

**ANTI-DUMPING AS A MEASURE OF CONTINGENT
PROTECTION: AN ANALYSIS OF INDIAN EXPERIENCE**

ANTI-DUMPING AS A MEASURE OF CONTINGENT PROTECTION: AN ANALYSIS OF INDIAN EXPERIENCE

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of Philosophy in Applied Economics of the Jawaharlal Nehru University*

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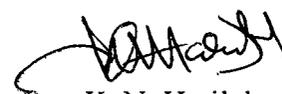
*I hereby affirm that the work for this dissertation, **Anti-dumping as a Measure of Contingent Protection: An Analysis of Indian Experience**, being submitted as part of the requirements of the M.Phil. Programme in Applied Economics of the Jawaharlal Nehru University, was carried out entirely by myself. I also affirm that it was not part of any other Programme of study and has not been submitted to any other University for the award of any Degree.*

June 29, 2004



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Certified that this study is the bona fide work of Nandana Baruah, carried out under my supervision at the Centre for Development Studies.



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To my parents.....

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ABSTRACT OF THE DISSERTATION
ANTI DUMPING AS A MEASURE OF CONTINGENT PROTECTION
AN ANALYSIS OF INDIAN EXPERIENCE

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Use of anti dumping measure as a trade protection tool, has increased phenomenally in the recent years. One significant aspect of this new trend is the increasing involvement of developing countries. These countries have not only initiated an alarmingly large number of anti dumping cases of late, but also most often, they are the victims of these anti dumping initiations. However, not many studies have come out examining the anti dumping behaviour of these countries. In this context, the present study tries to analyse Indian experience with anti dumping measures. The main objective of the study is to understand the trends and patterns in the use of anti dumping measures by India. Secondly, we try to identify and analyse the various factors, which might have influenced the anti dumping procedure in India.

The study is based on secondary sources of information. As very limited information is available on anti dumping cases, study has relied on several sources to compile the relevant information. Like all other WTO member nations, India has brought down its tariff levels significantly, as per the commitments made under the WTO framework. However, this reduction in conventional barriers to trade has been accompanied by a disturbing trend of increasing use of anti dumping measures. Our discussion on the growth and pattern of anti dumping cases initiated by India shows that, within a short period of time, India has emerged as one of the most frequent users of anti dumping measure surpassing even the traditional users. The majority of anti dumping cases initiated by India are against developing countries. Another important feature of the cases initiated by India is that, these cases are concentrated in narrow range product groups, like chemicals and petrochemicals, iron and steel, pharmaceuticals and textiles.

The cases against India are also showing an increasing trend. India is facing more anti dumping cases in developed countries. The export items from India facing anti dumping cases are also concentrated in a few sectors, and are not very different from the products involved in the cases initiated by India. In the next part of our analysis our effort was to identify the various demand side as well as supply side factors influencing the anti dumping procedure in India. Our analysis of imports, both in general and also specific to the products involved in the anti dumping cases, indicated possible pressure from imports. This is particularly true for a number of developing countries facing dumping charges in India. These developing countries, even though have small share in India's total imports, exports to India from these countries are growing rapidly. Discussion on domestic industry revealed that, many of the producers of the like products are being performing poorly during the last decade. Thus, the trend in import growth and poor performance of the domestic industry may induce the import competing industries to seek anti dumping protection.

Our next attempt was to identify the factors, which influence the final decision of the anti dumping authority, whether to impose anti dumping duty or not. Our results rather indicated a tendency of the authority to provide anti dumping protection to industries, which are characterised by large number of firms. Imports and performance of the domestic industry though might have influenced the initiation of anti dumping cases, in the final decision of the authority, these factors did not seem to influence significantly.

We also examine the rationale behind the anti dumping cases initiated by India as well against India. The evidence showed that, these cases could not be justified on predatory ground. However, we cannot rule out the possibility of strategic behaviour on the part of the firms as well as anti dumping authority.

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Chapter 1

INTRODUCTION

A phenomenon, in the international trade arena, which has seized the attention of the economists as well as the policy makers in the recent years, is the phenomenal rise in the use of anti dumping measures. Among the users of anti dumping measures India features very prominently. This study is an attempt to analyse India's experience with anti dumping measures.

1.1. Contextualising the Problem

Although the benefits of free trade have been well documented in the literature, in the real world, international trade has always been subject to a number of restrictions. However, after the Second World War there was a conscious attempt by nations to remove the existing trade barriers and to move towards a free and liberal international trade regime. One major step in this regard was formation of General Agreement on Tariffs and Trade (GATT) in 1947. The member countries of GATT agreed for simultaneous reduction in tariff rates, guided by the key principle of open and non-discriminatory trade, thereby, giving rise to the term 'open multilateral system' (Baldwin, 1995). Since then, there have been several rounds of negotiations of GATT member countries. As a result of these continuing negotiations, the levels of tariff, applied by nations across the product groups, have come down substantially. By the end of the Uruguay round the tariffs in the developed countries came down to as low as around 3.5 percent (WTO, 2003).

