side, in 1990s, the contribution of Bangladesh to India's import was only 0.06 percent of its global imports. Though, the import share from Bangladesh to India has increased from 0.13 percent in 2012 to 0.15 percent in 2018, there have been negative import growth between the countries (-24.24 percent in 2013-14 to -2.29 percent in 2017-2018) (Table 4.4).

Table 4.4

Trade between Bangladesh and India

(Values in US$ Millions)

Year	2012-2013	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19[16]
Export	5,144.99	6,166.93	6,451.47	6,034.94	6,820.11	8,614.35	9,214.22
% Growth		19.86	4.61	-6.46	13.01	26.31	6.96
India's Total Export	300,400.58	314,405.30	310,338.48	262,291.09	275,852.43	303,526.16	330,069.60
% Growth		4.66	-1.29	-15.48	5.17	10.03	8.75
% Share	1.71	1.96	2.08	2.30	2.47	2.84	2.79
Import	639.33	484.34	621.37	727.15	701.68	685.65	1,043.03
%Growth		-24.24	28.29	17.02	-3.50	-2.29	52.12
India's Total Import	490,736.65	450,199.79	448,033.41	381,007.76	384,357.03	465,580.99	514,034

[16] The period covered is till 17 June 2019.

% Growth		**-8.26**	**-0.48**	**-14.96**	**0.88**	**21.13**	**10.41**
% Share	**0.13**	**0.11**	**0.14**	**0.19**	**0.18**	**0.15**	**0.20**
Total Trade	**5784.31**	**6651.27**	**7.072.84**	**6,762.09**	**7521.79**	**9,299.99**	**10,257.25**
% Growth		**14.99**	**6.34**	**-4.39**	**11.23**	**23.64**	**10.29**
India's Total Trade	**791,137.23**	**764,605.09**	**758,371.89**	**643,298.84**	**660,209.46**	**769, 107.15**	**844,103.68**
% Growth		**-3.35**	**-0.82**	**-15.17**	**2.63**	**16.49**	**9.75**
% Share	**0.73**	**0.87**	**0.93**	**1.05**	**1.14**	**1.21**	**1.22**
Trade Balance	**4505.66**	**5,682.59**	**5,830.10**	**5,307.79**	**6.118.42**	**7,928.70**	**8,171.19**
India's Trade Balance(In minus)	**-190,336.07**	**-135,794.49**	**-137,694.93**	**-118,716.50**	**-108,503.85**	**-162,054.60**	**-183,964.49**

Source: Export Import Data Bank (2019)

As the export share of India to Bangladesh is much more compared to the share of imports, there has been negative balance of trade between India and Bangladesh. The trade deficit with India was always experienced by Bangladesh since its independence that has increased over the years as trade balance in 2012-2013 was minus US$190,336.07 million and minus US$183,964.49 million in 2018- 2019 (Table 4.4).

4.5 Reasons for Trade Imbalance between India and Bangladesh

Several reasons account for such a trade imbalance between Bangladesh and India. As analysed by Rahman (2005), Bangladesh and India have experienced depreciation in their currencies. However, the depreciation of India's currency had been stronger compared to Bangladesh. As a result, the exchange rate policy of Bangladesh is inappropriate compared to India which results in a large deficit of trade. The products of India became more competitive both at the bilateral and multilateral level and India have been able to divert its demand for its imports leading to trade deficit with Bangladesh.

India has a productive advantage compared to Bangladesh both in agriculture and industry as India's economy is large, diversified and technologically advanced (Eusufzai 2000). The products of India (in terms of price and quality) have become competitive globally. India and Bangladesh have geographical proximity as both shares their borders that make importers of Bangladesh familiar with Indian products and its capacities to

produce. These factors have contributed in making India's products competitive in the market of Bangladesh. This results in exports of diversified products including manufactured goods. The diversified categories of products imported by Bangladesh from India are intermediate goods, textiles and clothing, raw materials, consumer goods, capital goods, vegetables, chemicals, machinery and electronics, transportation and metals (World Bank 2018). On the other hand, the export from Bangladesh to India is confined to few products like textile and clothing, consumer goods, intermediate goods, raw materials and metals (World Bank 2018) as Bangladesh lacks supply base for a large variety of products in India.

Bangladesh's exports face several tariffs and non-tariff barriers while entering the Indian market. These non-tariff barriers make exporters of Bangladesh unhappy as it lacks transparency and clarity based on the discretion of Indian custom authorities (Rahman 1998). Rahman (1998) further stated that the Rules of Origin and inadequate infrastructure are among non-tariff barriers on Indian side that has restricted Bangladesh's exports.

Inadequate infrastructure of Bangladesh in all land routes except Benapole and inefficient storage facilities limit its trade expansion with India (Rehman 2005).

4.6 India and Bangladesh on Lead-Acid Battery Dispute

Anti-Dumping Measures are among the most widely used non-tariff barriers as discussed in chapter one of the thesis. As India had imposed anti-dumping measures on Bangladesh's lead-acid battery, it approached the WTO DSS when it felt that such measures were against the WTO agreements on anti-dumping on 28 January 2004. Hence, this is the first and only dispute of an LDC Bangladesh as a complainant in the WTO DSS. Against this backdrop, the chapter analyses the anti-dumping dispute between India and Bangladesh in the WTO DSS.

Table 4.5

India and Bangladesh in the Dispute Settlement System

Dispute no.	Complainant	Respondent	Year of initiation	Articles of the ADA challenged	Final Outcome
306	Bangladesh	India	28th January 2004 (Request for Consultation by Bangladesh	Art.1,2.1, 2.2,2.4, 3.1,3.2,3.4,3.5,3.7,5.8, 6.8,7.9, 12.2, Annex II,	Reached mutually agreed solution on 20 February 2006

Source: WTO (2018)

4.7 Bangladesh's Export of Lead-Acid Battery to India

The lead-acid battery is a type of battery that converts chemical energy into electric power by using lead peroxide and sponge lead. Lead-acid battery because of its high cell voltage and low cost is used in power stations and sub-stations. These batteries are used in motor vehicles for high currents that are needed for automobile starter motors.[17]

The export of batteries to India was made under India's Special Import License in the year 1996 as India maintained the licensing system[18] for imports of products like electronics, tobacco, alcohol, aerospace, pharmaceuticals, hazardous chemicals and

[17]The starter motor is a device that is capable of turning over an internal combustion engine until the process of combustion takes over which is accomplished by providing the necessary mechanical engine to rotate the crankshaft for a given number of cycles. The engine begins the process of combustion while crankshaft is rotated by starter motor. The starter then is able to disengage once the engine starts running in its own power. The automotive starters are mostly electric but some applications use pneumatic or hydraulic power.

[18]The licencing system means maintaining an import licence to any imports. The Import Licence is a document which authorises the importation of certain goods in its territory and is issued by the national government. The total volume of imports should not exceed the quota which is specified in the licence. The importing companies can buy these licences at competitive price or can get this for free. One of the major drawbacks for 'import licencing' is that it creates a political ground for lobbying and bribery. The restriction can be put by the government on the amount and category of goods and services that can be imported through Import Licence. The government has to take into account the impact of any imports on local markets and can impose the restriction; For more information see, WTO (2018), "Technical Information on Import Licencing", [online web],Accessed 28 December 2018, URL: https://www.wto.org/english/tratop_e/implic_e/implic_info_e.htm

industrial explosives. The legal notice was served to Bangladesh by the authorities of India asking them to give reasons for not declaring their imports of automotive batteries to be illegal. The Exide India Limited which is a major manufacturer of batteries in India lodged a complaint against Rahimafarooz, a major manufacturer of batteries in Bangladesh, that it used the illegal trademark. Though the Exide India Limited lost the case but this had an impact on the trade of automotive batteries between India and Bangladesh. The importers were harassed to such a large extent by the Indian authorities that imports ceased completely. However, the imports resumed after the product was included under the Open General Licence[19] in 1998 and was included under those products that were given concession on tariffs by India under South Asian Preferential Trade Arrangement (SAPTA) in its third round of negotiation (Table 4.5).

The MFN tariff rate[20] of 40 percent was charged by India on the lead-acid battery that hindered the imports of lead-acid battery from Bangladesh to India. Such a high tariff rate demonstrates that though countries are willing to liberalise their trade, they maintain high tariffs in order to protect their domestic industries which is hindrance to the basic principle of trade liberalisation of the WTO. India gave tariff concessions to several products that originated from the LDCs members of the SAARC. The commodity under HS code, HS8507[21] was included in the list of products that were given tariff concession as these were categorised as electric accumulators with separators that included lead-acid batteries. Due to the SAPTA concessions, the tariff rate on the lead-acid battery was reduced from 40 to 16 percent (Table 4.6). Now, this came as a boon for Rahimafarooz, the largest manufacturer of battery and it started its exports of the lead acid batteries in small quantities.

[19]The Open General License a type of licence issued by the government to the domestic suppliers. These are the licenses with minimal restrictions on imports. As per the HS classification, there is no such terminology as open general licence. However, in India, during the Exim policies of the 70s and 80s, the imports and exports of products were regulated through licence which was issued under open general licence (Sarkar 1999).

[20] The MFN tariff rate is a lowest possible tariff that a country can determine on another country. If the lowest tariff of the country is less than 2 per cent of the value of goods then this per cent can be charged on the import from the country with most favoured status nation.

[21] Under the category of HS8507, electric accumulators are included which also include separators. HS refers to Harmonised System of Commodity Coding and Classification which was established by the World Trade Organisation. It is an international standard for classification of traded goods at six digit level of detail.

Table: 4.6

Tariff Rates on Lead-Acid Batteries

HS Code	Basic tariff rate[22]	Tariff concession under SAPTA (for LDCs)	Tariff concession under SAPTA (For others)	Effective tariff rate[23] for LDCs
8507.10[24]	40 percent	60 percent	0 percent	16 percent
8507.20[25]	40 percent	60 percent	0 percent	16 percent

Source: Taslim (2011)

The basic tariff rate on imports of lead-acid used for starting piston and other lead-acid accumulators given by India was 40 percent and the tariff concession given to the LDCs of the members of SAPTA was about 60 percent which reduced the tariff to 16 percent (Table 4.6). With the tariff concession provided under the SAPTA to the LDCs in 1998, the export of HS 850710 group of commodities grew from US$0.05 million in 1997-98 to US$0.47 million in 2001-02 (Table 4.7). The growth rate of 138.71 percent was experienced during 2001-02. The HS 850720 commodity also experienced the growth rate of 52.21 in 1999-00 percent after getting tariff concession under the SAPTA (Table 4.7). However, it can be seen that the export declined after the initiation of anti-dumping investigation which fell from US$0.04 million in 2002-03 to zero in 2003-04 (Table 4.7). The lead-acid battery also experienced negative export growth of -91.98 in 2001-02. This was the period after the initiation of anti-dumping investigation by India on Bangladesh's lead-acid battery.

[22] Basic tariff rate is the standard or lowest level on a scale of money payable at taxation.
[23] Effective tariff rate is the sum of the protection for the component parts of the finished products.
[24] lead acid of a kind used for starting piston engines
[25] other lead acid accumulators

Table 4.7

Impact of the Anti-Dumping Investigations on Lead-Acid Battery

Year	HS 850710: Lead acid accumulators of a kind used for starting engines		HS 850720: Other Lead acid accumulators	
	Bangladesh Export to India (US$ Million)	Growth %	Bangladesh Export to India (US$ Million)	Growth %
1997-98	0.05	-	0	-
1998-99	0.10	103.82	0.03	-
1999-00	0.55	445.62	0.05	52.21
2000-01	0.20	-64.17	-	-
2001-02	0.47	138.71	-	-
2002-03	0.04	-91.98	-	-
2003-04	-	-	-	-

Source: Export Import Data Bank (2019)[26]

Table 4.8

Export of Lead-Acid Battery from Bangladesh

Period	1998-99	1999-00	2000-01	2001-02	2002-03
Export Value(US $)	541,181	1,060,905	1,281,240	0	0

Source: Taslim (2011)

The exports nearly doubled from US$541,181 in 1998-99 to US$1,060,905 in 1999-2000 which further increased to US$1,281,240 in the year 2000-2001(Table 4.8). It is clearly visible that the anti-dumping investigation initiated in the year 2001 by the DGAD had a huge impact on the exports of the lead-acid batteries to India. The exports ceased to zero which was a great loss for Bangladesh and it hindered the trade relation between India and Bangladesh. At one side, India granted tariff preferences on the lead-acid battery to Bangladesh under SAPTA and on the other side, it imposed anti-dumping measures on

[26]Government of India (2018), Department of Commerce, Export Import Data Bank, "Import::Country – wise all Commodities", [online web], Accessed 29 December 2018, URL: http://commerce-app.gov.in/eidb/Icntcom.asp

the same products from Bangladesh. India's motive on imposing anti-dumping measures on Bangladesh's lead acid batteries needs to be questioned. Hoda (2018)[27] feels that India's trade policy actions are so much in breach of its commitment. It is not possible for the battery manufacturer of Bangladesh to hurt the battery manufacturer of India (Hoda 2018).[28]

4.8 India's Anti-Dumping Investigations on Bangladesh's Lead-Acid Battery

In India, anti-dumping duties are administered by the DGAD that functions under the Department of Commerce and Industry that is headed by the Designated Authority. The head conducts the investigation and recommends the imposition of anti-dumping duties that is enforced by the Ministry of Finance. The application for such investigation initiation can only be made by domestic industries of importing countries. The application is submitted to the Department of Commerce, India.

There are certain specific situations under which anti-dumping investigations can be conducted.[29] The anti-dumping investigation in India goes through various stages like preliminary screening, initiation and accession of information, preliminary findings, provisional duty, oral evidence and public hearing, disclosure of information and final determination. Therefore, there are certain criteria required to initiate anti-dumping investigation against any country. This is done to prevent countries from misusing these provisions and to protect their domestic industries and they do not opt for such nontariff barriers that hinder the process of trade liberalisation.

As the application in the WTO DSS can be initiated by the domestic industry of the importing country, the petition in this case was filed by the Exide Industries Limited and the Amara Raja Batteries Limited against the imports of lead-acid battery from Bangladesh, Japan, Korea and Republic of China according to the Rule 5(1) of the

[27]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[28]Ibid.
[29] The different circumstances under which anti-dumping investigation can be carried out have been discussed in chapter 1 of the thesis.

Custom Tariff Rules 1995.[30] The product lead-acid battery comes under Chapter 85 of the Custom Tariff Act and under subheading 8507. The domestic industry stated that lead-acid batteries were also included under subheadings 8504 and 8506. These batteries accumulate power which can be discharged over a long time period. They are used in vehicles and industries for several purposes like providing powers for telecommunications, power stations, control rooms and UPS application. The petitioners provided several evidences that these products were dumped in the market and are causing injury to their industry and subsequently, anti-dumping investigation should be initiated against them. The name of Technolink and Amaz-K Techno trade was mentioned as companies of Bangladesh that dumped lead-acid batteries in India. The investigation was initiated on 12 January 2001 by the DGAD.

After its preliminary findings, the designated authority came to certain conclusions.[31] These are,

(i) The lead-acid batteries' exports from Korea, Japan and China are less than their normal price.

(ii) The 'material injury and threat to material injury' to the industries due to dumped batteries are found in India.

(iii) The dumped imports from Korea, China and Japan are causing "material injury and threat of material injury" to the industries in India.

(iv) The volume of imports of lead-acid batteries from Bangladesh is *de-minimis*.

The DGAD's preliminary findings demonstrated that the imported volume of Bangladesh was *de-minimis* which meant that it was below 3 percent of India's imports. There are several provisions of ADA regarding the termination of the investigations. These are,

(i) The investigation has to be terminated if the request for such termination comes from those domestic industries that have initiated the petition for investigation.

[30] The Custom Tariff Rules deal with the collection, identification and assessment of anti-dumping duty on the articles which have been dumped and for determining the injury caused due to the dumped products.
[31]The findings of designated authority was published in the Gazette of India, Extraordinary, Part I, Section I on 21st March 2001.

(ii) The investigation has to be terminated if there is a lack of sufficient evidence on the dumping of the products.

(iii) The investigation has to be terminated if the margin of dumping is less than 2 percent of the export price.

(iv) The investigation would not continue if the dumped products do not harm the domestic market.

(v) The investigation has to be withdrawn if the dumped imports' volume is less than three percent of the country's total imports.[32]

The termination of the investigation was demanded by Bangladesh as it was found that the dumped imports' volume was less than three percent of the country's imports but the DGAD continued with the investigation. Rahimafarooz was required to fill the questionnaire in which it had to give the details of its balance sheets, profits, and costs which Rahimafarooz submitted to Bangladesh Battery Manufacturers Association (BABMA) on 31st May 2001. The DGAD also demanded for the on the spot investigation of the company but Rahimafarooz claimed that such demand should be made through the Government. It was regarded as non-cooperation by the DGAD and it carried out its investigation based on the 'best information available' according to Article 6.8 of the Agreement on Implementation of Article VI of the GATT. The normal value was based on the cost of production and on the basis of evidence regarding the domestic price. The export price was calculated on the basis of the information gathered from Director General Commercial Intelligence & Statistics, Calcutta and also from secondary sources.