However, one aspect of the increasing openness of the economies is that, it makes them more vulnerable to injury from adverse trade shocks. GATT founders were cognizant that injured import competing groups might use such shocks as an excuse to renege on GATT agreements; for that reason, exceptions to tariff obligations were provided within the GATT. These exceptions allow governments to protect the injured sector while not abandoning the tariff liberalisation achieved in other sectors (Dam, 1970). GATT exceptions allow governments to take actions in response to imports, which are deemed to have harmed the domestic competing industry. If injury is caused by 'fair' trade, e.g., an increase in imports due to tariff reductions, a government can invoke the escape clause to restrain imports; if injury is caused by 'unfair' trade, e.g., dumping or government subsidisation of imports, the policy response is antidumping or countervailing duties. These measures are mostly known as the contingent

measures of protection because, unlike tariff, their use is contingent upon the performance of the domestic producers or on some activities on the part of the exporters. Thus WTO has made the provision for contingent measures, which the member countries tend to use when their domestic industry get injured from excessive imports.

But, what has become a matter of concern in the recent years is the growing use of these contingent measures of protection. Among these contingent measures, the most widely used one is the anti dumping measures. Not only the frequency of the use of these measures has increased manifold but also the numbers of nations using these measures have shown an alarming rise. Though use of anti dumping as a measure of trade protection is not a new phenomenon, till 1980s, its use was confined to only a few developed countries. Moreover they used the measure sparingly. For instance, during 1960s all the GATT members together filed only about ten anti dumping petition per year (Prusa, 2001). But since 1980s there has been an extraordinary rise in the use of anti dumping measures. The traditional users were now joined by a number of other countries, a majority of them being developing countries such as- Argentina, Mexico, India, Brazil, Turkey and South Africa. More than 1600 anti dumping cases were filed worldwide during 1980s. The decade of 1990s experienced an even higher filing rate, of which the new users accounted for a significantly higher portion. However, what is interesting is that, most of the time, these developing countries are also the victims of anti dumping initiations. More than 70 percent of the total anti dumping initiations are aimed against these developing countries by the end of 2003.

Such unprecedented rise in the use of anti dumping measures in the last two decades has led many economists to conclude that, this new trend can not be explained merely in terms of the economic rationale behind using anti dumping and that it has become the newest tool for trade protection. As the conventional barriers to trade are coming down, countries are found to be using anti dumping measures as a 'back door to protection'. The vagueness of the WTO anti dumping agreement has also helped in this regard. The WTO agreement on anti dumping (article VI) sets only the broad guidelines for the member nations to frame their own anti dumping legislation. This gives ample scope to the nations to interpret the various clauses of the agreement to suit their purpose.

Examining the immense popularity of the anti dumping measures among the nations, a number of empirical studies have pointed out different ways in which, the anti dumping procedure in various countries have become subject to a number of pressure from different

sections. WTO made the provision for the anti dumping measures to provide relief to the domestic producers, if excessive imports causes injury to them. Therefore, injury to the domestic industry should be the guiding force for seeking as well as providing anti dumping protection. However, as has been pointed out by these studies, the factors affecting anti dumping procedure may go well beyond the economic performance of the domestic firms. The demand for anti dumping measures may come from the domestic industry, not because they are materially injured by dumping but due to the 'rent seeking behaviour' on their part. In the supply side, many times, the authority may agree to supply with protection to conform to certain national trade or commercial policy goals. Thus the available studies have tried to bring out the protectionist nature of the anti dumping measures.

However, most of these studies are done in the context of traditional users of anti dumping measures. Even though the fact that developing countries have become major users of anti dumping law has been recognised, their anti dumping behaviour has not yet been studied in detail. India provides an interesting case for analysis in this regard. India is one of the new members in the club of anti dumping users. But within a short span of time it has initiated large number of anti dumping cases against many of its trading partners. At the same time, it is also facing quite a few anti dumping cases in other countries. This calls for a detailed analysis of India's experience with anti dumping measures.

1.2 Objectives

Studies investigating the anti dumping activities of India are very limited. In one study Mitali Das Gupta (2001), explained how the anti dumping agreement has taken shape over the years, and analysed various provisions under the agreement and the implications it may have for the developing countries.¹ Another study that has come up in the recent years is by Anuradha Aggarwal (2002), where she tried to investigate whether the increasing anti dumping investigation in India could be justified on economic ground. Considering the rationales given in the literature for the use of anti dumping measures, she found that, none of them can justify the ever increasing popularity of anti dumping measures in India, and concluded that anti dumping has become nothing but a protectionist tool in the hands of the authority. Thus she suggested dismantling of anti dumping mechanism and merging it with the competition policy. However, whether anti dumping measures has been used or abused, there must be

¹ The study also discusses two anti dumping cases that India is facing, explaining the desecration shown by the investigating authority in the process.

some factors, which must have propelled the authority to initiate more anti dumping cases. Moreover, if India is using anti dumping duties to give protection to its domestic producers, then India's exports are also facing the same type of discretion in other countries. It may have serious implication for the Indian exporters who are very small players in the international trade scenario. Therefore it is important to see the situation regarding the anti dumping cases against India vis-à-vis the anti dumping cases filed by it. Considering these aspects, the study has set the following objectives.