During its visit to India in March 2001, the Commerce Ministry of Bangladesh raised the issue of anti-dumping investigation on its lead-acid battery to its counterpart in India. Nevertheless, it did not provide any effective result and the DGAD continued with its anti-dumping investigations against the imports of lead -acid battery from Bangladesh. In October 2001, there was a change in the government of Bangladesh which led to the appointment of new Commerce Minister. Consequently, the Ministry of Bangladesh once again tried to solve the matter over anti-dumping investigation by writing a letter to India.

[32]The information has been collected from Government of India, Ministry of Commerce and Industry, Department of Commerce.

The suggestion that came from India was that the exporters of Bangladesh should give a price undertaking on the exports of lead-acid battery to India. According to Article 8 of the ADA, the anti-dumping investigation can be terminated or suspended without imposing provisional measures or anti-dumping duties if the exporting country gives a price undertaking regarding the product facing anti-dumping investigation. The exporters would revise its price and would not export its product at a price lower than its normal price. However, Bangladesh was reluctant in giving such undertaking as giving price undertaking meant acceptance of the allegation of dumping of lead-acid battery in the Indian market.

The DGAD started its investigations in January 2001 and it came to the conclusion,

> The central government has imposed anti-dumping duty vide notification of the government of India in the Ministry of Finance (Department of Revenue), No.41/2001-Customs, dated 9th April 2001[G.S.R. 254, dated 9th April 2001] published in part II, Section 3, Sub Section (i) of the Gazette of India, Extraordinary dated 9th April 2009.[33]

The period that was specified for investigation was from 1st January to 30th September 2000.

The findings were,[34]

(i) During the investigation period, it was found that the exports of lead-acid battery from Bangladesh, China, Korea and Japan were made lower than their normal value.

(ii) Domestic industries of India were being affected by such imports and that caused material injury and also threat to material injury.

(iii) The dumping of lead-acid battery from Bangladesh caused injury to domestic industries of India.

The finding that lead-acid batteries' imports from Bangladesh were above the negligible level was different from the earlier findings of the DGAD. The anti-dumping duties were

[33]For more information, refer to, "Anti-Dumping Duty on Lead Acid Battery"(2002), [online web] Accessed 20 May 2017, URL: http://www.ieport.com/cus2002/Tariff/not01.htm

[34]The findings were published in Gazette of India, Extraordinary, Part I, Section I, dated 7th December 2001.

neither imposed on battery's quantity nor on its value but on the weight. It was regarded as a clever move according to Bangladesh as per unit weight is likely to be low for batteries because of their heaviness. The ad valorem duty would be large even for small duty per unit of weight. It was as high as 131 percent according to a local newspaper in Bangladesh.[35] The anti-dumping duty was imposed at the rate of "US$2.53 kg weighing between 7 kg and 30 kg per piece"(Daily Janakantha 2002). Such heavy duties ceased all the imports from Bangladesh.

4.9 Response of Bangladesh to the Anti-Dumping Duties on its Battery

Bangladesh Commerce Ministry tried to solve the matter regarding the anti-dumping investigation by approaching his counterpart in India not only once but twice. However, this did not prove to be effective and the anti-dumping duties continued on Bangladesh's lead acid battery.

There have been few examples of small countries challenging big countries in the WTO DSS like Antigua and Barbuda initiated a dispute against the US in the US-Gambling dispute. The developing countries that have adequate trade capacity would pursue cases that would offer modest gains even if trade value is small (Guzman and Simmons 2005). Trade Capacities for participating in the WTO DSS is important for countries to anticipate the political reaction by the respondent and in order to overcome the psychological barriers for taking a decision in favour or against of initiating the dispute.

> Government officials without knowledge of or experience in the WTO regime tend to consider inter-governmental litigation at the WTO as a diplomatically hostile act, likely to lead to an overall deterioration of relations with the target country. As experience with the system increases, this perception dissipates and is replaced by the more accurate insight that WTO litigation is more in the nature of a technical exercise bereft of negative political connotations (Bohanes and Garza 2015).

The Ministry of Commerce, Bangladesh feared that initiating the dispute against India can affect its diplomatic relations with India. Bangladesh lacked the technical capacity to overcome this psychological barrier (Shaffer and Ortiz 2010).

[35] It was published in the newspaper 'Daily Janakantha' of 7th January 2002.

> Bangladesh was in the midst of delicate trade negotiations with India, with series of planned meetings with Indian officials. The ministry felt that their efforts might come to nothing if India was annoyed by Bangladesh's move to push a bilateral trade dispute to the multilateral arena (Shaffer and Ortiz 2010).

The Ministry of Commerce felt that initiating a dispute against India would affect its diplomatic relations with India. The Ministry of Foreign Affairs also held the view that Bangladesh's action can have untoward diplomatic ramifications which needed to be considered before going against India. However, the Bangladesh Tariff Commission (BTC) along with the Permanent Mission of Bangladesh in Geneva held the view that diplomatic relations would not be affected as the dispute was between respective companies. The Permanent Mission of Bangladesh in Geneva held the view that legal challenges among countries are a common phenomenon and it is unlikely to affect diplomatic relations of the countries involved in the dispute.

> With the decision, Bangladesh broke through a significant psychological barrier in its understanding of trade and diplomatic relations. It became aware of the possibility of using the multilateral trade forum for resolving bilateral disputes with powerful trading partners (Shaffer and Ortiz 2010).

It is the legal capacity of countries that induces the respondent to resolve disputes mutually through settlements. Such a resolution has a greater likelihood of maximum concessions from the defendant and also helps in sustaining friendly diplomatic relations. In the lead-acid battery dispute, when India realised that it had a weak case and Bangladesh was willing to approach the panel and Appellate Body for dispute resolution, the matter was resolved mutually through consultations.

There were several factors that encouraged Bangladesh to approach the WTO DSS. The important roles were played by the private industry, the Advisory Centre on WTO Law, Bangladesh Tariff Commission and Bangladesh's government. Bangladesh has been an active participant in the dispute and its participation is special for least developed countries (Hoda 2018).[36]

[36]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

4.10 Role of the Private Industry

Though the WTO is an agreement among member states, it is the private businesses that mostly conduct trade (Mavroidis and Zduoc 1998). It is the private industries that are mostly affected by unfair trade practices of countries violating the WTO agreements (Shell 1996; Mavroidis and Zdouc 1998; Schleyer 1997; Gao 2014). The participation at the WTO DSS as complainant, respondent or third party is possible only at the government level and private industries cannot participate directly to enforce the WTO agreements.[37] Thus, private industries depend on the government for protecting their trade interests.

There has been debate among scholars related to participation of private parties in the WTO DSS. Shell (1995) asserts that the direct participation of non-state actors (includes businesses) in trade disputes would bring legitimacy to the WTO system as representative institution. Schleyer (1997) also supports the private parties' participation in the WTO DSS to pursue their trade interests. The predictability and security to the multilateral trade system as promised by the WTO can be advanced through private parties' participation in the WTO DSS which will also encourage their involvement in the international trade.

However, there are other scholars that oppose private parties' direct and formal participation. Nichols (1996) holds the view that such participation requires careful thought as it would lead to fundamental changes rather than procedural changes which will involve the sovereignty issue of the states. He adds that the world trade and trade disputes are matters of democratic nations and the nations are adequate enough to represent the interests of their constituency that makes the participation of private parties in the WTO DSS unnecessary.

The private parties like private firms and trade associations have worked with the government in several trade disputes to manage their interests and have played a significant role in the process and procedures of the WTO DSS (Shaffer 2003). Shaffer

[37]Appellate Body Report, United States-Import Prohibition of Certain Shrimp and Shrimp Products, WTO Document WT/DS58/AB/R (12 October 1998).

(2003) opined, “WTO law, while formally a domain of public international law, profits and prejudices private parties”. The term “public-private partnership” is used by Shaffer to describe the involvement of trade associations or private firms with their respective governments in handling WTO disputes.

Taslim (2010) is of the view that public-private cooperation helped Bangladesh in approaching the WTO DSS against India. Rahimafarooz, the private industry of Bangladesh that exported lead-acid batteries was affected due to India’s anti-dumping measures and it played an important role in this particular dispute. It would have been difficult for Bangladesh to challenge India’s anti-dumping measures in the WTO DSS without the help of Rahimafarooz. It provided the government with facts and data related to the WTO ADA. It even agreed to incur all the expenses of the dispute litigation in the WTO DSS.

Rahimafarooz is amongst the largest business groups in Bangladesh founded by Abdur Rahim as a trading company in the year 1954. It consists of nine Strategic Business Units and has several other affiliations related to its business. Currently (May 2019),its chairman is Afroz Rahim and the Managing Director is Feroz Rehman.

4.10.1 Rahimafarooz Lobbied the Government to Approach the WTO DSS

As a matter to the dispute settlement proceedings of the WTO can only be initiated through government, the delegates and people appointed by the government can only participate in the deliberations of the WTO proceedings. Therefore, it becomes important for the local industries getting affected by the anti-dumping duties to lobby the government in order to initiate dispute proceedings in the WTO DSS. This role was effectively played by Rahimafarooz which was affected badly as its exports of lead-acid battery to India declined to a large extent which ceased the export to zero due to India’s anti-dumping measures. Rahimafarooz lobbied the government in order to approach the Ministry of Commerce. As the talk on this matter with commerce Ministry of both countries was not successful in the year 2001, Rahimafarooz lobbied the government to approach the WTO DSS against India’s anti-dumping measures on lead-acid battery.

4.10.2 Rahimafarooz Provided Financial Assistance for Dispute

Bangladesh, being an LDC, with financial constraints, was not able to approach the WTO DSS when the USA and Brazil imposed anti-dumping duties on its cotton shop towels and jute bags. The USA had imposed anti-dumping duties on Bangladesh's cotton towels in the year 1992. This came as a setback to Bangladesh as the USA was its principle market. The application for initiation of the investigation came from Roger Milliken and Co. which is the largest manufacturer and seller of shop towels in the USA. Bangladesh lacked the legal and financial capacities to question these measures in the WTO DSS. The affected local firms did not wish to approach the dispute settlement proceedings because of its cost implications.

Similarly, Bangladesh did not approach the dispute settlement proceedings against Brazil's imposition of anti-dumping duties on its jute bags because of the financial constraints. It is expensive for the LDCs to contest the measures of a developed country and developing country on its exports in the WTO DSS. The cost of contesting the case at dispute settlement proceedings is very high which makes the participation of the LDC very low and negligible at the international platform. The LDCs may sometimes have a very low volume of export and comparatively, their gains from the challenge could be very small as compared to the cost of challenging the dispute which is economically unprofitable for the LDCs. Rahimafarooz incurred the financial cost required for preparing and preceding the case. Such an undertaking of incurring the financial cost was very important to proceed in the case as it was one of the most important constraints that prevented Bangladesh from approaching the WTO DSS against the USA and Brazil.

4.10.3 Rahimafarooz Cooperated with the Government Departments

Rahimafarooz played a significant role since the initiation of the dispute to its withdrawal from the WTO DSS. It cooperated with the respective government departments and updated them with information concerning the dispute. It responded to the questionnaire provided by India on the dumping of the lead-acid battery. It lobbied the government and also gave an undertaking to incur the cost of the WTO litigation process. This

demonstrates public-private cooperation can play a significant role in the WTO disputes and encourages the LDCs to approach the WTO DSS.

4.11 Role of the Advisory Centre on WTO Law

The Advisory Centre on WTO Law (ACWL) played an important role in the dispute between Bangladesh and India. The ACWL was established to address legal concerns of developing countries and the LDCs from the consultation stage to the implementation stage and further to the stage reaching the process of retaliation, on the matters of WTO Law. The center provides legal assistance to the LDCs in WTO disputes at only 10 percent of total litigation costs. It was estimated by the BTC that if the anti-dumping dispute of Bangladesh went for all the stages of the DSM, it would cost around US$150,000. Bangladesh had to pay 10 percent of the total cost and it was calculated around US$15,000 which was found affordable to Rahimafarooz which gave an undertaking of incurring the total cost. The ACWL helped Bangladesh in preparing the case against India. It provided two lawyers to Bangladesh who would assist in preparing and proceeding with the case. It would have been difficult for Bangladesh, as an LDC with high litigation cost to approach the WTO DSS without the help of the ACWL. The effective role of the ACWL in this particular dispute provided important lessons to other LDCs that they can also launch disputes in the WTO DSS (Das 2018).[38]

4.12 Role of the Bangladesh Tariff Commission and the Government

The constitutional body to deal with dumping matters in Bangladesh is Bangladesh Tariff Commission (BTC). It comes under the Ministry of Commerce, Government of Bangladesh that handles the external trade affairs of Bangladesh. It is an autonomous and statutory body that is responsible for imposing tariffs on imports, protecting domestic industry of Bangladesh and to prevent dumped products in the market of Bangladesh. It has a special wing that looks after measures related to trade including dumping allegations. The commission has a chairman and three members in which each heads one of the three wings. Though it is unclear whether the BTC is the sole authority to regulate

[38]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

the anti-dumping issues, it is expected that the BTC should look into these matters. The BTC played an important role during the process of anti-dumping investigation and approaching the WTO DSS. A detailed study of the case was conducted by the BTC. It stated that anti-dumping duties of India on Bangladesh's lead-acid batteries were inconsistent with several provisions of the ADA and it also recognised several problems in the procedure of applying anti-dumping duties.

The BTC is an advisory body and the implementation depends on the Ministry of Commerce. Though the BTC was determined to approach the WTO DSS, the officials were hesitant due to several constraints that the LDCs face while approaching the WTO DSS.[39] Bangladesh, during this time, was planning several trade negotiations and meetings with India. There was fear that such action would impact its trade relations with India. The Commerce Ministry and Ministry of Foreign Affairs of Bangladesh viewed that such action could affect diplomatic relations between the two countries. The BTC viewed that the action would not affect the diplomatic relation with India as the dispute was between companies. This was supported by the Permanent Mission of Bangladesh in Geneva that handled the WTO matters. The earlier advise was given by the Permanent Mission of Bangladesh in Geneva to the ministers of Bangladesh that legal challenges are common occurrences among trading partners and do not affect the diplomatic relations between the disputants.

Now, the decision was with the Ministry of Commerce to analyse the negative and positive outcomes of approaching the WTO DSS. The negative and positive aspects of pursuing the case were pointed out by the BTC. There were several arguments given by the BTC in favour of approaching the DSM. The BTC argued that India has violated several anti-dumping measures while conducting the investigation and imposing anti-dumping duties. The BTC was confident that the chance of winning the case was high as the adjudication in the DSM would not discriminate between developing countries and the LDCs. It also pointed out that even if they lose, there would not be any additional loss for Bangladesh as the loss to the trade has already been done with the initiation of investigation and imposition of anti-dumping duties. Losing the dispute would only mean

[39] The constraints of the LDCs have been discussed in detail in chapter five of the thesis.

maintaining the status quo that is the continuation of anti-dumping duties. It also raised the issue that as the whole expenditure is incurred by Rahimafarooz; the government of Bangladesh does not have to incur the financial cost.

Moreover, approaching the WTO DSS would provide an experience to Bangladesh which is most important for an LDC. As this is the first dispute of any LDC as a complainant, it would break the psychological barrier of the LDCs and provide encouragement and motivation to other LDCs of not only South Asia but also of the world. Bangladesh would gain the knowledge and experience which is the most important advantage of participating in the dispute. Additionally, getting the decision in its favour would resume the exports of the lead-acid battery to India. India would think wisely in the future before applying anti-dumping measures on the exports of any country if the panel's decision favours Bangladesh. The only negative point was that there was a fear of retaliation by India. The argument in this case given by the BTC was that India would not retaliate as it would be disadvantageous in the long term trade interests of India with Bangladesh. Bangladesh provides the largest export market to India and it also shares its borders with other states which are of trade importance to India.

The government of Bangladesh decided to approach the WTO DSS against India. The BTC was given instructions to prepare and present the case. The decision led to overcoming Bangladesh's psychological barrier in understanding diplomatic relations and trade among countries. It became aware about the possibility of challenging stronger countries at the multilateral trade forum.

It was anticipated by the BTC that India would settle the matter with Bangladesh and dispute would be resolved at the consultation stage soon after Bangladesh decides to initiate dispute in the WTO DSS. As India had violated the WTO ADA, it was unlikely that it would go for the panel stage that has observers from several countries (Shaffer and Ortiz 2010).

4.13 Bangladesh Approaches the WTO DSS against India

Bangladesh approached the WTO DSS against India's imposition of anti-dumping duties on its lead-acid batteries. The request for consultation was "with respect to the imposition of definitive anti-dumping duties on imports of lead acid batteries from Bangladesh and certain aspects of the investigation leading to the imposition".[40] There were seventeen specific points mentioned by Bangladesh that compelled it to approach the DSM. It argued that India has violated Article I of Agreement on Implementation of Article VI of the GATT 1994 on several grounds. Under the agreement, the anti-dumping measure "shall be applied only under circumstances provided for in Article VI of GATT 1994 and pursuant to the investigations initiated and conducted in accordance with the provisions of (the ADP) Agreement." The initiation of anti-dumping investigations and the imposition of the anti-dumping duties were questioned on several grounds by Bangladesh.

(i) Bangladesh argued that the criteria for initiating anti-dumping investigation were not fulfilled by the domestic industries of India.