- To analyse the pattern of the anti dumping cases initiated by India over the years, across industries/ product groups and also across the countries.
- To identify the various factors, which exert significant influence on the anti dumping procedure in India.
- To present a comparative picture between the cases initiated by India and the cases against India.

1.3. Database and Methodology

This study is based on secondary sources of information. However, the available database on anti dumping cases is rather weak to support detailed empirical inquiries into the question of anti dumping behaviour. Therefore, we had to rely on a variety of sources to put together the database. For information on anti dumping cases initiated by India we have relied mainly on the annual reports on anti dumping measures brought out by the 'Directorate General of Anti dumping and Allied Duties'. The report gives information on the anti dumping cases initiated by India and also on the cases initiated against India. The information on the cases initiated by India include name of the product, date of initiation, country (s) involved in the case, dumping margin, duty imposed and also the date of review. Besides these, the report also provides the HS (Harmonised System) codes for the products involved, which facilitate collection of relevant product level trade data. However, the level of disaggregation shown for these products differs. While for most of the products the HS code is shown at the 6 or 8 -digit level, for some others codes are given at 2-digit level. Moreover, for some of the products HS codes were not reported. We have taken the relevant trade data as per the level of disaggregation reported for each product. However, as the anti dumping authority of India itself says, this code is only indicative, it is no way binding on the commodity under investigation.

The information on the cases against India is even scantier. The annual reports of Directorate of Anti dumping and Allied Duties give information such as the name of the product, dates of initiation of cases and the name of the country initiating the case. But the reports give hardly anything beyond such identification information. As a complementary source we tried to use the 'semi annual reports' on anti dumping activities submitted by India to the WTO. Such reports give more detailed information on anti dumping cases. But such information are not uniformly available for all anti dumping cases. Therefore such information can not be relied upon for detailed quantitative analysis.

For the trade data we have relied on monthly statistics on foreign trade published by Directorate General of Commercial Intelligence and Statistics (DGCI&S) and the COMTRADE database maintained by United Nations. The data pertaining to India's export and imports from 1997-98 onwards is also available on the online databank maintained by the Commerce Ministry. We have acquired some data from that source also.

Finding information on the performance of the domestic industry was difficult. Such information is not available in the annual reports of the 'Directorate of Anti dumping and Allied Duties'. Therefore, for such domestic industry related information we have relied on CMIE's electronic database PROWESS. But here, there is a problem of correspondence between products under anti dumping investigation, which are reported by HS classification and the classification used by CMIE to report the information related to domestic producers. As many of the products involved in the anti dumping cases are reported at highly disaggregated levels of HS codes, we chose to search for the information in the PROWESS database by product names. But there are some limitations to this. Firstly, there is no single unambiguously defined name of a product. As a result, it is quite likely that two companies manufacturing the same product address the same by two different names. Another problem with product names is the degree of detail that a name suggests². Different companies provide different levels of details in this respect. Because of these reasons, some of the products facing anti dumping cases could not be included for our analysis and for some other cases the correspondence between the product and the information relating to the domestic industry may not be exact. One more limitation of PROWESS database is that it gives information

² For example, a company manufacturing 2.5 tonne split window air conditioners may state that it manufactures 2.5 tonne split window air conditioners or may state that it manufactures split window air conditioners or window air conditioners or merely air conditioners.

only on firms registered with the BSE or NSE. Therefore firms outside the coverage of stock exchange could not be included for our analysis.

1.4 Chapter Scheme

The study has been organised in five chapters, including this introduction. The second chapter is a prelude to our discussion on India's experience with anti dumping measures. In that chapter we discuss the changes in the international trade scenario, especially since the formation of GATT. The chapter gives an account of the effort made by GATT and WTO to reduce the existing barriers to world trade through various rounds of negotiation among the member nations. In the chapter we also discuss rise and spread of anti dumping measures as a widely used tool for protection. We conclude the chapter by discussing the various issues that has arisen due to such extensive use of anti dumping measures and reviewing the relevant literature.

In the third chapter looked into the anti dumping cases involving India. The first section of this chapter discusses the changing policy regime in Indian economy, which has special relevance to rise in the use of anti dumping measures. This is followed by a detailed discussion on the growth and distribution of anti dumping cases initiated by India and also of the cases filed against India. Thus, in that chapter our endeavour is to lay down the pattern in the use of anti dumping cases by India and also against India, before we try to explain this pattern.