(ii) The anti-dumping investigation was not terminated by the DGAD despite its earlier findings that the volume of imports from Bangladesh was negligible or 'less than 3 percent of the total imports' of lead-acid batteries in India. Rahimafarooz claimed that the amount of lead acid battery exported by them was about 54,000 units which valued about US$789, 745. This was during the period from January to September 2000. However, during this time the demand in India was for 10 million units of lead-acid battery. This demonstrates that volume of import was less than 3 per cent of the domestic market.

(iii) The normal value was not determined by the DGAD and they resorted to the constructed normal value for calculating the dumping margin.

[40]India-Anti-Dumping Measure on Batteries from Bangladesh, Request for Consultations by Bangladesh, WTO Document, WT/DS 306/1, G/L/669 and G/ADP/D52/1 of 2 February 2004.

(iv) According to Bangladesh, the DGAD of India failed to properly compare the export price and normal value leading to a miscalculation of the dumping margin.

(v) The imports of Bangladesh's lead-acid battery were included in the cumulative assessment of consequences of imports, which included imports from Japan, China and Korea, despite the fact that Bangladesh's imports were *de-minimis* in the first findings of the DGAD.

(vi) Bangladesh claimed that India was unsuccessful in objectively assessing the comparison between the normal price and export price and there was inaccuracy in the calculation of the price.

Bangladesh Permanent Mission in WTO requested consultations with its counterpart in January 2004. The consultation was held from 26-27 February 2004. The negotiation on the part of Bangladesh was led by Mohammad Ali Taslim who was the chairman of the Bangladesh Tariff Commission. However, consultations did not provide any effective results. According to one of the officials of BTC, "hardly anything concrete came out of the consultations; the Indian officials were rather casual during the session"(Dawn 2004). Bangladesh claimed that the Indian officials suggested that the domestic industries which were affected due to cheap exports should file for the review petition in order to settle the issues on anti-dumping. The official from Bangladesh's Commerce Ministry opined, "the review petition, suggested by the Indian side at the consultation, was nothing but a face-saving ploy for the Indian authorities to get Bangladesh to withdraw the complaints filed with the WTO" (Dawn 2004). This was going to be a first case in the history of the WTO in which an LDC was about to challenge a trade measure of a developing country in the WTO DSS.

The decision to approach the WTO DSS was taken by Bangladesh after the consultations between the two countries failed to provide any effective result "within the two months" of the consultations. According to the DSU, the complainants can request the Dispute Settlement Body to form a panel and proceed with the rulings within two months of the consultations that have been taken place between countries. The panel should be

composed within 45 days of the complainant's request received in the WTO DSB. Bangladesh requested for the panel establishment.

This came as a setback to India as it had no idea that Bangladesh being an LDC would request for the establishment of the panel. As India had violated several Articles of the ADA, it was a weak case for India and approaching the panel stage would involve observers from different countries. The European Union acted as a third party. This dispute was also to attract much attention as the first dispute initiated by an LDC in the WTO DSS.

4.14 Withdrawal of the Anti-Dumping Duties by India

Immediately, after the consultation stage, India communicated to the Permanent Representative of Bangladesh in Geneva that they would initiate the withdrawal process of anti-dumping duties from Bangladesh's lead-acid batteries. The request was made from the Indian side to Bangladesh to refrain from going for the panel stage of the WTO DSS. Bangladesh denied the request of withdrawing its case at this stage. There was less time left for panel establishment in this particular dispute. The case could only be terminated if India withdrew its anti-dumping duties from Bangladesh's lead-acid battery. The review from the Indian side was initiated on March 18, 2004, when the petition came from its importers of lead-acid batteries. A notification was issued by the Department of Revenue, which works under the Ministry of Finance that dumping margin could not be established due to the absence of Bangladesh's exports during the investigation period. A government official said, "New Delhi withdrew the controversial duty on Bangladeshi batteries as it realised that it had a weak case in hand. There were also technical faults in the case as far as WTO anti-dumping rules are concerned and it had very weak foundation" (Mahmud 2005).

India withdrew its anti-dumping duties from Bangladesh's lead-acid batteries before the matter could go for the panel stage of the DSM. The Dispute Settlement Body was informed about their mutual agreement on 20th February 2006. India terminated its measure by India's Custom Notification No.01/2005 dated 4 January 2005(WTO 2006). A trade dispute between the two countries was resolved through a good office of the

WTO Dispute Settlement System. An official of Rahimafarooz claimed that the company would very shortly start the export of lead-acid battery to Bangladesh. He said, "In fact, we have lost our previous market because of the duty. We have to make a fresh start now" (Financial Express 2006).

4.15 Conclusion

The lead-acid battery dispute between Bangladesh and India is noteworthy for several reasons. Bangladesh and India are two countries with different levels of development but from the same region of South Asia. India, a developing country and Bangladesh, an LDC of South Asia were involved in a WTO dispute which clearly demonstrates that the WTO DSS provides a platform for consultations and adjudication to its member countries irrespective of their level of development. The Dispute Settlement System provides a good office to the member countries to solve their trade disputes. However, approaching the WTO DSS is a costly affair and it becomes difficult for the LDCs to approach the office due to financial and technical constraints which is one of the most important reasons for the absence of all LDCs but Bangladesh in the WTO DSS. Therefore, this dispute becomes important as it was the first dispute in which an LDC, Bangladesh approached the WTO DSS against a developing country, India. Bangladesh even with low share of export and lack of technical capacities participated effectively in the dispute. The reason for such participation has to be attributed to the ACWL, private industry of Bangladesh, Rahimafarooz, the BTC and the government of Bangladesh. The legal and financial constraints were handled by Rahimafarooz and the ACWL that proved beneficial for Bangladesh and encouraged it to approach the WTO judicial body. The dispute provides an example of how public-private cooperation can help in the process and procedures of the WTO DSS. The dispute is a clear demonstration of how countries use non-tariff barriers in order to safeguard their domestic industries. This dispute is a perfect example of how the good office of an International institution can be used by the member countries for solving their trade disputes. Bangladesh as a complainant to the WTO DSS provides an example and motivation for other LDCs to break their psychological barriers and approach the WTO DSS.

The next chapter analyses the challenges to the participation of developing and the least developed countries in the anti-dumping disputes by taking lessons from the South Asian countries.

Chapter 5
Challenges to Participation in the WTO DSS on Anti-Dumping Disputes: Lessons from South Asia

5.1 **Introduction**

The rule based WTO DSS was considered to benefit developing countries and the LDCs with small economies. Most of the disputes are initiated by the developed countries like the EU, the USA and afew developing countries like India, Indonesia and Brazil. Davey, former Director of Legal Affairs at the WTO, studied about the working of first 10 years of the WTO DSS, and had identified Brazil, India and Korea as themain users of the system after the US and the EU (Davey 2005; Shaffer 2008). There has been participation of the developing countries to some extent but it is confined to only a few developing countries like India, Brazil, Argentina, Thailand and Chile. Sixty percent of dispute is confined to only these developing countries. Most of the developing countries and the LDCs are absent from the platform of the WTO DSS. Among the South Asian countries, three countries - India, Pakistan and Bangladesh have initiated their complaints but their level of participation varies to a large extent. India has actively initiated disputesin the WTO DSS. Pakistan has been involved to some extent but the participation is very low and Bangladesh has only one case as a complainant in the WTO DSS. Bown and Hoekman (2005) has pointed out, "a systematic pattern of missing dispute settlement activity calls into question whether the full public good and positive externality benefits of trading system are sufficiently exploited". Davey has also argued, "only an effective Dispute Settlement Mechanism can ensure rule enforcement which provides predictability and stability in trade relations".

This chapter analyses reasons for absence of many developing countries and the LDCs that includes South Asian countries from the WTO DSS. As the focus is on the participation of South Asian countries in the anti-dumping disputes, it is important to analyse the problems with anti-dumping provisions that affect trade of developing countries more in comparison to the developed countries. The developing countries had

no role to play in the negotiations of the anti-dumping code and it was shaped by the developed countries to protect their own trade.[1]

5.2 Problems in Anti-Dumping Provisions and Developing Countries

The provisions on the anti-dumping agreement are unclear and can easily be manipulated by the countries. The agreements are so vague that theyleave a scope for several alternative approaches and thus it is left on the discretion of the investigating authorities. These vagueness and ambiguities in calculating margin of dumping and determining injury affect the developing countries and the LDCs. The ADA leaves lots of discretion in the hands of the investigating authorities (Das 2018).[2] Though, these are not directed against the developing countries, but the developing countries are vulnerable to such provisions directly or indirectly. The definitions of dumping, construction of normal value, dispute settlement and compliance mechanism are against the interests of the developing countries. There have been several negotiations on anti-dumping in different WTO rounds as discussed in Chapter one of the thesis but these have not been successful in addressing the concerns of the developing countries and the LDCs. It was thought that the developing countries and the LDCs would benefit from the S&DT provisions but the provisions have their own drawbacks and has failed to manage the concerns of the LDCs and the developing countries. The agreements are ambiguous and many provisions of the agreement are vague which allow their misuse by the countries in their interests.

There is a need to review agreements and make them transparent and easily understandable. The vastuse of the anti-dumping measures nullifies the benefits of tariff concessions and free trade.Therefore, there should be restrictions on countries on the access of such measures. There are excessive discretion given to investigating authorities with no clear and detailed rules for investigation and the importing countries use these measures for the protection of their domestic industries. The methods of calculating dumping margin and injury are complex and procedural requirement for initiating anti-

[1]The role of developing countries in the negotiations on the anti-dumping code has been discussed in the chapter one of the thesis.
[2]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

dumping action is so detailed that makes understanding and application of the ADA difficult and impractical (Vermulst 2005).

There are several provisions of the ADA that are ambiguous and create hindrances for the developing countries in understanding and applying anti dumping measures. Several provisions of the ADA need clarification and reviews for their effective implementation. Some of the provisions are analysed in the following section of the chapter.

5.2.1 Product under Investigation

The first step to calculate normal value is to identify the products for anti-dumping investigations which are termed as 'like product' in the ADA. The "like product is defined as product that is similar in all respects" to the products that have been considered for investigation. In absence of such similarity, the products that are 'closely resembling' to the product are considered for investigation. There is no clear explanation for 'closely resembling' term which gives the authorities the discretion to decide the products whichresemble like product and is used for calculating injury of domestic industry. This can lead to imposition of anti-dumping duties on products that should not have been considered for investigation (Hoekman and Mavroidis 1996).

The developing countries face more problems compared to the developed countries as the standarised products are exported by the developing countries. Moreover, the developed countries produce and export specialised products and as a result both types of the products cannot be compared at the same level. However, as authorities decide about 'like product', it has been seen that they have used their discretion to establish similarities between the product of the developed and the developing countrieswhile conducting the anti-dumping investigation. The exporting industries in the Hot-Rolled Flat Dispute case claimed that the concerned products produced and exported by them cannot be compared with the US products as their industries produced more advanced products with high technologies. The panel accepted that products are not similar but it also emphasised that "this cannot lead to the conclusion that hot-rolled coil imported from the countries concerned were not a like product [emphasis added] to that produced by community industry" (Panel Report 2002). Therefore, in the absence of clear guidelines on 'like

product', it becomes difficult to establish relation between the dumped products and the domestic industries' produced products.

5.2.2 Construction of Normal Value

Normal value is considered as the market price in the domestic market of the exporting country. The actual information on the normal value is difficult to attain and so the ADA allows for construction of normal values when there is no sale of 'like product' in 'ordinary course of trade' in the exporting countries' domestic market or in case proper comparison between the domestic market price and export price cannot be made due to improper market situation.

5.2.2.1 Ordinary Course of Trade

The term 'ordinary course of trade' meant that the sale of products at price 'below per unit cost (plus administrative and selling cost)' should not be considered for the calculation of dumping margin. This is called 'cost test', based on 1974 US Trade Act. This increases the possibility of dumping as the price for comparison should be above exporters' cost of production. It has been argued by Kuofor (1990), Vermulst (1987) and Bierwagen (1990) that at the time of recession, the products are generally sold below their costs. The developing countries' markets are small for export oriented products.

The construction of normal value is allowed if the volume of sale is very low in the exporting countries' domestic market in case if it is below 5 percent of the sale of product considered for investigation. This is done at two levels,which are - total domestic sales and total exports of like product or domestic sale and export price of particular model or type of product. The agreement does not clarify about which of the two should be preferred and it is left on the authority's discretion to decide the condition for 5 percent of the sale of product. Didier (2001) has argued that in most of the cases the requirement of 5 percent is not found in specific model or type of product and as such the authorities decide to use constructed value for the normal price. The domestic markets of the developing countries are very small for the products that are exported from these countries. As a result, the products for domestic market and export market are separated which prevents domestic sales of many models of the product. As such, the authorities

get an opportunity to construct normal value by considering low volume of sales of the products. Consequently, the developing countries become vulnerable to the use of constructed value method by the investigating authorities. The normal value can be constructed by 'cost of production method' or by taking third country's export price.

The members have asked for amendment of Article 2.3, which talks about the 'constructed value' as it is liberally used by the countries and the recourse to 'constructed value' shall only be taken if the third market price is not available.

5.2.2.2 Cost of Production Method

The normal value is calculated through 'cost of production method' by adding "cost of production in the country of origin with reasonable amount for administrative, selling and general costs"(WTO 1995). The cost has to be calculated on the basis of exporter's records that have to be in accordance with exporter countries' 'generally accepted accounting principle' but the cost considered should reflect the cost of the production and sale of the product in the exporting country. However, the provision is silent on the circumstances regarding the acceptation or rejection of exporter's cost. This allows the authorities to reconstruct cost that demonstrates dumping artificially.

In the EC-Bed Linen dispute, the normal value was created for most exporters by using 18.65 per cent profit margin which was calculated on the basis of domestic sale of limited products by the producers of India (Anderson and Raju 2015). This increased the normal price, thereby increasing the dumping margin by the investigating authorities.

5.2.2.3 Third Countries' Export Price

The export price based on 'third country method' allowed authorities to consider export price of an 'appropriate third country' if the given price is not reliable for comparison. Nevertheless, there is lack of clarification on which country should be considered as the 'third country'. Itis decided by the complainant country that increases the possibility of dumping margin as the complainant countries initiate the anti-dumping investigation against the exporter's product.

5.2.2.4 Provision of 'Facts Available'

The investigating authorities of the importing country can make its findings on basis of 'facts available' in situations when required and necessary data is not given by the exporting country 'within a reasonable time period'. The authorities can reject or accept any data of the exporters as the provision is not clear on the issue of information and time. The 'fact available' rules are not clear and can be misused by the investigating authorities (Dutta 2004). The USDOC anti-dumping investigations were examined by Lindsey (2000) who stated that from 1995 to 1998, 36 determinants were based on 'facts available' out of 141 total determinants and dumping was found for 107 companies which were under investigation. The USDOC had 50 percent of success rate for the companies for which home market price was used.

The developing countries lack well maintained data system. If domestic industries of the developing countries, in any case, fail to respond to the questionnaire of the authorities, they can use the available best information and disregard the data provided by the exporters of the developing countries. In the dispute between the USA and India on steel plate, the USDOC was provided with electronic database which was not complete and was incorrectly formatted. There were several supplementary questionnaires issued by the USDOC. The Steel Authority of India (SAIL), the steel firm from Indian side, responded to the entire questionnaire. The SAIL admitted that cost was not maintained on the basis of specific product as questionnaire demanded but it provided different costs for the different products. The USDOC discarded all of their information and relied on the information provided by the petitioner of the USA. However, the panel in the DSB ruled that members cannot reject all the information provided by the exporting country.

The construction of normal values affects the developing countries to a large extent and there are huge chances of manipulation of these methodologies. Blonegin (2003) had analysed the data on anti-dumping investigations from 1980 to 1995 and found that the affirmative anti-dumping investigation against the developing countries were around 69 percent. Lindsey (2000) analysed the data from 1995 to 1998 and found that the normal value was mostly constructed for the developing countries andnot forthe developed countries.

5.2.3 Construction of Export Price

The ADA allows for constructing export price in absence of actual export price or in case the reliability on the existing export price is difficult. The export price in such a case is the price at which independent buyers buy imported products. The independent buyer means that the exporters and importers are not associated with each other. The export price becomes high when manufacturer performs all the export functions like networking and administration of costs. Nonetheless, when the manufacturer sells to the related importers who execute all the export functions, the export price becomes low. This low export price increases the chance of dumping findings as normal price of the product becomes higher in comparison to export price. Didier (2001) argued that the adjustments made in the price penalises both the exporter and the related importer but the issue has not been raised in any anti-dumping negotiations.

5.2.4 Comparison of Export Price and Normal Value

The comparison between the export price and the normal price has to be made at the same trade level -generally at 'the ex factory level' and at the same time. The due allowance has to be made for differences like taxation, trade levels, terms and condition of sale and physical characteristics which affect the comparison of the prices.

One of the problems with such comparison is that, though the agreement stated that export price should be constructed if the exporter and importer are related to each other but it did not talk about constructing normal value in such cases. The symmetric adjustments between the export price and normal value is not found and the comparison of the prices are not justified (Lindsey and Ikenson 2002; Bhansali 2004). If the price adjustment is demanded by the interested parties due to differences in condition of sales and physical characteristics, the fact has to be established by them that the difference is quantifiable that affects the market price or manufacturing cost. However, such allowances are not permitted by the investigating authorities on certain grounds. The duty drawback claim is one such allowance. The developing countries face higher import duties as compared to the developed countries. The provisional anti-dumping margin exceeded 100 percent in the Synthetic Fiber Polyester dispute between India and the

EUas duty drawback allowances was not made and the margin was reduced once the allowances were made.