In the next chapter, which is the fourth chapter of the study, our attempt is identify the possible factors influencing the anti dumping procedure in India. In the first section of the chapter we try to assess the various demand and the supply factors, which may influence the decision-making process at various stages. In the next section, we undertake a statistical exercise to analysis to identify the factors influencing the final decision making in the anti dumping investigation. Our basic aim here is toe find out, whether factors beyond the economic performance of the injured firms influence the decision of the authorities. In the next section we take up the question of rationale behind the anti dumping cases initiated by India and cases against India.

The fifth chapter summarises the major conclusions of the study. It also discusses the limitations of the study and possible areas of further investigation.

Chapter 2

CHANGING GLOBAL TRADING SYSTEM AND EMERGENCE OF ANTI DUMPING MEASURES

Introduction

Till the Second World War, world trade was characterised by protectionist practices and the 'beggar-thy-neighbour' policy followed by countries, which resulted in reduced world trade. To tackle this and to make the international trading system more open and liberal, GATT was signed in 1947. Since then, global trading system has undergone considerable change, where the protectionist regime followed by most of the countries earlier, slowly started giving way to a more liberal trading environment. This chapter is an overview of this changing global trading environment and emergence of anti dumping measures as a widely used trade protection tool. Section 1 of the chapter discusses the developments in the international trading scenario since the formation of GATT till recent times. It gives a brief account of the ongoing negotiations under GATT and WTO and the outcomes of such prolonged negotiations. Section 2 deals with the rise and spread of anti dumping measures. It discusses the trend in the use of anti dumping measures worldwide. The last section is devoted to a discussion on theoretical moorings of dumping and anti dumping measures and also to a review of empirical studies. The review helps us to examine various issues emerging out of the growing popularity of anti dumping measures.

2.1: Changing Global Trading Environment

Economists always acknowledged the desirability of free trade. As Krugman said:

'Economists have a notorious, only partly deserved reputation for disagreeing about everything. One thing that almost all economists have almost always agreed about however, is the desirability of free trade'.

(Krugman, 1993, pp.362).

Thus, since the days of Adam Smith, economists have generally been in favour of free trade policies. The main attraction of free trade comes from the theoretical elegance of the principle of comparative advantage, which Paul Samuelson¹ once described as the only proposition in

¹ Mathematician Stanislaw Ulam once asked economics Nobel Laureate Paul Samuelson whether he could point to an idea in economics that was universally true and not obvious at the same time. Samuelson's response was the 'principle of comparative advantage'.

economics that is at once true and non trivial (Dani, 1992). Free trade guided by the principle of comparative advantage allows nations to specialise in the production of goods in which they have lower opportunity cost than its trading partners do. If each country specialises in the production and export of the commodities in which they enjoy comparative advantage, all the participating members can reap benefits out of that. On the other hand imposition of tariffs causes net loss to the economy by distorting economic incentives to both producers and consumers. A move towards free trade will eliminate these distortions and increase the national welfare. Besides this, there are certain 'dynamic gains'² from free trade, which can not be accounted for in a typical cost benefit framework. (Krugman and Obstfeld, 2000). One such gain involves economies of scale. Protected markets, besides reducing competition and raising profits, may also lead to many domestic firms entering the industry. As a result, the economies of scale at which each firm operate may be inefficient. Free trade will help to eliminate such inefficiency by allowing only the efficient firms to operate in the market. Further, free trade might provide the entrepreneurs with incentives to learn and innovate new ways of production and export. Thus the benefits of free trade has been well recognised in the literature.

But, the notion of free trade has remained a well-canvassed but less practiced idea. When rulers first intervened in trade, they saw no compelling reason to treat all trading partners equally and consequently, some elements of protection have always been present in the international trading system. Industrial nations in general attained high levels of growth by maintaining some form protection or other. The USA had very high rates of tariff before 1930.³ Japan, which experienced very high growth rates, also used to maintain high protective tariffs⁴.

However, towards the end of the Second World War, there was a comprehensive effort by the community of countries to brake away from this protectionist legacy. The experience of the 'great depression' in the late 1920s and the early 1930s, which followed the protectionist episode in world trade, made the governments aware of the need to establish certain multilateral disciplines in the field of international trade. The devastating effect of the war

² These gains are called dynamic gains because increased competition and innovation may need more time to take effect than the elimination of production and consumption distortions.

³ It is worth mentioning here that in 1930 the U S Congress raised US tariffs on over 20,000 dutiable items to record levels by passing the 'Smoot-Hawley' tariff Act.

⁴ Joon C H (2002) discusses in details such protectionist regime maintained by the developed countries while they themselves were developing.

made the awareness all the more convincing. This led to the convening of a United Nations Conference on Trade and Employment in Havana, which resulted in the formulation of the 'Havana Charter'. The Charter was intended to provide not only world trade disciplines but also contained rules relating to employment, commodity agreements, restrictive business practices, international investment and services. However, the US, which was a major proponent of this entire exercise failed to ratify it. As a result of this, this charter could not be implemented. However, the international trade chapter was taken from the charter and was converted into the GATT in 1947. GATT was a multi-lateral treaty signed by 23 countries including the USA. It laid down certain agreed rules for conducting international trade among the contracting parties.

Several rounds of negotiations were organised, under the banner of GATT for reduction and if possible, even elimination both tariffs and non-tariff barriers. The two principles on the basis of which the negotiations proceeded were: 'non-discrimination' and 'reciprocity'; which meant that any reduction granted to any one of the trading partners were automatically extended to all the contacting countries. The first round of trade negotiation under GATT was held in Geneva in 1947, where discussions regarding cutting the existing rates of high tariffs started off. Discussions in the round resulted in 45,000 tariff concessions affecting \$10 billion of trade, about one-fifth of the world's total. (WTO, 2003). For the first five rounds of negotiation⁵, discussions concentrated on further reduction of tariffs. In the Kennedy Round (1964-67) for the first time, negotiations departed from product-by-product approach to across-the board, linear method of cutting tariffs for industrial goods. The working hypothesis of a 50 per cent target cut in tariff level was achieved in many areas. Concessions covered an estimated total value of trade of about \$40 billion. Besides this, the Kennedy Round brought about a GATT Anti-Dumping Agreement. However, it was in the Tokyo Round (1973-79), the first major attempt to address the problem of non-tariff barriers was made. A series of agreements on non-tariff barriers did emerge from the round of negotiation, in some cases interpreting existing GATT rules, in others breaking entirely new ground.

The last round of GATT negotiation was held in Uruguay, which started in 1986. This was the most complex, controversial and prolonged one, which concluded on 15th December 1993 after seven years of negotiation. Baldwin (1995) has classified the issues discussed in the

⁵ Geneva (1947), Annecy (1949), Torquay (1956), Geneva (1956) and Dillon round (1960-61).

Uruguay round into three broad categories. First, those issues, which were not previously, discussed in the GATT negotiations. These issues include trade in services, trade-related aspects of intellectual property right and trade-related aspects of investment measures.

The General Agreement on Trade in Services (GATS) commits the member countries to a set of general principles that include MFN treatment, transparency with regard to any domestic laws or regulations affecting trade in services and progressive liberalisation of trade in services. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) establishes minimum standards of protection for each category of intellectual property rights (IPRs). A key feature of the Agreement is that Members are required to provide within their national laws effective procedures and remedies for the enforcement of rights to the holders of those rights, mainly private enterprises. Negotiation on trade related investment measures (TRIMS) aims at eliminating trading requirements imposed on the foreign enterprises located within a country, that do not apply to the domestically owned firms. Practices such as – the foreign firm requiring to purchase a certain proportion of domestically produced goods or export a certain proportion of their output have become illegal under this agreement.

The second group of issues includes those, which have initially been covered by standard GATT rules but became excluded from GATT discipline for several reasons. These issues relate to agriculture and textile/apparels. Agreement on Agriculture clarifies how GATT rules will be applied to this sector. All Members are required to convert all non-tariff measures to tariffs (except for those products for which a special treatment have been negotiated) and bind 100 per cent of agricultural tariff lines. Members, with the exception of least-developed countries, are required to undertake reduction commitments with respect to market access, domestic support and export subsidies.

Agreement on Textiles and Clothing on the other hand provides for the eventual elimination of the 'Multi-Fibre Arrangement' (MFA) after a ten-year transition period. Exports covered by the MFA are subject to bilaterally agreed quantitative restraints or unilaterally imposed restraints on imports, typically applied at the product level but in some cases to various aggregates as well. MFA restraints will be phased-out in four stages.

The third group consists of traditional GATT issues. This include issues such as tariff liberalisation, dumping, government procurement, technical barrier to trade and dispute

settlement. Detailed discussions on these issues were held in order to eliminate the alleged 'unfair' trade practices followed by many of the member nations.

Thus the Uruguay round tried to address a considerably wider range of issues than the previous rounds of negotiations. One of the major decisions taken in the Uruguay round was to establish a new multilateral trade organisation. Accordingly WTO came into existence. The WTO framework ensures a 'single undertaking approach' to the results of the Uruguay Round - thus, membership in the WTO entails accepting all the results of the Round without exception. With the emergence of the WTO the process of trade negotiations achieved a formal shape and a new impetus.

2.1.1 Liberalisation of Tariffs

There are basically two forms of barriers that exist in world trade—tariffs and non-tariff measures. Tariff works through prices, by increasing the cost of imports and thus discouraging them. Tariffs, which are taxes on imports of commodities into a country or region, are among the oldest forms of government intervention in economic activity. They are implemented for two clear economic purposes. First, they provide revenue for the government. Second, they improve economic returns to firms and suppliers of resources to domestic industry that face competition from foreign imports. Tariffs are widely used to protect domestic producers' incomes from foreign competition. However, this protection comes at an economic cost to domestic consumers, who pay higher prices for import-competing goods and to the economy as a whole through the inefficient allocation of resources to the import competing domestic industry.