The price comparison can be done in three ways, that is, by comparing weighted average normal value and weighted average export price, transaction to transaction method or weighted average normal value to be compared with export transaction individually. The weighted average transaction method can be used when there is difference of prices among purchasers, difference of time periods or different regions for dumping investigations. Bhansali (2004) argued that in most of the cases such differences exist. The probability of dumping finding increases when the weighted average normal value is compared with the export transaction individually. The countries used the 'zeroing method'in comparing the weighted average normal price and individual export transaction in which the negative dumping was treated as zero and negative dumping did not offset the positive dumping. The panel and the Appellate Body in the EC- Bed Linen dispute ruled against the 'zeroing method' and dumping margin was reduced with the removal of 'zeroing method' in the EC-Bed linen dispute. As a result, the EU had to withdraw its anti-dumping duties from cotton type bed linen of India.

5.2.5 Initiation of the Anti-Dumping Investigations

The anti-dumping investigation is initiated on the basis of petition filed by domestic industries of the importing countries. However, there is no method of verifying the information given by the domestic industries which can lead to investigation initiation on the basis of false information. The provision is silent about the limitations on the number of investigations that can be initiated against the countries. Consequently, this has led to repeated anti-dumping investigations on the same products by the same countries. There have been repeated anti-dumping investigations on similar products of the developing countries like the EU initiated repeated anti-dumping investigations on textile industry of India. The repeated investigations on the same product affect trade between countries which hampers trade liberalisation process of the WTO.

In order to overcome this, one proposal is to review Article 5.3 of the ADA in order to prevent frequent and repeated anti-dumping investigations initiated for the same product.

There should also be a gap of one year in initiating anti-dumping investigation on similar products in case the earlier investigation did not lead to imposition of the anti-dumping measures. There is absence of time limit provided in the ADA for the investigating authorities for determination of the dumping. This is problematic as the time frame is decided by the investigating authorities.

The ADA under Article 5.8 states that the anti-dumping investigation has to be terminated if the volume of dumped import is less than three percent of imports of like products in the importing country. The threshold limit should be increased from three to five percent and the seven percent criteria should be abolished for the developing countries. The *de minimis* margin of dumping should be enhanced from two percent to five percent for the developing countries. These countries feel that the investigation process is expensive and lengthy. The anti-dumping investigation harms the exports of product on which investigation has been initiated even if the anti-dumping measures are not found.

The anti-dumping investigation was initiated by the EU against India's synthetic fiber ropes in June 1997 but the investigation was terminated as the causal relationship between dumping and injury was not found. The EU, just after a month again initiated anti-dumping investigation on asimilar product on the ground that industries of the EUare harmed due to dumping of synthetic fiber ropes by India. India opposed the EU action but the EU continued with the anti-dumping investigation against the targeted product. It should be noticed that even initiation of anti-dumping investigation has disruptive trade effects. Bangladesh's exports of lead-acid battery fell down to zero after the initiation of anti-dumping investigation by India.[3]

5.2.6 Absence of Standarised Questionnaire

There is no standarised questionnaire for conducting anti-dumping investigations and countries prepare it on the basis of their own anti-dumping laws. It is difficult for small exporters of the developing countries and the LDCs to reply to the questionnaires which are lengthy, complicated and time taking. The developing countries prevent themselves

[3] For more information on this, refer to chapter 4 of the thesis.

from such harassment by not replying to the investigating countries' questionnaires and let the case proceed on the basis of 'facts available' that mostly leads to affirmative findings of dumping.

5.2.7 Price Undertaking

The agreement provides for the provision of price undertaking by the exporter to revise its price so that dumping is prevented.These undertakings can only be taken once the anti-dumping investigation has been initiated and the administrative authorities have found that there has been dumping in the domestic market of importing countries. The criteria for such undertaking are vague and left on discretion of the authorities to accept or reject the price undertaking. Thakaran (1991) has analysed that in the EU, the acceptance of such undertaking is influenced by several non-economic factors like bilateral trade deficit and the number of total exporters involved.

5.2.8 Imposition of the Anti-Dumping Duties

The anti-dumping duties imposed should be less than the dumping margin which is essential for injury removal according to Article 9.1 of the ADA. However, it is left on discretion of the dumping authorities to impose an amount which is equal or less than the dumping margin. There should be amendments to this article to make it mandatory for the dumping authorities to impose duties which are less than the margin of dumping required to remove injury.

5.2.9 Sunset Review

The provision of 'sunset review', added upon the request of the developing countries in theanti-dumping negotiation, required importing countries' administrative authorities to review their anti-dumping duties after five years of imposition of anti-dumping duties.Anti-Dumping duties have to be removed unless removing duties would lead to dumping and injury in the domestic market of countries that have imposed the duties. The authorities can renew anti-dumping duties for another five-year term if removal of duties would lead to reoccurrence of dumping. Therefore, sunset review has not proved to be much effective for the developing countries as the developed traditional users have

imposed duties repeatedly even after conducting sunset review. For instance, in the USA, it was in the 53 percent of the cases that anti-dumping duties continued (Aggarwal 2007).

5.2.10 Restricted Role of Panel

There was no separate provision provided in the Kennedy Round for anti-dumping disputes and such disputes were part of overall DSS of the GATT. Article 15 of the ADA for conciliation, consultation and dispute settlement was provided in the Tokyo Round but it failed to provide panel with guidelines on the dispute settlement which was provided in the Uruguay Round under Article 17.6 of the ADA.

The panel's role was restricted on the anti-dumping disputes contrary to its role in other WTO agreements. The panel's role is restricted and confined if there has been "proper establishment and unbiased and objective evaluation of those facts" by the investigating authorities. The provision has not even explained the term 'proper', 'unbiased' and 'objective' related to the facts used in the ADA. One of the major weaknesses of the ADA is the review standard by the panel mentioned under Article 17 of the ADA. The panel's role is restricted as it only has to determine whether the investigating authorities were properly able to establish and evaluate the facts related to anti-dumping investigation or not. The ADA is the WTO's integral part and having a restrictive review standard prevents it from close scrutiny by the Panel and it increases the risk of the ADA being misused. There is a need for review of Article 17 and the panel should be given same position as under other agreements of the WTO where its role is not restricted and it has autonomy to work freely in the WTO disputes.

The WTO provided a platform for the developing countries to gain from multilateral mechanisms and be at equal footing with the developed countries. But, the panel's role is very weak in the anti-dumping disputes and the developing countries' decision to join the WTO are affected due to weak panel as it is not able to work in an autonomous and independent manner. As the negotiations on the ADA were mainly guided by the developed countries ashas been discussed in chapter one of the thesis, they wanted minimum interference in their domestic decisions that led to restricting the role of the panel in anti-dumping disputes.

Durling (2003) has analysed thirteen cases that went for panel rulings of the dispute settlement from 1995 to 2002.He found that out of 138 individual claims, 69 anti-dumping claims prevailed which showed the rate of success of only 50 percent. Aggarwal (2007) has come to certain conclusions on the basis of Durling's (2003) findings. First, the rate of success of challenging anti-dumping measures of thedeveloping countries is more as compared to the developed countries. Second, the rate of success of ant-dumping measures challenged by the developed countries is more as compared to those challenged by the developing countries (Table 5.1). This demonstrates that developing countries' participation is less effective compared to the developed countries'.It is therefore, difficult for them to achieve rulings in their favour as they lack economic and legal capacity (Busch and Reinhardt 2003).

Table 5.1

Success Rate on the Anti-Dumping Measures

Complaining Party[4]	Targets	Success Rate (%)
Developing Countries	**All cases**	**44**
Developing Countries	**Developing**	**50**
Developing Countries	**Developed**	**36**
Developed Countries	**All cases**	**61**
Developed Countries	**Developing**	**75**
Developed Countries	**Developed**	**54**

Source: Aggarwal (2006, 105)

5.2.11 Termination of the Anti-Dumping Investigations

The anti-dumping investigations hamper the trade of the exporting country and add tothe legal costs and harassments even if the investigations are terminated. The legitimacy and impartiality of such dumping complaints and investigations are questioned and there is absence of any authority to review such actions as the role of the panel is also limited. There is a need for a neutral body to determine these actions in a fair manner and the role

[4]The group of developed countries includes the United States, the EC, Canada and Japan. The group of developing countries includes India, Argentina, Egypt, Thailand, Mexico, Korea, Guatemala, Poland and Turkey.

of the Panel should be strengthened. The other suggestion is that the anti-dumping action should be exporter-specific and not against the exports from the country as a whole as anti-dumping action is to prevent unfair trade practices by specific exporters. There is a drop of approximately 50 percent of imports in the products on which anti-dumping investigations are initiated (Staiger and Wolak 1994). The terminated anti-dumping case hampers trade to the level that results in anti-dumping duties (Prusa 2001). The Uruguay Round added Article 12 to the ADA that demands for public notice from the investigating authorities with elaborate provisions on the proceedings of the anti-dumping investigation. Though, this was done to improve transparency in the procedure, it ended as a burden on the developing countries' authorities which already suffer from human and financial constraints.

In addition to the drawbacks of anti-dumping provisions, it is important to understand how GDP and share in the world exports of the developing countries especially South Asian countries affect the participation of these countries in the WTO DSS.

5.3 GDP, Share of World Exports and the WTO Disputes

The economic size and share in the worldexports ascertain different trends of participation in the WTO DSS. The dispute allocation across the WTO members is in proportion to the global trade's structure (Horn, Mavroidis and Nordstorm 2009). If countries' share in theworldexport is more, it will have several trading partners which increase the chance of trade related frictions subsequently leading to several WTO disputes (Horn, Mavroidis and Nordstorm 2009). There is a connection between the size of exports of the country and its tendency to initiate WTO disputes (Bown 2005). The pattern of initiation of the disputes is determined by the volume and composition of the trade of a particular country (Francois, Horn and Kaunitz 2008). Nine countries - Argentina, Brazil, Canada, Japan, Mexico, EU, India, China and the USA are the top users of the WTO DSS and subsequently have been taken as the sample for analysing the relations among them.

Table 5.2

DS Participation, GDP and Share in World Export of Active Participants

Rank on the basis of country's participation in the DSS	Countries	DS Participation[5] (1995-2019)	GDP (USD million)[6] (2017)	Share in World Exports (%)[7] (2017)
1	USA	276	19.390,600	8.72
2	EU	187	17,308, 862	15.22
3	Canada	62	1,652, 412	2.37
4	China	63	12,014,610	12.77
5	India	53	2,611,012	1.68
6	Brazil	49	2,054,969	1.23
7	Argentina	43	637,717	0.33
8	Japan	40	4,872,135	3.94
9	Mexico	40	1,049, 236	2.31

Source: WTO (2019)

In table 5.2, it can be seen that the countries active in the WTO DSS have higher GDP and large share in the world exports. The USA and the EU are the top two active players in the WTO litigations and they have highest GDP and also large percentage of share in the world exports. Therefore, the relation between the WTO litigation and GDP and share in the world exports cannot be denied. Subsequently, the members with large economies participate morein the WTO litigation compared to the members with small economies.

Among the South Asian countries - India, Pakistan, Bangladesh, Sri Lanka, Nepal, Afghanistan and Maldives have been taken as the case studies for establishing correlation between their GDP and share in the world exports along with their participation in the WTO disputes. Bhutan is the only South Asian country that has not acquired membership of the WTO.

[5]The total Dispute Settlement participation is calculated by adding total number of complaints initiated by these members plus total number of cases that it has defended.

[6]The GDP of each country is taken from the WTO website. The latest GDP of the year 2016 has been given.

[7]The country's share in world exports is also taken from the WTO website. The latest that has been given is of the year 2016.

Table 5.3

DS Participation, GDP and Share in World Export of South Asia

Rank according to their participation in the DSS	Countries	DS Participation[8] (1995-2019) C= As Complainant R= As Respondent	GDP (USD million)[9] (2018)	Share in World Exports (%)[10] (2018)
1	**India**	**53 (C=24, R=29)**	**2,611,012**	**1.65**
2	**Pakistan**	**9 (C-=5, R=4)**	**303,993**	**0.13**
3	**Sri Lanka**	**4 (C=1, R=3)**	**87,591**	**0.06**
4	**Bangladesh**	**2 (C=1,R=1)**	**261,374**	**0.20**
5	**Maldives**	**0 (C=0, R=0)**	**4,505**	**0.00**
6	**Nepal**	**0 (C=0, R=0)**	**24,472**	**0.00**
7	**Afghanistan**	**0 (C=0, R=0)**	**20,889**	**0.00**

Source: WTO (2018)

Table 5.3 demonstrates that the South Asian countries' participation in the dispute settlement is proportionate to their economic size and their share in the world exports. India is an active participant with 53 cases and its GDP and share in the world exports is also very high compared to the other countries of South Asia. The country whose participation is zero, their GDP and share in the world export is also very low. The share in the world export is also equal to zero in case of Maldives, Nepal and Afghanistan. When a country does not have diverse trade products for exports, it does not have many trade partners which thus lower the possibility of any trade friction with any other countries, thereby diminishing their chance of approaching the WTO litigation.

[8]The DS participation is calculated by adding total number of complaints initiated by these members plus total number of cases that it has defended in the WTO DSS.

[9]The GDP of each country is taken from the WTO website. The latest GDP of the year 2017 has been given at the time of writing the chapter (2019).

[10]The country's share in world exports is also taken from the WTO website. The latest data that has been given is of the year 2017 (WTO 2019).

There are several challenges that LDCsand the developing countries face while approaching the WTO DSS. The challenges have been analysed in the following section of the chapter.

5.4 Challenges in Approaching the WTO DSS

This section discusses and analyses barriers that prevent small countries from approaching the WTO DSS. There are no specific challenges for South Asian countries' participation in anti-dumping disputes but these challenges are applicable for all those developing countries and Least Developed Countries whose participations have remained minimal or zero in the WTO DSS covering different WTO agreements.

5.4.1 Entry Barriers

There are two types of barriers - upstream and downstream barriers that countries face while approaching the WTO DSS (Hoekman and Mavroidis1996). The barriers that are faced before the dispute is initiated are known as upstream component of the dispute and the barriers faced after the dispute is initiated are known as downstream component of the dispute. The problem is that the upstream component of the dispute is not taken into consideration while analysing the barriers to the entry of the developing countries in the Dispute Settlement Mechanism (DSM). In order to initiate a disputecountries have to prepare presentations regarding their trade barriers which require monetary and legal assistance. There is absence of any assistance before a dispute is initiated which is a major disadvantage for small countries.

The LDCs and the developing countries lack in internal mechanisms to recognise and communicate their trade barriers to the WTO lawyers (Abbott 2007). The developing countries should ask for the development agencies' assistance in order to overcome this barrier of communicating and identifying their trade barriers (Shaffer 2006). There can be recruitment of independent advocates or prosecutors in order to help the developing countries (Bown and Hoekman 2002).

The role of the ACWL and the SDT provisions come only after the case is initiated in the WTO DSS. There is no acknowledgement of the upstream component of the dispute by

the WTO DSS. In order to overcome this barrier, the African group of countries proposed that the WTO DSS should,

> provide for assistance in the form of a pool of experts and lawyers in the preparation and conduct of cases, payment of fees and expenses entailed, and compilation by the WTO Secretariat of all applicable law including past decisions to be fully available to and usable by both the parties and the panels and Appellate Body in each individual case (TN/DS/W/15).

They also opined that there can be law firms and experts for helping the developing countries and the LDCs in preparing their case before approaching the WTO DSS. The pre-litigation preparation and investigation is important for the developing countries. The pre-litigation stage is an important stage in which the developing countries analyse the positive and negative aspects of approaching the WTO DSS.

5.4.2 Problems of Fact Finding

The nature of dispute in the WTO DSM has become more scientific and technical. The disputes on the SPSmeasures and anti-dumping measures require specialised knowledge and expertise. Countries cannot present or defend their stand in these cases without having experts in these areas as these are scientific and technical issues. The qualitative economic analysis of a particular dispute is required in order to present the case in the DSM.

The developing countries lack human and technical capacities that are important for litigating disputes in the GATT and the WTO (Shaffer 2003; Brewer and Young 1999; Gabilondo 2001). The USA has many lawyers working in its United States Trade Representative (USTR)[11] but the developing countries have only a few lawyers with limited experience and knowledge on trade are working in the ministries. It was found that about half of the 38 Sub Saharan African members of the WTO lack full time representatives to the World Trade Organisation (Blackhurst et.al 2000: 498-499). The developing countries can hire experts on these issues only once the case is litigated.

[11]The USTR is the United States agency that develops and recommends trade policies to the government. It conducts trade negotiations and coordinates trade policies within the government.

5.4.3 Legal and Financial Constraints

The legal capacity is the capacity of the countries to identify WTO laws which have been violated, substantiate the laws with facts, prepare written submission and make oral presentation before the panel and the Appellate Body. The anti-dumping litigation process isa highly complex that requires experts familiar with national anti-dumping laws of the importing country. Fees of these experts are very high and adds burden to the small market of the LDCs and the developing countries (Barcelo III 2005). The lack of legal experts, poor administrative infrastructure, financial constraints and poorly maintained data system prevent effective participation of the developing countries in the anti-dumping investigations. It sometimes results in artificial dumping against them by the stronger countries. There is absence of required skills and resources which prevent governments of these countries from using anti-dumping provisions.

The countries that frequently use the WTO DSS maintain in-house government officials to analyse, prepare and manage disputes. The smaller countries' participation is rare and it becomes inefficient for them to maintain in-house legal experts as the services of these experts would not be availed regularly. The availability of the staffs in the developing countries is limited and assigning full time duty to officials for a particular dispute can affect the functioning of the administration. The developing countries and the LDCs can hire legal experts and law firms from the developed countries like North America and Europe. However, the cost of hiring them is very high. The procedure of the dispute settlement can result in legal fees of over US$100,000,000 which results in a financial burden for the developing countries and the LDCs. In the Kodak-Fuji dispute between the USA and Japan, the expense was estimated to be US$10,000,000 for both the countries (Shaffer 2003:16). The countries would refrain from approaching the DSS if the litigation cost is more than the benefits of the dispute (Bown 2005).

In the dispute between India and Bangladesh, the imposition of anti-dumping duties on Bangladesh's lead-acid battery led to the loss in the export of around 315,430 USD. However, the average loss for the developing countries in anti-dumping disputes is about 11.8 million USD (Bown and McCulloch 2012). The loss in exports of Bangladesh was

2.7 percent of a developing country's average loss. This amount was even ten times higher than the amount at which the legal assistance was provided by the ACWL.

India has developed its legal capacities over the years of its participation in the GATT and the WTO DSS. India started appointing domestic legal practitioners for managing proceedings in the WTO dispute settlement. The Economic Laws Practice is a law firm based in Delhi and Mumbai and it provided its service in India-Additional Duties dispute. In the EC-Drug Seizure dispute, Krishna Venugopal and Fredrick Abbot were hired for consultation. The Luthra and Luthra Law Office and Lakshmikumaran and Sridharan provided legal assistance in India- Agricultural product dispute and the US-Steel plate disputes. The Clarus Law Associates were consulted in solar cells and solar modules disputes. India's focus was to develop domestic legal capacities and limit its dependency on foreign lawyers and law firms.

In some cases, if developing country is a complainant, the industries interested in removing trade barriers bear the cost of the litigation. This was done by the industries of Pakistan and Bangladesh. During the USA and Pakistan dispute on cotton, the expense of the dispute was borne by the All Pakistan Textile Mill Association. A similar situation was also witnessed in the case of Bangladesh when it initiated a dispute against India's anti-dumping duties on its lead acid battery. Rahimafarooz, the industry in Bangladesh was ready to bear the expenses of the dispute, which was an important reason that a LDC like Bangladesh could approach the WTO DSS.

But there are problems in relying on these industries as the industries in small countries are not well organised which makes it difficult for them to provide financial and other resources (Nottage 2009).

The domestic law firms are significant part of trade of a particular country. The law firms play an important role in arranging communications and meetings between private sectors and government and also in providing assistance to the private sector and the government on the WTO matters. The internship programs are organised by Brazil for private lawyersin the WTO mission in Geneva so that it can have experts in its domestic

law firms (Bentes 2014). Similarly, China also empowers and educates its law firms by engaging private lawyers in the WTO disputes.

There were several law firms of India that led delegations to Geneva during the launch of the Doha Round negotiations. In areas like anti-dumping and countervailing duties, these law firms have played an important role. [12] These law firms advise the Ministry of Commerce and Industry (MOCI) on matters of trade and publish newsletters and trade alerts to attract clients whoengage in understanding of the WTO Law from an academic point of view. The MOCI, India has been keen on developing domestic lawyers specialised in the WTO laws. There have been large numbers of law firms engaged in submissions as third party and in consultation proceedings of the WTO disputes (Natahani and Nedumpara 2012).

The additional legal aid mechanism has been suggested by several developing countries. A proposal for 'WTO Fund on Dispute Settlement' came from African countries which would provide financial assistance to the developing countries.[13]India along with Pakistan, Indonesia, Cuba and Malaysia have suggested that in disputes between the developed and the developing countries, the expenses of the dispute should be incurred by the developed countries in case the panel and the Appellate Body's findings are not against the developing countries (WTO Document 2004).[14] The monetary compensation to countries hurt by the anti-dumping measures is possible and was also given in theUSA-Cotton dispute with Brazil (Hoda 2018)[15]. Such monetary compensation would be an achievement for the developing countries (Das 2018)[16].

The proposal for financial assistance has drawbacks and is difficult to implement due to several reasons. The 'developing countries' group is wide and diverse and includes both

[12]Nedumpara conducted an interview with a Partner in a New Delhi based law firm (Feb. 28, 2012).
[13] Special Session of the Dispute Settlement Body, Text for the African Group Proposals on Dispute Settlement Understanding Negotiation: Communications from Cote d' Ivoire, TN/DS/W/92 of 5 March 2008.
[14]Negotiations on the Dispute Settlement Understanding: Special and Differential Treatment for Developing Countries, WTO Document TN/DS/W/19 of 9 October 2002.
[15]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[16] Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

the small and the advanced economies. So, not all the developing countries require financial assistance. It raises the questions regarding operationalisation of these proposals (Bohananes and Garza 2012). The proposal is not clear about covering legal costs of the proceedings with two developing countries in dispute (Bohananes and Garza 2012) and it is a rare possibility that the developed countries would agree to such a proposal of establishing fund. Though, the negotiations on the WTO DSU started in 1997 but it has not been able to achieve the desired result (Davey 2014; Tajeda and Pierola 2011; Zimmermann 2006).

5.4.4 Lack of Coordination between Public and Private Sector

There is lack of coordination between the private and the public sectors in recognising and conveying the problems of trade constraints (Shaffer and Ortiz 2010). In most of the developing countries, the communication between the government and the private sectors is absent. There is a well defined and established channel of communication in the developed countries for communicating trade problems to the government and such channels of communicationare missing in the developing countries. The WTO disputes have to be led by the private sectors. These private sectors should persuade governments to challenge the measures of the other countries at the WTO DSS by showing the effects of such trade measures on their own trade and they should also share the litigation process with the government (Das 2018)[17].

The private sectors of the developing countries consider that it is government's task to collect authentic information on the barriers of the foreign trade. The focus of the developing countries is only against those trade barriers which are visible, like, anti-dumping measures (Bown and McCulloch 2012). The less visible trade barriers are resource intensive which require proper coordination and greater communication between the government and the private sectors. The private sectors lack trust in the government and subsequently are hesitant to provide any confidential information like the information about export markets required to challenge the anti-dumping measures. The public private partnership in the US-Custom Bond Directives dispute and the EC-Bed Linen

[17] Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

dispute demonstrates that proper coordination and communication between the government and the private industries can enhance the participation of the countries in the WTO disputes.

The other problem between the government and private industry is that there is absence of transparency regarding the flow of information between the private sector and the government. The private sector may not be aware of the steps of government on the dispute. The dispute between India and the EU on tariff preferences is one such example where the private industry on textile lobbied the government to approach the WTO DSS four months after the dispute has already been initiated by the government.

The proper organisation within the private sector is effective for proper communication with the government. This becomes even more important for fragmented industry whichconsists of small companies, as the industry of textiles. There should be a collective action. Industries should collectively lobby the government to initiate the WTO dispute. There should be well defined responsibilities within the industry association on the matters related to the WTO. An example can be seen in the Pakistan-US dispute on cotton yarn. A WTO section was established by the All Pakistan Textile Mill Association during the dispute so that there can be better communication with the government on the external trade.

The relationship between the private sectors and the government needs proper institutionalisation. The Section 301 of the US Trade Act of 1974 and Trade Barrier Regulation in the EU allow for communication channelsbetween the government and the private parties. China has also focused on developing its trade capacities related to the WTO disputes and has participated in large number of disputes as the third party since 2003 (Shaffer and Ortiz 2010) where it has always encouraged private lawyers' participation (Liyu and Gao 2003; Wehuji and Huang 2011).

In order to overcome such barriers, there should be meeting between the government and the private industries through periodic round tables. Different departments of the government should participate in the meeting so that more and more departments become aware of the issues of the private sector. The better coordination and communication

between the two would be helpful not only in trade disputes but also in other trade deals of the country. A single department can be established by the government for the private sector to look after trade barriers. The government can annually produce and publish the concerns of trade barriers from several private sectors, as done by the USA and the EU.

However, Hoda (2018)[18] has different view on the role of the private sectors in the WTO disputes. He states that the private sectors of the developing countries would refrain from approaching the WTO DSS if the gains from the outcome of the dispute are comparatively less than the gains from its exports in the particular product from the particular country. Hoda (2018)[19] views that except in high stake cases, the private sectors of the developing countries do not play an important role in the WTO disputes. He gives an example from his experience that in the past a manufacturer in India refused to defend its case as its total exports in that particular product was around one or two million which was not worth challenging in the WTO DSS.

5.4.5 Stakeholder Capacities

In International trade, stakeholders are considered as the "third pillar" (Shaffer 2008) which includes the civil society, laws, academia and businesses. These third pillars have to identify, analyse and litigate the WTO disputes. The stakeholder capacity is the capacity of the third pillars to carry out these functions in the WTO disputes. The developing countries and the least developed countries lack such stakeholder capacities which are important for approaching the WTO DSS. There are few examples to demonstrate the role of the stakeholders in different WTO disputes.

The Cotton Textile Export Promotion Council (Texprocil) played a significant role in the EC-Bed linen dispute, the EC-GSP dispute and the US-Textiles Rules of Origin dispute. In the EC-Bed linen dispute, Texprocil played an important role by selecting law firms in Brussels and dealt with the choice of sample for calculating the dumping margin. It was because of Texprocil that Indian exporters who accounted for more than 80 percent of the production were known before the investigating authorities of the EU. In the EC-GSP

[18] Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[19] Ibid.

dispute, Texprocil submitted a memo to the Ministry of Textiles drawing attention to the difficulties suffered by the textile and clothing sectors due to the GSP scheme of the EU. The EC-GSP scheme increased the textile exports of Pakistan to the EU which affected India's exports of textiles.

The Marine Products Exporters Development Authority (MPEDA) and the Seafood Exporters Association of India (SEAI) played an important rolein the US-Custom Bond Directive dispute. The mandate to increase market opportunities for seafood in India is provided to these agencies. These effectively supported the exporters of frozen warm water shrimps whose export declined to one third after anti-dumping duties were imposedby the USA in 2004. The MPEDA and the SEAI incurred the fees of the lawyer and other expenses of the dispute (Nedumpara 2013).[20] It was found that the shrimp exporters had to incur the expenditure of $12 million which was equal to 60 Crores rupees in 2012 during the proceedings of the case in the DSS. They explained the dispute to the Trade Policy Division (TPD), MOCI and the Indian Embassy in Washington, District of Columbia (D.C.).

5.4.6 Absence of Political will

There is unwillingness on the part of the governmentsinthe developing countries and the LDCs to approach the DSS. This can be due to several reasons. The government would not want to lose a case and initiating a dispute would also affect its relations with the trading partners if they are negotiating at other platforms. These countries lack resources and staffs placed in Geneva for regulating the matters related to the WTO lack trainings and knowledge on trade matters. The developed countries have experts and specialists on trade as their representatives in Geneva but on the contrary the developing countries are represented by Foreign Affairs Ministers with little knowledge of trade. Some of the developing countries do not even have any representative at Geneva. There is also a fear, among the governments, of trade retaliation by the powerful developing and developed countries.

[20]Nedumpara conducted a telephonic interview with Zandu Joseph, Secretary, SEAI (May 12, 2011). It is stated that the funding was provided from the Market Access Initiativeof the Marine Product ExportDevelopment Authorities (MPEDA), available at: http://www.mpeda.com/HOMEPAGE.asp.

5.4.7 Weak Civil Society and NGOs

The academic institutions, civil society and research institutes also play significant role in strengthening knowledge about the laws of the WTO. The developing countries lack such academic institutions which work on international trade laws. Moreover,this area is not included even in the subject of their law studies.

There have been civil societies whose roles have been significant in the WTO disputes. The dispute between Thailand and EC is one such example. In the EC-Sugar Dispute, the non- governmental group Oxfam played an important role for Thailand. The information and data wereprovided by Oxfam and one officialof Thailand considered it "highly valuable" (Danvivathana 2010).

5.4.8 Institutional Capacities

In the developing countries, there is lack of proper institutions and departments in the government to manage trade disputes. The WTO related issues, in India, fall under the Ministry of External Affairs as it is an international organisation whereas the matters related to trade comes under Ministry of Trade. Even if the matters come under one ministry, there are different departments that deal with the trade issues. In such situation, cooperation is very important for effective and adequate working in different areas related to the disputes. If there is no effective coordination among different departments, delivery of functions become slow and even impedes the process.

In order to regulate dispute settlement processes and negotiations on the WTO industrial bodies of India have opened offices in Geneva. The first industrial body to establish its branch in Geneva was Confederation of Indian Industry (CII) but such office is no longer maintained in Geneva (Nedumpara 2013).[21] The Federation of Indian Chambers of Commerce and Industry (FICCI) is an association of industries with separate divisions related to the WTO, Free Trade Agreement (FTA) and Free Trade Division (FTD) in

[21]Nedumpara conducted Interview with Pranav Sharma, Head - Trade Policy Division of CII in New Delhi, (Oct. 12, 2012).

New Delhi (FICCI 2011). Though, the FICCI works well on the WTO matters, it does not directly work on matters of dispute settlement (Nedumpara 2013).[22]

5.4.9 Weakness of Retaliation Provision

Article 21.5 of the DSU provides for a'compliance panel' in case the winning country is not satisfied with the implementation of the panel and the Appellate Body rulings. In the EC-Bed linen dispute, the panel and the Appellate Body asked the EU to bring its measures in conformity with the WTO ADA in March 2001. Subsequently, the EU implemented the rulings by amending its anti-dumping duties in August 2001. However, India was not satisfied and requested for compliance panel that challenged the implementation process of the EU. The compliance panel decided in the EU's favour. In February 2002, the domestic industry requested for the review of the implementation. The review was decided in favour of India but the ruling on implementation was delayed. One of the drawbacks of the implementation of the WTO ruling is that the WTO cannot pressurise countries to comply with their rulings.

In case, countries do not comply with the rulings, the WTO can authorise the affected countries to retaliate through trade sanctions. The developing countries and the LDCs lack the capacity to enforce rulings which defeats the purpose of bringing their dispute to the dispute settlement proceedings. It is less likely for the developing countries to use retaliation against powerful developing or developed countries. The developing countries with small domestic markets fail to exert political and economic pressure on larger countries for inducing compliance (Nottage 2010; Nilaratna 2005). The developing countries through retaliation increase tariff levels on imports from non complying countries which make products expensive and inaccessible to customers which harms the economically weaker countries (Bronckers and Broek ; Mercurio 2009). The retaliation process instead of hurting non complying members hurts poor countries if their major proportion of trade is dependent on the non complying country. For example in the EC-Banana dispute between the Ecuador and the EU, Ecuador requested for authorisation to retaliate against the EU. The arbitrator said,

[22]Nedumpara conducted an interview with Manab Majumdar, Asst. Secretary General FICCI in New Delhi (April 10, 2011).

> in situations where the complaining party is highly dependent on imports from the other party, it may happen that the suspension of certain concessions or certain other obligations entails more harmful effects for the party seeking suspension than for the other party(EC-Banana Dispute 2000).[23]

India has also stated that retaliation has adverse economic impact on small countries than non-complying developed country of the WTO (WTO 2002).[24]During the request for retaliation against the USA, Antigua and Barbuda [25] observed that if they cease their trade with the USA, it would not have any impact on the economy of the USA but will cause hardships to their economy.

Similarly, in the EC-Banana case, a similar situation was experienced by the Ecuador. The imports from the EU to Ecuador are less than 0.1 percent of the total imports. The Ecuador's ability to retaliate against the EU was examined by thearbitrator who was presiding over the dispute. He said,

> …given the fact that Ecuador, as a small developing country, only accounts for a negligible portion of the EC's exports of these products, the suspension of concessions is unlikely to have any significant effect on demand for these EC exports…in situations where complaining party is highly dependent on imports from other party it may happen that the suspension of certain concessions or certain other obligations entails more harmful effects for the part seeking suspension of concessions than for the other party…(Anyiwe and Ekhator 2013).

The retaliations can only be done if the countries are granted authorisation by the panel and such condition weakens the provision of retaliation (Hoda 2018)[26]. The irony is that the EU retaliated against the USA without the authorisation from the panel and their actions are not declared against the WTO agreements. Blonigen (2002) and Bown (2005) are of the view that the countries charge anti-dumping duties if they feel that the targeted countries are small, lack legal capacity and do not have potential to retaliate. Busch and

[23]European Communities - Regime for the Importation, Sale and Distribution of Bananas, WTO Document WT/DS27/ARB/ECU of 24 March 2000; In the EC — Bananas III (Ecuador) dispute, Ecuador was authorised to apply retaliatory measures for an amount of US$201.6 million a year but found it impossible to make use of this possibility without causing severe damage to its own economy. The authorisation was given in 1999 but up to now Ecuador has not retaliated because it is not feasible. She lacks the economic muscle to wrestle against the EC.

[24]Negotiations on the Dispute Settlement Understanding: Special and Differential Treatment for Developing Countries, WTO Document TN/DS/W/19 of 9 October 2002.