Since the formation of GATT a long distance has been traveled as far as tariffs are concerned, and substantial reduction in tariffs has been achieved in the successive Rounds of trade negotiations. By the end of the Tokyo Round of Trade Negotiations the tariffs in the developed countries had been brought down to 6.3 percentage on the industrial products which got further reduced to around 3.5 percentage on a trade weighted average, by the end of the Uruguay Round implementation period i.e. 1 January 2001 (WTO, 2003). Table 2.1 reports the tariff levels during the pre and the post Uruguay round of negotiation. It shows the weighted average tariff rates applicable to import of various product groups from all the countries and also to the imports from the developing countries specifically.

Table 2.1: Weighted Average Tariff Rates (in percentage): Pre and Post Uruguay Round

Items	Imports from all sources		Imports from developing countries	
	Pre-Uruguay round	Post-Uruguay round	Pre-Uruguay round	Post-Uruguay round
All industrial products	6.3	3.8	6.8	4.3
Fish & fish products	6.1	4.5	6.6	4.8
Wood, pulp, paper & furniture	3.5	1.1	4.6	1.7
Textile & clothing	15.5	12.1	14.6	11.3
Leather, rubber, footwear	8.9	7.3	8.1	6.6
Metals	3.7	1.4	2.7	0.9
Chemicals & photographic supplies	6.7	3.7	7.2	3.8
Transport equipment	7.5	5.8	3.8	3.1
Non electrical machinery	4.8	1.9	4.7	1.6
electrical machinery	6.6	3.5	6.3	3.3
Mineral products & precious stones	2.3	1.1	2.6	0.8
Other manufactured articles	5.5	2.4	6.5	3.1

Source: (Debroy, 1996)

It is very evident that tariff rates on the imports of industrial products in general have come down substantially by the end of the Uruguay round. In products like wood, pulp, paper & furniture, metals, and mineral products and precious stones the post Uruguay round tariff rates have come down to around 1 percentage. In the case of products like textile & clothing and leather, rubber and footwear, though the tariff rates have come down (post Uruguay round tariff rates for these two products are 12.1 percentage and 7.3 percentage respectively), they are still comparatively higher than the other product groups. In the case of the tariff rates applicable to the imports from the developing countries also, substantial reduction in tariff rates can be seen. This reduction in tariff level becomes evident when we consider the tariff rates of different countries too.

**Table 2.2: Scope of Bindings, Average and Bound Tariff Rates on Industrial Products
(For selected WTO Members)**

Countries	Share of bound lines(%)	Average final bound rates	Average applied tariff rates	Year
USA	100.00	4.0	4.4	2001
Canada	99.7	5.7	4.2	2001
EU	100.00	4.0	4.1	2002
Australia	95.5	11.6	4.7	2001/02
Argentina	100.0	31.8	31.4	2000
Brazil	100.00	29.6	13.8	2000
India	68.2	36.2	31.0	2001/02
Japan	98.7	3.8	3.9	2002/03
Hong Kong	32.6	0.0	0.0	2001
Singapore	63.6	6.3	0.0	2002
South Africa	95.7	18.1	10.9	2002

Source: WTO Annual Report, 2003

Table 2.2 shows percentages of bound lines, as well as tariff rates both 'average bound rates' and 'average applied rates'⁶ on industrial products of some WTO member nations. The share of the bound rates is around 100 percentage in most countries, with the exception of India (68.2 percentage), Hong Kong (32.6 percentage) and Singapore (63.6 percentage). Both applied and bound tariff rates are found to be very low for most of these countries. For countries such as the USA, Australia, Japan and also for the EU counties the applied tariff rates ranges between 3 to 5 percentage. In the case of Hong Kong both the bound and the applied tariff rates are 0 percentage. As against such low tariff rates maintained by the developed countries, developing countries such as India and Argentina are maintaining comparatively higher tariff rates. The applied tariff rates of these two countries are 31 percentage and 31.4 percentage respectively. However, even though the developing countries are retaining relatively high tariff levels, they have also been experiencing remarkable reduction in the level of tariffs.

But, in spite of the general trend towards reduced tariffs, a few reservations have been expressed regarding this process. Two of them are worth mentioning. Firstly, though average tariff rates have come down, this reduction has not been even for all the products and all the sectors. On the contrary, the low average tariffs conceal the high tariffs left in place for major

⁶ The "binding" tariff is the tariff that a country pledges not to exceed. And the tariff that the countries actually charge on imports is called the "applied" tariff.

agricultural and industrial export products from developing countries. The second complaint, which is often made by the developing countries against the developed countries, is the continuous practice of tariff escalation by them. Tariff escalation is the process by which relatively higher rates are applied to successive stages of production --raw –material to the final product. When an exporter faces an escalated tariff structure, he will find it easier to export unprocessed goods against processed goods. In this manner, tariff escalation has the potential of hindering the growth of manufacturing industries in the exporting countries and thus may pose to be a major constraint for vertical diversification of agricultural exports of the developing countries.