[25]The dispute number 285 in which Antigua and Barbuda approached the WTO DSS against the US measures affecting the cross border supply of gambling and betting services.

[26]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

Reinhardt (2003) and Shaffer (2008) have also supported this statement. The process of retaliation can only be effective if it is collectively retaliated by the developed countries.

In the US-Byrd Amendment dispute, the USA did not comply with the WTO rulings that asked the USA to confirm its anti-dumping measures with the WTO ADA. The Byrd Amendment was considered illegal by the WTO in 2003 and the time given to the USA was till 27 December 2003 to comply with the rulings. The USA did not comply with the WTO rulings even when the group of complainant included the developed countries like the EU, Canada and Japan. The US Congress failed to repeal or amend the Byrd Amendment and the authorisation to retaliate was provided by the WTO to complaining countries. The USA repealed the Byrd Amendment in 2006 with the signing of Budget Reconciliation Bill in February 2006. This dispute demonstrates that as the group of complainant included economic powerful countries like the EU, Canada and Japan, the USA complied with the rulings but only after the complainant countries got the retaliation authorisation from the WTO DSS. If the group included only the developing countries as complainant, the outcome would have been different and the USA would have refused to comply with the WTO rulings at any stage of the DSS.

The proposals for collective retaliation and financial compensation came from Egypt, Malaysia, India, Dominion Republic, Cuba, Honduras, Jamaica[27], Ecuador[28], the LDC[29] and the African group[30]to overcome the problems of retaliation. The countries opined that there should be a time limit at the stage of retaliation as it would pressurise the losing country to bring its measures in terms with the WTO rulings within a definite time period. The others have come up with the view that there should be automatic provisions

[27]Special Session of the Dispute Settlement Body, Dispute Settlement Understanding Proposals: Legal Text: Communication from India on Behalf of Cuba, Dominican Republic, Egypt, Honduras, Jamaica and Malaysia, TN/DS/W/47 of 11 February 2003.
[28]Special Session of the Dispute Settlement Body, Negotiations on Improvements and Clarification of the Dispute Settlement Understanding: Proposal by Ecuador, TN/DS/W/33 of23 January 2003.
[29]Special Session of the Dispute Settlement Body, Negotiations on the Dispute Settlement Understanding: Proposal by the LDC Group, TN/DS/W/17 of 9 October 2002; Special Session of the Dispute Settlement Body, Text for the LDC Proposal on Dispute Settlement Understanding Negotiations: Communication from Haiti, TN/DS/W/37 of 22 January 2003
[30]Special Session of the Dispute Settlement Body, Negotiations on Dispute Settlement Understanding: Proposal by African Group, TN/DS/W/15 of 25 September 2002; Special Session of the Dispute Settlement Body, Text from the African Group Proposals on Dispute Settlement Understanding Negotiations, Communications from Kenya, TN/DS/W/42 of 24 January 2003.

for cross retaliation where countries who have won can choose the sectors which they want to target for cross retaliation. There is also a view that the members should be capable of auctioning their right to retaliation. The African group of countries had come up with the proposal that the right to retaliation should not be confined to the winning country but should extend to all the members of the WTO.

5.4.10 Complex and Lengthy WTO Proceedings

The WTO contains "a complex web of over 20 agreements, which together with the attached member specific schedules of concessions and commitments cover more than 20,000 pages" (ACWL 1995). The formation of the WTO initiated trade rules whichare more thorough, obligatory and specific. It contains eighteen multilateral agreements, several "protocols" and "understanding" including text of 26,000 pages which include concessions schedules (Shaffer 2005). The GATT gave an average of 86 pages of panel's rulings every year from 1986-1995 whereas the WTO provided panel findings of 693 pages only in the year 1999. The WTO laws on disputes with the panel and Appellate Body reports are detailed and huge (Shaffer 2003) and is growing over the time with more filing of disputes every year. In order, "just to read through and understand the growing WTO case law is an immense task, including for specialized academics" (Shaffer 2008).

The facts and information presented by the disputing parties are given much attention by the WTO panels. The scientific and economic evidences have to be provided to the panel in disputes which are scientific and technical in nature and it adds burden on the disputing parties (Bohl 2009). The anti-dumping provisions are also technical in nature and require specialised knowledge of experts to deal with these anti-dumping disputes. As the legal reasoning is of much importance in the panel and the Appellate Body rulings, the developing countries have to hire trade lawyers specialised in WTO laws related to different agreements in order to present and defend their trade problems in the WTO litigation (Shaffer 2008). The legal experts are also required at the consultation stage for reaching at a mutually agreed solution with the disputing party. A country as a complainant if has the capacity "to hit the right legal buttons in the request for consultations, to pressure the defendant on its weakest legal points during consultations,

and to give the impression that the issue might well be pushed to a successful conclusion" is in good position to convince the defendant to reach at a mutually agreed solution (Busch and Reinhardt 2003). The WTO DSS is lengthy, complicated and expensive and effective trade capacities to deal with the WTO disputes are required (Antell and Coleman (2011).

The WTO proceedings are complex and it takes longer time period for resolving a dispute. The complex proceedings provide the respondents with an opportunity to delay the procedures. The long duration and complex proceedings can prevent countries from approaching the WTO DSS. All these can causethe legal fees go higher and these may go beyond the budget of the developing and the least developed countries. However, there are other scholars who believe that the time for litigating disputes is fairly stiff and if it becomes stiffer and shorter, then the developing countries will face problems (Das 2018)[31]. The time period of litigating the WTO disputesis based on the Section 301 of the US Trade Law and is comparatively good and it is not practical to make the time frame shorter (Hoda 2018)[32]. However, there is a shorter time period for the disputes challenged under subsidies, but such shorter time periods are not practical (Hoda 2018)[33].

5.4.11 Failure of the Special and Differential Treatment Provisions

There are SDT provisions for the developing countries and the LDCs mentioned in the WTO DSU. The provisions state that special attention should be given to particular interests and problems of the developing countries during the consultation stage. When the dispute is between a developing and a developed country, minimum of one panelist should be from a developing country but the request should come from the concerned developing country. The Secretariat has to provide legal assistance to these countries by providing them with legal experts on the technical issues of the WTO.

The SDT provisions are not mandatory or are not applicable automatically in the disputes in which the developing countries are involved. The countries should ask for these

[31]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[32]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[33]Ibid.

provisions (Ewelukwa, 2005). The SDT provisions are dividedin two categories (Roessler, 2005). The first category includes those provisions which are generally applicable for the developing countries involved in a particular dispute, that one member of the panel should be from the developing country (Article 8.10 of the DSU) and the panel has to clarify its decision of considering the SDT provisions if the issue has been raised by developing countries (Art 12.11 of the DSU). The second category includes those provisions which are exclusively referred to developing countries in which thesecountries are allowed to use alternative dispute settlement procedure (Art 3.12 of the DSU). The developing countries have not used the second type of the SDT provision. The SDT provision has failed to address "lack or shortage of human and financial resources, a little practical flexibility in selection of sectors for trade retaliation" (WTO 2006).[34]

The S&DT provisions have not played any significant role in addressing the concerns of the developing and the least developed countries (Das 2018[35]; Alavi 2007). The S&DT provisions are not a thing to cherish as far as the WTO DSS is concerned because they have a minimal impact. India should get out of 'S&DT syndrome' because it raises concernsover the SDT provisions in several disputes.It is not gaining much from the provisions (Hoda 2018)[36].

> ...The provision only urges and advices members to give special attention to the particular problems and interests of developing countries and therefore is not a mandatory provision. The provision is more declaratory than operative and does not provide any operative content, it does not state exactly who gets what assistance from whom. As a result, it does not create enforceable obligation on the part of the members...(Lekgowe 2012).

The S&DT provisions lack clarity whenthey says that 'special situation' of the developing countries should be considered and possibility of 'constructive remedies' should be explored before applying anti-dumping measures on the developing countries. The article does not explain the technical term 'special situation' and 'constructive remedies' and leaves it on the discretion of the member countries. The SDT provisions

[34] Special Session of the Dispute Settlement Body, Report by the Chairman, Ambassador Ronaldo Saborio Soto, to the Trade Negotiations Committee, TN/DS/W/15 of 29 March 2006.
[35] Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[36] Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

have proved to be inefficient in solving the disputes involving the developing countries. In the USA-Carbon Steel dispute, the panel ruled that the USA is not obligated to consider special situation of India as a developing country. This shows the failure of the SDT provisions.

However, the panel in the EC-Bed Linen dispute said that the developed countries' investigating authorities are obligated "to consider actively the possibility of constructive remedies with an open mind prior to the imposition of final anti-dumping measures." The constructive remedies could be achieved through accepting price undertaking from the developing countries' exporters and applying lesser duty rule to imports from the developing countries.

There have been several WTO disputes in which SDT provisions were discussed. In the EC-Bed Linen dispute, India argued that the term 'constructive remedies' means that there should not be any anti-dumping duties imposed on the product from the developing countries. However, the argument was rejected by the WTO panel which said that the term refers to the price undertaking (Article 8 of ADA) and possibility of lesser duty rule (Article 9). The panel also discussed the term 'explore' mentioned under Article 15 of the SDT provisions. It reported that the investigating authority would consider with open mind the possibilities of different remedies before imposing anti-dumping duties. This shows that the participation of the developing countries in Dispute Settlement Mechanism becomes even more important as it is a platform which clarifies various ambiguous agreements of WTO. It helps in understanding the technical terms which are not properly defined in the agreement.

There have been several suggestions in order to improve the SDT provisions. The SDT provisions should be made legally binding as the word 'should' be replaced with 'shall' which would make it mandatory and more effective (WTO 2002).[37] The African group in the WTO proposed that in disputes involving a developing country, the panel should automatically have a member from a developing country and if the developing country

[37]Negotiations on the Dispute Settlement Understanding, Proposal by the LDC Group, TN/DS/W/17 of 9 October 2002.

requests, one more member from the developing countries should be included. This would be beneficial for all the developing countries including the ones in South Asia.

5.4.12 Failure of the Advisory Centre on WTO Law

The ACWL was established in the year 2001 to provide legal advice and training to the developing countries and the LDCs on the WTO Law. The LDCs do not have to become its member in order to avail its facilities, and services for the LDCs are free of cost. The developing counties have to pay minimal amount to access its services.[38] It provides assistance at all the stages of the dispute, that is, from consultation stage to the stage of retaliation. The ACWL has provided legal assistance to the developing countries at a minimal rate. The assistance has been provided to India, Pakistan and Bangladesh in several disputes. Bangladesh, with the help of the ACWL could approach the dispute settlement procedure against India's anti-dumping measures on its lead-acid battery.

Though, the service is provided at concessionary rate, it is not free of cost which becomes a burden for small countries. In order to become its member, they have to pay a fee which is considered as obstacle for small countries (Bohanes and Garza 2012).[39] The ACWL can provide legal assistance in the WTO disputes only when the dispute is initiated in the WTO DSS. The ACWL does not have the capacity to handle all the matters as it lacks human resources (Nordstorm and Shaffer 2008)."The ACWL has neither the resources nor the mandate to go out into the field and provide information to developing country exporters that they have a legally viable case that they could pursue at the WTO to enforce their market access rights" (Nordstorm and Shaffer 2008).

Moreover, the service can only be provided on the request of the developing countries after the case is initiated. It does not address the problems of identifying and prioritising trade claims. The African Group has stated that "the Advisory Centre on WTO Law

[38] The stages include the consultation stage, Panel and Appellate Body Process and the Implementation Stage.
[39] The complaints have been frequently initiated by developing countries in the round table conference in Geneva.

should not be considered as panacea for all institutional and human capacity constraints of developing countries [for using the WTO DSS]" (WTO 2002).[40]

5.4.13 Failure of the Secretariat

The WTO under its Article 27.2 of the DSU provides for the WTO Secretariat that provides legal experts to the developing countries on their request in order to assist in dispute settlement proceedings.

The developing countries are less likely to gain from the services of the Secretariat due to several reasons. First, the staffs of the Secretariat assigned with the task of providing legal assistance to the developing countries are very limited. The Secretariat has just "one full time official and, on a permanent part time basis, two independent consultants for this purpose" (WTO 1995). Second, the advice of the Secretariat on legal matters is confined to "a narrow range of issues, frequently doing no more than critiquing possible arguments or defenses and providing basic advice about the course of WTO dispute proceedings" (Parlin 1998). Third, the legal support can only be provided after dispute is initiated in the WTO. The developing countries cannot get legal assistance from the Secretariat in pre-complainant stage to identify and prioritise trade claims required to initiate complaint in the WTO (Nottage 2009). Finally, the Secretariat, under Article 27.2 of the DSU has to assist developing countries in a manner that ensures its impartiality which makes works of the Secretariat difficult as an advocate in the WTO litigation process (Nottage 2009).

5.4.14 Fear of Retaliation among Countries

Though the WTO works on the principle of law and not on power, there is always a possibility that the countries against whom the dispute has been initiated can retaliate in several ways outside the ambit of dispute settlement proceedings and impose other forms of economic sanctions.[41]It can also use other measures of trade restrictions on the complaining country. This can affect foreign policy of both the countries. This type of

[40]Negotiations on the Dispute Settlement Understanding, Proposal by the African Group, WTO Document TN/DS/W/15 of 25 September 2002

[41]The Economic sanction is the commercial and financial penalties in the form of trade barriers and tariffs which is applied by one or more countries against the country, group or individual that has been targeted.

barrier is the most important barrier (Hoekman and Mavroidis 2000; Shaffer 2003; Hoekman and Kostecki 2001).

Countries find it difficult to approach the WTO DSS if it is depended on the other countries for foreign aid, development assistance, and preferential market access (Bown et. al 2003; Busch 2000; Shaffer 2008; Shaffer and Ortiz 2010). It is stated that, "the more that a complaining member is dependent on the potential respondent (whether for trade, security, or development assistance), the larger the political dimension likely becomes" (Evans and Shaffer 2010). As the countries are not bound to provide such preferences, it can be cancelled or modified by the countries providing preferences (Bartels and Haberli 2010; Ozden and Reinhardt 2005). The examples like Kenya refrained from filing dispute against the EU in legal Nile Perch case as the EU was its trade and developmental partner (Ochieng and Majanja 2010). Similarly, Egypt also did not challenge the EU's ban on its potatoes, though the EU lacked any evidence to support the potato ban, for fear that it would affect its trade relations with the EU (Shahin 2010).

The developing countries export in the market of the developed and the other developing countries under preferential trade regime. This happens because under the WTO, these preferences are not enforceable and the developing countries would refrain from bringing any dispute to the WTO related to thetrade regulated under preferential trade regime through bilateral negotiations. This reduces the number of developing countries as a complainant. There is also a fear of political and economic pressures from the developed countries. The developing countries, in order to enhance their trade, require preferential market access and development assistance from the developed countries. Subsequently, the developing countries would refrain from challenging the developed countries in the WTO DSS in order to prevent tariff preferences and foreign aid from the developed countries. The developing countries share bilateral trade relations with the developed countries and as such it prevents them from initiating WTO disputes against them.

There are several trade arrangements like the US-Pakistan Trade and Investment Agreement (USTR 2003), the US-Sri Lanka Trade and Investment Agreement (USTR 2008) and the US-Bangladesh Trade and Investment Cooperation Forum Agreement (USTR 2013)between the South Asian countries and developed countries. These

countries would refrain from challenging any measures of the USA in the dispute settlement proceeding for fear of losing the preferential treatment that they enjoy under these agreements.

The coalition assistance by the developed countries and active developing countries was thought to help small developing countries and the LDCs in enhancing their participation in the WTO DSS. But, Hoda (2018)[42] stated that countries would refrain from helping each other unless they have their own national interest.

There are reforms required in the WTO DSS and there was a mandate to negotiate on important provisions of the DSU (Das 2018)[43]. The WTO DSS is not a substantive law but a process of initiating reforms and change is required in the whole process (Hoda 2018)[44].

5.5 Measures to Enhance South Asian Participation

There are certain measures that can be adopted by South Asian countries to enhance theirparticipation in the WTO DSS. These have been discussed and analysed in the following section along with several examples of the South Asian countries which have benefitted from adopting such measures.

5.5.1 Regular Participation of Countries

The countries 'learn by doing'. This means that when the developing countries participate regularly in the disputes and become a repeat player, they acquire knowledge about the different processes in the WTO DSS.Consequently, they strengthen their institutional arrangement in order to remove trade barriers and approach the Dispute Settlement Mechanism. The countries can participate as co-complainant or as third party as well.

[42]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[43]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[44] Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.

5.5.1.1 Participation as Co- Complainant

The joint complaints with the developed countries can be helpful for the developing countries. This can strengthen the case for the developing countries and exert political and economic pressures on the respondent country. Das (2018)[45] supported this view and said that as co-complainants, countries can play effective role in the WTO disputes. This can also be regarded as a training ground for the developing countries as they would gain a first-hand experience of the procedure and working of the dispute settlement procedures. The example of such cases can be seen when 11 countries challenged the Byrd Amendment of the USA in the WTO DSS. The complainants included both the developed and the developing countries like the EU, Japan, India, Brazil, Chile, Indonesia, Korea, Thailand, Australia and Mexico.

The example of effectiveness of participation can be seen in the case of Pakistan. Pakistan as a sole complainant initiated its first case against the United States when the latter imposed several safeguard measures on the combed cotton yarn from Pakistan. Before initiating this dispute, Pakistan had initiated two cases under the GATT and one case under the WTO along with other complainants when the USA had prohibited imports of shrimp and shrimp products.[46] An effective institutional framework for handling dispute settlement cases was missing in Pakistan at the time of filing the dispute. However, it was during the dispute that a section on the WTO matters was set up as the Permanent Mission in Geneva. Additionally, the Ministry of Commerce and a 13 member high-level WTO Councilchaired by the Ministry of Commerce were also set up (Hussain 2005:470). The country at present has six staff officials as Country's Mission to Geneva which includes also an expert on legal affairs. The cotton yarn dispute between the USA and Pakistan was ruled in the favour of Pakistan. Pakistan in 2005, as discussed in chapter 3 of the thesis, challenged Egypt's anti-dumping duties on its matches and the panel ruled in its favour. Subsequently, Egypt had to remove its duties from Pakistan's matches.

[45]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.

[46]The complaint was initiated by India, Pakistan, Thailand and Malaysia against the USA when it proibited certain shrimp and shrimp products' imports.

In the year, 2008, Dr. Manzoor Ahmed, the first Pakistan's Ambassador to the WTO said,

> it is encouraging when we get positive results so we are more likely to see dispute settlement as an effective strategy. We know about the selection of lawyers and how to enter consultations. If it were the first time we would be completely lost but if we have experience it helps. Now with our problem with the EU preference regime [the EU generalized system of preferences offers preferential terms to the imports of some export competitors on what Pakistan considers to be arbitrary terms] all of the groundwork is ready- we know what to do and have the nuts and bolts in place so we are ready to go (Davis and Burmeo 2009).[47]

There is a lack of information among the private sectors regarding the WTO objectives and functioning (Hussain 2005: 459). Ahmed even claimed that Pakistan before this dispute lacked institutions for sharing the cost of litigation in the WTO which had led to delays in the proceedings. Consequently, All Pakistan Textile Mills Association (APTMA) established a WTO section in order to coordinate with the Ministry of Commerce related to the trade disputes with the WTO.

5.5.1.2 Participation as Third Party

The countries should be active as third party in different disputesas it provides with first-hand understanding of the WTO litigation. The government officials and the private lawyers can benefit from such disputes as it provides them with the trainings on trade matters and strengthens their capacitiesto deal with these matters. The countries as third parties can submit their concerns in the panel and Appellate Body review which provide them with the capacity to influence a particular dispute.

Pakistan and India have also participated as a third party and have gained knowledge and experiences related to several disputes.India has participated in 160 cases as a third party, Pakistan in 10 cases, Bangladesh in one case and Sri Lanka in four cases till May 2019(WTO 2019). The participation as third party helps countries in developing their capabilities and capacities of presenting their respective casesin the WTO DSS. It also provides training to their lawyers and prepares them for future cases.

[47]This was the comment given by Dr. Manzoor Ahmed, Ambassador and Permanent Representative to the WTO for Pakistan in an interview which was conducted by Davis and Bermeo, Geneva on 30 June 2008.

5.5.2 Participation as a Region

A common heritage, culture, history and social practices are shared by the South Asian countries. However, it is the least integrated region of the world, both politically and economically. One of the drawbacks of this region is that there are political disputes among countries which hinder the process of economic development and integration. The intra regional trade among the South Asian countries is below 5 percent of the total trade, which is very low (World Bank 2016).

There are several indicators for defining a region. There should be a close geographical proximity, together with common culture, common political, social, historical and economic interests. While deciding inter-state relations, cooperation among countries should be kept above the conflicts. These countries should try to achieve regional cooperation by using a common platform. These features are absent in case of South Asia which is demonstrated by failure of the SAARC (Malhotra 2009).

There are several impediments to South Asia for becoming a region. The inter-state conflicts, strained relations between India and Pakistan, absence of common interest, and dependence on India in terms of GDP, geography and population are some of the problems in South Asia. The trade instead of being complementary is competitive among them (Kher 2012).

The former Prime Minister of India, Dr. Manmohan Singh in 16th SAARC summit in April 2010 said,

> we have created institutions for regional cooperation, but we have not yet empowered them adequately to enable them to be more proactive…the challenge before us is to translate institutions into activities, conventions into programmes, official statements into popular sentiments. Declarations at summits and official level meetings do not amount to regional cooperation and integration. Regional cooperation should enable freer movement of people, of goods, services and ideas. It should help us rediscover our shared heritage and build our common future. The 21st Century cannot be an Asian Century unless South Asia marches together (Kher 2012).

Similarly, the current Prime Minister of India, Narendra Modi, in the 18th SAARC Summit held in Kathmandu in 2014 said, “We can all choose our paths to our

destinations. But, when we join our hands and walk in step, the path becomes easier, the journey quicker and destination closer" (Economic Times 2014).

The South Asian countries should approach dispute settlement proceedings as a region like the European Union. This would be helpful in providing them training and understanding of different disputes. The SAARC can be used as a platform in order to discuss the issues related to the WTO. The South Asian countries should keep their 'economic cooperation' above their 'political conflicts'. Overcoming all its problems, the SAARC should establish a separate body that would look into the WTO trade matters. However, Das (2018)[48] viewed that South Asia is not a custom union like the EU and difficult to act as one region. Similarly, Hoda (2018)[49] has a similar view, that South Asia participating as a region like the EU is not possible.

5.5.3 Lessons from India's Participation

India, over the years has developed human, institutional and stakeholder capacities to participate in the WTO disputes. It has emerged as an active developing country in internationaltrade negotiations. It has participated in several high profile disputes like the EC-Bed Linen dispute and the US-Shrimp Dispute which provided an exposure to Indian legal practitioners in the international disputes that were complex in nature.

India has developed strong industries like the Texprocil[50], the SEIA[51] and the MPEDA[52] which have significant role in lobbying and communicating with the government regarding the violations of the WTO rules by different member countries which have affected the trade of India.

A joint project 'Strategies and Preparedness for Trade and Globalisation in India' was initiated by the UNCTAD, DFID and MOCI to assist trade negotiators and stakeholders

[48]Personal Interview with Prof. Abhijit Das, Chair, CWS, at IIFT on 9 August 2018; Refer to Appendix for questionnaire.
[49]Personal interview with Anwarul Hoda, Chair Professor, Trade Police and WTO Research Programme, ICRIER on 8 August 2018; Refer to Appendix for questionnaire.
[50]Texprocil is the Cotton Textile Export Promotion Council is an autonomous non-profit organization for promoting exports in cotton textiles.
[51]SEIA is the Solar Energy Industry Association.
[52]The MPEDA is the Marine Product Export Development Authority that looks into the exports of marine products of India to different part of the world.

of India on multilateral negotiations on trade.They also play a role in strengtheningIndia's institutional and human capacities for improving its understanding on globlisation and trade. They also hold trainings and seminars on the WTO litigation process.

The establishment of a structured process in India, Pakistan and Bangladesh to investigate issues of violation of the WTO rules would be helpful for making their participation more significant and effective. The WTO Disputes Investigation and Enforcement Mechanisms have been instituted by the Department of Foreign Affairs in Australia to which affected parties can complain.It helps affected exporters to get a formal response within a definite time period (Nedumpara 2007).

India has some think tanks and academic institutions like the Indian Council for Research on International Economic Relations (ICRIER), the Centre for WTO Studies (CWS) of Indian Institute of Foreign Trade (IIFT), the Research and Information System for Developing Countries (RIS) and the National Council for Applied Economic Research (NCAER) whichhave been active on the issues of economics and international trade. However, there is lack of special think tanks or institutions which conduct studies related to the matters of the WTO and the DSM. Even if there are few institutions working on the WTO matters, these have not proved to be very effective. They need more attention of the government. India needs to develop institutions which conduct researches of high caliber related to trade and dispute settlement that would be helpful for Department of Commerce and other Stakeholders of trade in India.

As international trade is an important aspect for countries,there should be a separate department related to the WTO matters in every universityinthe South Asia countries. The researches related to the WTO and the DSS should be encouraged which would help in understanding the WTO matters and overcoming the problems that countries face in these matters. The recommendations through several researchesby young minds on the WTO would be helpful for the government of respective countries in dealing with external trade and the WTO matters.

India has lessened its dependence on the ACWL over the years. The dependence on the external legal supports reduces as countries' gain experiences of the dispute settlement processes.

There can be two ways through which involvement of these countries in dispute settlement proceedings could be made effective. The reforms can be initiated within these countries by improving their internal capacities by building effective infrastructures related to trade. But according to Hoekman and Mavroidis (1994), this infrastructure building is not within the scope of the WTO. Therefore, the WTO should bring about reforms in the WTO DSS through several negotiations and discussions with countries whose participation is low and should try to overcome the problems related to upstream component of the disputes.

5.6 Conclusion

Though the rule based WTO provided with a legal platform DSS, where the developed, the developing and the least developed countries would have equal opportunities to file trade disputes, large number of developing and the LDCs are missing from the WTO DSM. There have also been several problems in the provisions of the ADA for the developing countries and the LDCs. The provisions of the ADA like construction of normal value and export price, initiation of investigation, definition of like products, method of price comparison, sunset reviews etc. negatively affect the developing countries in comparison to the developed countries. These provisions are detrimental to the developing countries as they have no role during negotiations on the anti-dumping code as the provisions are evolved considering the interests of the developed countries. The problems in the provisions of the ADA prevent effective participation of the developing countries and the LDCs.

The GDP and share in the world exports affect the participation of the countries in the WTO DSS. India with high GDP and large share in the world exports is pre dominant user of the WTO DSS whereas other countries like Afghanistan, Maldives and Nepal with low GDP and minimal share in the world exports, which is equal to zero are

completely absent from the WTO DSS. Pakistan and Bangladesh have participated in the WTO litigation but their participation is very low.

Several other reasons which are constraints for the small countries in approaching the WTO DSS have been analysed in the chapter. The challenges like financial and legal constraints, lack of human, institutional and stakeholder capacities, weak civil society, lack of cooperation between private sectors and government, absence of special institution on trade matters, etc. affect the countries' participation. The recommendations together with challenges have been provided in the chapter. These include strengthening the office of the ACWL and the Secretariat and improving the provisions of the SDT to improve participation of the developing and the LDCs. Most of the South Asian countries face these challenges of approaching the WTO DSS.

The South Asian countries should act as a region like the EU which would help them in discussing their trade problems with each other before finally approaching the WTO DSS. The SAARC can act as a significant platform to discuss the issues on WTO matters. As India has more experience and participation related to the disputes of the WTO, it can guide other countries of South Asia for enhancing their participation. These South Asian countries should start participating further as co-complainants and as a third party. An example of such participation can be seen in case of Chinese Taipei that does not have many disputes as complainant but has large number of cases as third party.[53] Once these countries gain experience through third party participation and co-complainant, it would provide them with first-hand experience of enhancing their legal capacities by providing training and knowledge to their lawyers in these disputes.Subsequently they can initiate disputes as single complainant against other countries. This was done by India and Pakistan. Pakistan participated as a third party and a co-complainant before initiating its own dispute as sole complainant against the USA.[54] Therefore, a sincere effort should be

[53]As Complainant, it has initiated only 6 cases and does not has any case as a respondent but as a third party it has participated in 98 cases.
[54]Pakistan –US dispute was the dispute initiated by Pakistan against the USA when it imposed transitional safeguard measures on combed cotton yarn from Pakistan.

made in order to enhance the participation of South Asian countries where India should play an important role.

The next chapter is “Conclusion” that summarises findings of all the chapters of the study.

Chapter 6
Conclusion

The WTO allows its members to impose non-tariff barrier in form of anti-dumping measures to prevent unfair trade practices of cheap and low-priced imports which hamper domestic industries of the importing countries. However, these measures have been misused by countries and in fact extensively used as non-tariff barriers. Increased trade liberalisation through reduction of tariffs at the WTO and adoption of anti-dumping laws by large number of developing countries have led to an extensive use of non-tariff barriers especially the anti-dumping measures. The WTO Dispute Settlement System (DSS) is the judicial body of the WTO that regulates trade disputes among member countries. The WTO DSS has been mainly dominated by the developed countries and few developing countries like India, Brazil, South Africa and Indonesia. Sixty percent of disputes are initiated by these developing countries and rest of the developing and the LDCs have a very low participation.

Among the South Asian countries India, Pakistan and Bangladesh have approached the WTO DSS for disputes challenged under different WTO agreements. Nepal, Afghanistan and Maldives are absent from the WTO DSS platform. Bhutan has not even acquired full membership and is the observer state of the WTO. The WTO DSS is an important platform through which misuse of the anti-dumping measures can be prevented as countries can approach the DSS if they feel that the anti-dumping measures imposed on their products are not in accordance with the WTO ADA. Till June 2019, 131 disputes have been initiated under the anti-dumping agreement. Among the South Asian countries, two developing countries India and Pakistan and one LDC Bangladesh have anti-dumping disputes in the WTO DSS. India has been actively involved in the anti-dumping disputes in comparison to participation of Pakistan and Bangladesh. Bangladesh is the only LDC to have a dispute as a complainant raised under the ADA in the WTO DSS. Nepal, Bhutan, Maldives, Sri Lanka and Afghanistan are absent from the WTO DSS platform on disputes challenged under the ADA.

The WTO DSS has played an important role in several disputes initiated by the South Asian countries like India and the EU on cotton type bed-Linen dispute, India and the

USA on the Byrd Amendment and the Custom Bond Directive disputes, and India and Bangladesh on lead-acid battery. The ruling in these disputes favoured the complainant and the respondents had to bring its measures in conformity with the Anti-Dumping Agreement (ADA).

This study has examined the practices of dumping, anti-dumping and the WTO DSS in the context of international trade and with reference to participation, experiences and the role of India, Pakistan and Bangladesh in the anti-dumping disputes of the WTO. The study has investigated the reasons for differences in the level of participation of the two developing countries India and Pakistan in the WTO disputes. It also examined circumstances favourable for Bangladesh, an LDC, to approach the WTO DSS. The research analysed the challenges and constraints to the participation of major developing countries and the LDCs in the WTO DSS on anti-dumping disputes. Two hypotheses have been tested in the study. First, Bangladesh was able to approach the WTO DSS as it overcame its financial constraints. Second, India's economic strength has been major contributing factor in its frequent use of and success at the WTO DSS on anti-dumping disputes compared to the other developing countries including Pakistan.

India's participation in the WTO DSS demonstrates that it has evolved over the years from being an obstructionist in the Uruguay Round negotiations to become a voice for the major developing countries. It has developed its human, institutional and stakeholder capacities over the years of its participation in the WTO DSS. Disputes like the India-Quantitative Restriction, India-Patent and India-Autos have played a significant role in shaping India's trade policies in conformity with the WTO agreements. India has been involved in a few high-profile cases such as the US-Shrimp dispute, the US-Byrd Amendment dispute, the EC-Bed Linen dispute and the EC-Tariff Preferences dispute. The US-Shrimp dispute clarified that environment is also an important aspect of trade but policies to protect the environment cannot be practiced in a discriminatory manner and countries should not deviate from the Most Favoured Nation (MFN) principle of the WTO. The US-Byrd Amendment dispute clarified that national laws should be in conformity with the WTO agreements and no specific action against dumping can be adopted by the countries except for the measures mentioned under the WTO ADA. The EC-Bed Linen dispute rejected the practice of 'zeroing' that was adopted by the EU for calculating the dumping margin

in which negative dumping was considered as zero which increased the chances of dumping in the domestic market. The EC-Tariff preferences dispute clarified that discrimination cannot be made among countries in giving preferences. The rulings in these disputes clarified different provisions related to the Dispute Settlement Mechanism of the WTO.

India is among the major users of anti-dumping measures and has the largest number of disputes challenged under the ADA-nine as complainant and four as respondent, in relation to the disputes under other agreements of the WTO. The anti-dumping disputes of India are with the EU on unbleached cotton fabric, Polyethylene Terephthalate, cotton type bed linen, iron and steel and twenty seven different products, with the USA on Byrd Amendment, Custom Bond Directives and steel, with South Africa on cement, with Brazil on jute, with Chinese Taipei on seven different products and Universal Serial Bus and with Bangladesh on lead-acid battery. Pakistan has two anti-dumping disputes as a complainant and two disputes as a respondent. The disputes are with Egypt on Matches, South-Africa on Cement, Indonesia on Paper and the UAE on BOPP film. Bangladesh is the only Least Developed Country (LDC) that has approached the DSS when India imposed anti-dumping duties on its lead-acid battery. The dispute was mutually resolved as India withdrew its anti-dumping duties on imports of lead-acid battery from Bangladesh. This dispute demonstrates the success of economically minor trading state which was successfully able to challenge the measure of an economically powerful neighbour and achieve a favourable outcome. It validates the importance of the WTO DSS.