2.1.2 Non Tariff Barriers

Non Tariff Barriers (NTBs), refer to any trade barriers other than the tariff barriers. Baldwin (1970) defined ‘Non Tariff Distortions’ as:

‘Any measure (public or private) that causes internationally traded goods and services or resources devoted to production of these goods and services to be allocated in such a way as to reduce potential real world income’

NTBs normally include quotas, licenses or other types of surveillance price administration, restraints on purchase of foreign goods and administration of non-trade controls in a way intended to deter imports. Though the discussions on reduction of tariff level dominated the GATT negotiations from the very first round, discussions regarding the NTBs did not receive any such priority attention. But, considering the fact that, a substantial amount of world export is subject to NTBs, focus of the negotiation was extended to the NTBs in the Kennedy round (1962-67). However, as we have mentioned earlier more serious attention towards strengthening the disciplines on NTBs and thus preventing disguised obstacles to trade was given in the Tokyo round of negotiation held in 1973-79. Tokyo round resulted in a number of agreements, popularly known as Tokyo Round of Codes. These agreements cover the areas of subsidy, dumping, government procurement, technical barriers to trade, custom valuation, import-licensing etc. NTBs are however, difficult to identify because of their very nature. They lack transparency and are hard to evaluate. Yet, considerable achievement has been made as regards NTBs by the end of the Uruguay round of negotiation. Table 2.3 reports the existence of NTBs in the post Uruguay rounds period in some WTO member countries, by SITC product groups.

**Table: 2.3 NTB Coverage Ratio by Product groups for Selected Countries, 2001
(Simple Average in Percentage)**

Product (SITC)	Australia	Brazil	China	European Union	India	Indonesia	Japan	Korea	Malaysia	Mexico	United States
Primary Products (0-4,68)	0.54	3.54	6.46	1.98	35.37	4.43	7.49	9.29	3.02	2.41	4.69
Agriculture (0-2,4)	0.63	3.76	7.30	2.30	42.24	3.35	7.69	10.76	3.53	2.54	4.56
Mining (3,68)	0.00	2.50	1.51	0.47	2.37	10.84	6.31	0.60	0.00	1.67	5.44
Manufactures (5-8,less 68)	0.31	3.91	8.00	10.77	27.18	1.07	5.08	0.37	2.41	0.80	5.23
Iron and Steel (67)	0.24	0.49	44.85	51.94	0.00	1.87	0.48	0.00	7.97	0.00	42.44
Chemicals (5)	0.89	0.87	3.90	4.18	16.73	1.56	1.15	1.25	0.75	0.14	3.35
Other Semi-Manufactures (61-64,66,69)	0.49	2.20	1.36	0.86	28.18	1.22	0.64	0.16	0.90	0.08	4.59
Machinery & Transport Equipment (7)	0.07	8.14	14.02	2.41	28.11	1.92	0.05	0.00	4.29	2.25	5.18
Textiles and Clothing (65,84)	0.06	5.36	2.85	87.21	80.58	0.00	23.06	0.38	0.30	0.00	1.13
Other Consumer Goods (81-83,85,87-89)	0.00	6.85	5.05	4.82	61.17	0.00	0.68	0.00	4.31	1.57	0.92
Other Products (9)	0.00	0.00	0.00	0.00	50.00	0.00	0.00	0.00	0.00	0.00	0.00
All Products (0-9)	0.36	3.88	7.62	5.79	34.66	1.82	5.61	2.37	2.54	1.16	5.08

Source: Bora, B, Kuwahara A and Laird S, 2002

Note: a) Calculation is based on most recent data available. Figures with zero may not necessarily reflect the absence of NTB but rather lack of data.

The table shows lower NTB coverage ratio for most of the product groups. Countries like Australia, has reduced the levels of non-tariff barriers to very low level across product groups during the post Uruguay round period. However, this is not so for all the developed countries. For example, in case of the EU, though the NTB coverage ratio for primary products has come down to 1.98 percentage, for manufacturing products it is much higher i.e. 10.77 percentage. Among manufactured products the iron and steel (51.94 percentage) and the textile and clothing (87.21 percentage) sectors are protected through very high levels of non-tariff barriers. In case of the USA though the NTB coverage ratio for all the products remains at 5.08 percentage, for iron and steel sector it is very high (42.44 percentage). Among the developing countries Brazil, Indonesia, Malaysia etc have reduced the NTB coverage ratio to very low levels. The NTB coverage ratios for all products groups for these countries are 3.88 percentage, 1.82 percentage, 2.54 percentage and 1.12 percentage respectively. Compared to these, India, however, is maintaining higher levels of non-tariff barriers. The coverage ratio for the all the products groups together is 34.66 percentage, which is much higher than many other countries. The incidence of non-tariff barriers is higher in primary products (35.37 percentage) than the manufactured products (27.18 percentage). Among manufactured items,

the textile and clothing sector (80.58 percentage) has the highest level of non-tariff barriers followed by consumer goods (61.17 percentage). Nevertheless, given the complex and diverse nature of the NTBs, the coverage of these measures have come down significantly over time for all countries.