Analysing the GDP of South Asian countries with their participation in the WTO DSS including anti-dumping disputes, it was found that GDP, share in world export and the participation in the WTO DSS including anti-dumping disputes are positively related to each other for South Asian countries. India's GDP and share in the world export are higher than Pakistan and as a result, India has higher participation and success compared to Pakistan in the anti-dumping disputes. In order to approach the WTO DSS, the countries need to have financial and legal capacities to understand and pursue the disputes. If countries are not economically strong, they experience difficulties in approaching the WTO DSS. India has around 13 anti-dumping disputes in the WTO DSS both as complainant and respondent whereas Pakistan has only 4 disputes. If the overall participation, including disputes under other WTO

agreements, of both the countries is considered then India has around 53 disputes and Pakistan has only 13 disputes as complainant and respondent. The other South Asian countries Sri Lanka, Nepal, Maldives and Afghanistan have low GDP and zero share in the world trade and these results in their low or zero participation at the WTO DSS. It is also found that greater the countries' share in the world export, there are more chances of facing anti-dumping measures compelling countries to approach the WTO DSS. The share of the export of Pakistan and Bangladesh are less and they have faced very few anti-dumping measures which leaves them with fewer anti-dumping disputes. India's participation in the anti-dumping disputes is much higher compared to Pakistan and Bangladesh as more anti-dumping measures have been imposed on its products compared to the products of other South Asian countries. The anti-dumping measures and anti-dumping disputes have also found to be positively related to each other. The findings of the analysis shows the hypothesis that India's economic strength has been a major contributing factor in its frequent use of and success at the DSB on anti-dumping disputes relative to other developing countries including Pakistan has been found to be true.

The anti-dumping disputes are technical in nature and in order to understand anti-dumping measures, the experts in the technical knowledge are required. Bangladesh being an LDC lacked the financial and legal capacities to hire such experts and lawyers. The private industry of Bangladesh, Rahimafarooz, the largest producer and exporter of lead-acid battery, agreed to incur the cost of the case and it came as a major relief for the government of Bangladesh. The Advisory Centre on WTO Law (ACWL) also played an important role by providing legal assistance at one-tenth of the total cost of the dispute. The service of the ACWL is provided only after the case is initiated in the WTO DSS. Financial assistance is required even before a dispute is initiated to prepare and present the case to the DSB for consultation leading further to the panel and Appellate Body Review. Lack of financial capacities is one of the reasons that prevent countries from approaching the WTO DSS. The government of Bangladesh also agreed to challenge India's anti-dumping measures once it realised that Rahimafarooz would incur the cost of the dispute. If the financial support would not have been provided by Rahimafarooz and the ACWL, it would have been difficult for Bangladesh to initiate a dispute against India in the WTO DSS. Therefore, overcoming the financial constraints through private sector's support helped

Bangladesh in breaking through the psychological barrier that the LDCs face for challenging an economically powerful country. Bangladesh thus became the first LDC to approach the WTO DSS by challenging the anti-dumping measures of India on exports of its lead-acid battery. So, the hypothesis that Bangladesh was able to approach the DSB on anti-dumping disputes as it could overcome its financial constraint stands validated.

The countries in anti-dumping disputes with India are countries of diverse economies with different income level and at different levels of development. The group includes the EU, the USA, South Africa, Brazil, Chinese Taipei and Bangladesh. These are developed, developing and least developed countries and the countries from high-income, upper middle-income and lower middle-income group. The sectors which have been targeted in these disputes are iron and steel, pharmaceuticals, textiles and chemicals which are majorly exported by India. In the year 2018, India's share of exports in organic chemical was 5.5 percent, textile was 4.9 percent, pharmaceutical was 4.4 percent and iron- steel was 3.1 percent. India has experience of all the stages of the WTO DSS challenged under the ADA including the consultation stage, panel stage, Appellate Body Review stage, the retaliation stage and the implementation stage. India has achieved rulings in its favour in the EC-Bed Linen dispute, the US-Byrd Amendment dispute, Brazil-Jute Bags dispute and the US-Custom Bond Directives dispute. Most of the disputes concerning India are related to imposition and collection of anti-dumping duties.

The groups in dispute with Pakistan include three developing countries Egypt, South Africa and Indonesia and one developed country, the UAE. These countries are also from the group of lower middle-income, upper middle-income and high-income economies). Pakistan, unlike India, is not an active participant in the WTO disputes challenged under the ADA and its participation is very low. The sectors of Pakistan that faced anti-dumping measures are cement which accounts for 2.6 percent of Pakistan's total exports and matches which has export recipients of $9.1 million annually (2018). It demonstrates that the sectors which have been targeted are of export interest to Pakistan. Pakistan lacks the experience of anti-dumping disputes beyond the consultation stage that is a panel and Appellate Body process as its disputes are either in the consultation process or have been mutually resolved between the disputing parties.

India and Bangladesh have filed disputes with the countries with which they shared either bilateral trade relations or were working together on the same platform in the matters of trade. India challenged Brazil's anti-dumping measures on its jute bags at a time when both countries were negotiating together at the BRICS and the Doha Round negotiations. The government of Bangladesh was skeptical in approaching the WTO DSS against India's anti-dumping measures as it would have affected the relationship between the countries. However, the Bangladesh Tariff Commission (BTC) and the Permanent Mission of Bangladesh in Geneva viewed that trade disputes among countries are common and do not affect the friendly relations between countries. Though, these examples show that the relations between countries did not become a hurdle in approaching the WTO DSS, this cannot be completely true as large number of developing countries and the LDCs are missing from the WTO DSS and one of the reasons for such absence is fear of losing benefits from other powerful countries under bilateral trade agreements. Therefore, the relations among countries affect the country's decision to approach the WTO DSS.

The developing countries are mostly targeted for anti-dumping measures by both the developing and the developed countries. Several problems have been found in different provisions of the ADA and these provisions affect developing countries negatively compared to developed countries. The ADA is formulated in a way that developing countries are vulnerable to such measures as compared to the developed countries. The reason is that the negotiations on the anti-dumping code are led by developed countries and not developing countries keeping their interests in mind and to protect their own industries. The provisions related to the normal price, export price, methods of price comparison, like products, imposition of anti-dumping measures are problematic for the developing countries as has already been discussed in Chapter five of the thesis. These provisions affect the developing countries and harm their trade. The application of the same measures to both the developed and the developing countries are not justified.

The majority of the developing and the least developed countries are missing from the WTO DSS. These countries face several problems which prevent them from raising their trade concerns in the WTO DSS. The problems like financial and legal constraints, lack of human, institutional and stakeholder capacities, lack of proper communication between public and private sectors, lack of in-house capacities to

formulate and present the dispute, weak civil society and NGOs, failure of the SDT provisions, the ACWL and the Secretariat are hurdles to their participation in the WTO DSS.As far as anti-dumping disputes are concerned, the panel's role is very weak and it cannot play a significant role in such disputes.

The absence of several developing and all the least developed countries but Bangladesh from the WTO DSS is due to the problems at two levels; at country level and at the International institutional level. The developing countries lack the capacities to identify and prioritise their trade problems to challenge the measures at the WTO DSS. Even before the dispute is initiated, the countries need legal assistance to prepare and present the case for the WTO proceedings. The services of the Secretariat and the ACWL are provided for legal assistance to these countries but only after the cases are initiated in the WTO DSS. At the institutional level, these proceedings are lengthy, expensive and time taking which hamper the trade of the developing and the least developed countries. Though the provisions of the Special and Differential Treatment (S&DT or SDT) have been provided for special preferences for the developing countries, it has several drawbacks and has failed to address the concerns of the developing countries.

The research brings forth the following recommendations to enhance the participation of the missing developing countries and the LDCs not only in anti-dumping disputes but their overall participation, including disputes covered under different agreements of the WTO, in the WTO DSS.

There can be two ways in which the provisions on the ADA can be improved. One, the whole provisions can be replaced with a new one with more detailed, specific and easy language so that it is not misinterpreted by the member countries. Second, there should be several negotiations on different provisions of the ADA which need to be clarified in order to prevent their misuse. The developed, the developing and the least developed countries should have equal role in these negotiations on the ADA. The first option of replacing the whole provision is difficult to achieve as it would require much time and several negotiations on the ADA and it would undermine the earlier negotiations conducted over the years. Subsequently, the replacement of the existing provision is not only difficult but also not possible. Therefore, the second option that through several WTO negotiations, the issues related to the ADA should be discussed

and analysed to make provisions clearer, transparent and justified even for the developing countries and the LDCs. The other suggestion is that adding public interest clause in the ADA is expected to balance the interests of both the domestic producers and consumers but this would add administrative burden and financial cost for the developing countries.

The role of the panel needs to be strengthened in anti-dumping disputes and it should have the power to change the findings of the authorities of the respective countries regulating the anti-dumping investigations. The panel should be able to reevaluate and reexamine the findings of the authorities of a particular country which can prevent its misuse and frequent use by countries.

The S&DT provisions for developing countries should be strengthened to encourage the participation of the developing countries and the LDCs. The member countries of the WTO are at different levels of development. Therefore, the WTO provisions should be such to benefit the developing countries and the LDCs together with the developed and other beneficial developing countries. The SDT provisions should be clear and transparent so that small countries can benefit from these measures. In order to make these provisions meaningful, it should be limited to those developing countries and the LDCs which really require these services and not for other developing countries which are at a favourable position in the international trade. The WTO should make different groups to categorise developing countries separately on the basis of their economic position. The economic criteria need to be established for recognising country's status that involves levels of economic diversification and GDP per capita as considered by the IMF and World Bank. Developing countries should play a significant role in several negotiations of the WTO to get the S&DT Provisions in their favour and should ask for strengthening the S&DT provisions both at the theoretical level that is conceptual and practical level that is during their implementation. The S&DT provisions should be given in form of collective retaliation and reimbursement of legal costs for the developing countries that can enhance their participation in the WTO DSS.

The participation in the WTO DSS is linked with domestic governance of the countries. The bureaucracies of particular countries need to be strengthened, mechanisms related to internal decision making need to be reinforced and institutions

should be built for proper communication and coordination within the governments' department and also between private sectors and the government. Such coordination would help countries in resolving trade disputes at the WTO DSS. Such coordination was seen in the dispute between India and Bangladesh where Rahimafarooz and Bangladesh's government cooperated and communicated properly and effectively which resulted in their success in the WTO disputes.

There should be several provisions in the WTO for developing and the least developed countries to provide them with legal assistance even before the dispute is initiated as the problems exist even before initiation of the dispute. The countries, unless they identify and prioritise their trade problems, they cannot initiate disputes in the WTO DSS. Legal and financial capacities are required to identify such trade problems. The WTO should come up with certain provisions to overcome the problem of in -house capacities of the countries. The ACWL should have a separate branch in different countries for solving this issue of legal constraints even before the dispute is initiated in the WTO DSS.

The legal capacities of the countries can be developed by having a set of permanent officers who deal with the trade subjects for a longer time period. The WTO is a system and unless the officers are fully trained in the WTO matters, they cannot play an important role. Moreover, the problem is that the officers are frequently transferred which affects the functioning of these lawyers in the WTO disputes. The domestic law firms of respective countries should be developed for improving legal capacities and if the situation demands the foreign firms should be engaged.

The countries should improve their stakeholder capacities which will be beneficial in approaching the WTO DSS. Important roles have been played by the government firms, public sectors and private industries in the WTO litigation process. Significant roles were played by the MPEDA and the SEAI in the US-Custom Bond Directive dispute, SAIL in the US-Steel dispute, Cotton and Textile Industry of India (Texprocil) in the EC-Bed linen dispute and Brazil-Jute dispute. Rahimafarooz, a private industry and a major producer and exporter of lead- acid battery in Bangladesh, played an important role in the lead-acid battery dispute between Bangladesh and India. The experiences of several disputes enhance the capabilities of repeated players to participate in the WTO disputes. The Texprocil was prepared with

facts and information regarding adverse impact of several measures on the domestic industries of India. It presented details to the government on the violation of WTO agreements in the EC-Bed Linen dispute and Brazil-Jute dispute. The Texprocil was able to impact these disputes as they already knew the significance of challenging unfair trade measures in the WTO DSS and impact of such anti-dumping measures on their industries.

There is an absence of a large number of South Asian countries from the platform of the WTO DSS not only on disputes challenged under the ADA but also in respect of other agreements of the WTO. Their participation can be enhanced by engaging as a 'co-complainant' and 'third party' in several disputes before initiating dispute solely as a complainant. The participation as co-complainant and third party would act as an instrument for building legal capacities for lawyers and government officials. These provide experiences to the lawyers and legal experts of the respective countries in the process of litigation. Such efforts were made by India and Pakistan which have participated in a large number of disputes as a third party. India has 160 disputes as third party whereas Pakistan has 10 disputes till June 2019. Participation as third parties enhances the legal capacities of local lawyers to deal with the international trade.

An important role can also be played by the SAARC and the South Asian countries can be represented as one region instead of individual countries similar to the EU countries. The SAARC can be used as a platform where South Asian countries can discuss matters of international trade and get opinions and recommendations from the other member countries. The countries should also approach the WTO DSS jointly if the trade concerns of a particular country are also of an interest to them. This will strengthen the voice of these countries at the international level. However, it is difficult to achieve such status for South Asia for different reasons as discussed in Chapter five of the thesis. The areas of investment, governance, infrastructure, implementation and facilitation of trade need to be strengthened in order to promote regional integration. This can be possible by filing a trust deficit vacuum and building confidence among countries.

Political will and commitment are required for integrating South Asian countries. The global world and its changing dynamics provide opportunities to these countries to

overcome their differences and make efforts to accommodate each other in the process of regional integration. The countries as such can act as a pressure group not only at the DSS but also at other international forums.

There should be effective think tanks and academic institutions in these countries to conduct research on the matters of international trade. This would enhance knowledge on the WTO and its Dispute Settlement Mechanism. India and Pakistan have few academic institutions on international trade but the need is to increase their specialization, number and efficiency.

There should be measures to strengthen the services of the ACWL and the secretariat so that the LDCs and developing countries are encouraged to participate in the WTO DSS. The ACWL should help small countries including South Asia by providing them with trainings and understanding on the technicalities and complications of WTO laws including anti-dumping.

Developing countries have played an important role in the Doha round negotiations and they should push for adopting measures beneficial for the developing and the least developed countries in upcoming negotiations of the WTO. Here, an important role has to be played by India and Brazil, having emerged as the leader of the developing countries in order to guide the negotiations and raise important issues of concerns for them.

Though, the role of developing countries has increased in the use of anti-dumping measures and the WTO DSS, the participation is confined to only few developing countries. Most of the developing countries and the LDCs are either completely absent from the WTO DSS not only in anti-dumping disputes but also in disputes challenged under other WTO agreements or their rate of participation is very low. Among the South Asian countries, India's participation is much higher compared to other countries in the anti-dumping disputes of the WTO DSS. Pakistan and Bangladesh's participation is very low and rest of the South Asian countries are absent from initiating any anti-dumping disputes is the WTO DSS. There are several problems in the ADA that negatively affects the LDCs and the developing countries as the negotiations on these agreements are dominated by the developed countries considering their interests. The provisions of the ADA need to be revised to make it equally effective for the developed, the developing and the Least Developed

countries. There is a need to develop financial and legal capacities, government institutions on WTO DSS matters, better cooperation and communication between private sectors and government, strengthening the Advisory Centre on WTO Law and the Special and Differential Treatment provisions. Regular participation of missing countries as co-complainant and third party in the WTO DSS would provide first hand experiences of the litigation process of the WTO disputes.

The South Asian countries can act collectively as a region at the international platform where India can play an important role as it has experience of several WTO disputes compared to the other South Asian countries. The SAARC can also play an important role as a platform for collective representation in negotiations for the South Asian countries concerning the WTO disputes. Finally, it is important that countries develop research capacity and expertise on international trade matters and especially on dumping, anti-dumping, the WTO and its Dispute Settlement System.

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Appendix

Questionnaire

1. Do you think that the ADA is being misused by countries in order to protect the surge of imports in their market? How can the misuse of ADA be prevented?

2. What is your view on increasing number of developing countries as respondent to WTO cases?

3. What in your opinion leads to "mutually agreed solutions" of disputes between countries?

4. What is your opinion on the time taken for litigating a dispute? Should there be speeding of the process?

5. From following import substitution policies to becoming an active developing country member in the dispute settlement system, India has emerged as an active participant in the WTO cases. What do you think about the degree of participation of India?

6. The USA in the Byrd Amendment dispute took three years to comply with the rulings of the Appellate Body. What reforms should be made for countries to comply with rulings of the panel and the Appellate Body?

7. How far was imposition of anti-dumping duties on the lead acid battery from Bangladesh justified even after the first finding that the volume of dumped imports was less than 3 percent of the like products?

8. Bangladesh's participation in the WTO dispute is important in the history of the dispute settlement system. Do you think that this dispute is important for other LDCs of the WTO?

9. Can South Asia, in your opinion, like the EU represent as one region at the dispute settlement system?

10. Do you think that coalition assistance would be helpful for smaller countries in the dispute settlement system?

11. Are reforms required in the dispute settlement system of the WTO to meet the needs of developing and least developed countries?

12. Should monetary compensation be given to complainant countries hurt by anti-dumping measures of other countries?

13. What should be done so that developing and least developed countries can retaliate effectively? Can there be some alternative that benefits them?

14. Why do you think that legal capacities are important for initiating a dispute?

15. Can you give some insight on strengthening legal capacities of developing countries? What are the challenges that these countries face in building the legal capacity?

16. Seven out of eleven frequent complainants are developing countries? Are there any valuable lessons to be drawn from such participation?

17. How do private sectors contribute in different disputes of developing countries in the dispute settlement system of the WTO?

18. How far are Special and Differential Treatment Provisions effective for developing and least developed countries' participation? Do these provisions need reforms?