2.1.3 Provision of Contingent Measures

However, while on the one hand WTO is trying to make international trade free from the existing trade barriers, it also allows the member countries put some form of restriction on its imports, to protect its national interest. The justification for these measures arises from the argument that nations need to have safety valves that allow them to refrain from performing their treaty obligations, ostensibly for national interest. If the national authority finds that a particular sector of the economy is not prepared to face the international competition or if any of the sectors is facing unfair competition from the international exporters, then they may take measures to restrict imports to that sector. These measures, known as the contingent measures of protection, are inbuilt in the WTO framework. They are called contingent measures because their use is contingent upon the performance of the domestic producers or on some activities on the part of the exporters. These measures mainly refer to ‘safe guard measures’, ‘anti dumping and countervailing measures’, ‘sanitary and phytosanitary measures’.

2.1.3.1 Safeguard Measures:

Article XIX of the GATT agreement provides the member countries with some safeguard measures, which the countries can use against sudden surge of imports if its domestic industry is injured or threatened with injury caused by such imports. However, here, the injury has to be serious. The surge in imports, which can justify safeguard measures, may be a real increase in imports (an absolute increase); or it can be an increase in the imports’ share of a shrinking market, even if the import quantity has not increased (relative increase). Safeguard measures are emergency measures. Such measures, which in broad terms take the form of suspension of concessions or obligations, can consist of quantitative import restrictions (quotas) or of duty increases to higher than bound rates (tariff measures).

The agreement sets out criteria for assessing whether “serious injury” is being caused or threatened, and the factors which must be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the

extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. In principle, safeguard measures cannot be targeted at imports from a particular country. However, the agreement does describe how quotas can be allocated among supplying countries, including in the exceptional circumstance where imports from certain countries have increased disproportionately quickly. A safeguard measure should not last more than four years, although this can be extended up to eight years, subject to a determination by competent national authorities that the measure is needed and that there is evidence the industry is adjusting. Measures imposed for more than a year must be progressively liberalised⁷.

2.1.3.2 Sanitary and Phytosanitary Measures :

The WTO Agreement on Sanitary and Phytosanitary Measures (SPS) provides for the first time a multilateral framework for dealing with Sanitary and Phytosanitary problems in international trade.⁸ It deals with the application of food safety and animal and plant health regulations. The agreement defines Sanitary and Phytosanitary measures as any measures applied:

- To protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food.
- To protect human life from plant or animal carried diseases
- To protect animal or plant life from pests, disease-causing organisms
- To prevent or limit other damage to a country from the entry, establishment or spread of pests.

The agreement requires that these are based on scientific principles and are not maintained without sufficient scientific evidence and are applied to the extent necessary. The main aim of the SPS agreement is to prevent domestic SPS measures having unnecessary negative effects on international trade. The agreement provides the national authorities with a framework to develop their own domestic policies. It encourages the countries to base their SPS measures on international standards, guidelines or recommendations. However the agreement allows countries to introduce their own SPS measures which results in higher levels of protection

⁷ <http://www.wto.org>

⁸ It entered into force with the establishment of WTO on January 1st, 1995.

than that, which would be achieved by the measures based on international standards, if there is a scientific justification.

2.1.3.3 Subsidies and Countervailing Duties:

Agreement on Subsidies and Countervailing Measures (SCM) provides the countries with another form of trade defence measure. It addresses two separate but closely related topics: multilateral disciplines regulating the provision of subsidies and the use of countervailing measures to offset injury caused by subsidised imports. The definition of subsidy as given by the agreement covers three basic elements. Subsidy should involve a financial contribution by any public body within the territory of a member, which confers benefit to the receiving party. The SCM agreement creates two basic categories of subsidies prohibited and actionable⁹. Against the actionable subsidies countries can initiate countervailing action, because they may create different types of adverse effects. This may take the form of injury caused to the domestic country by subsidised imports in the territory of the complaining member. Again, there may be nullification of benefits accruing under the GATT 1994. This arises mainly where the market access presumed to flow from a bound tariff reduction is undercut by subsidisation.

Part V of the SCM agreement sets forth some conditions that must be fulfilled in order to impose countervailing duties. To offset protection and price advantage, the importing country imposes a countervailing duty, in addition to regular tariff duty. It may be called a special duty, which is generally equal to the amount of the foreign subsidy. Thereby, the price differential between a subsidised imported product and locally produced product is taken away. A member may not impose countervailing measures unless it determines that there were subsidised imports, injury to a domestic industry and a causal link between the subsidised imports and the injury.

⁹ Some subsidies for example, export subsidy are prohibited because they are designed to directly affect the trade and thus are most likely to have adverse effects on the interests of other members. The actionable subsidies are on the other hand subject to challenge in the WTO through multilateral dispute settlement. Otherwise the countries can initiate countervailing action against such subsidised exports.

2.1.3.4 Anti- Dumping Measures:

Article VI of GATT sets out the basic rules for imposition of anti dumping duties ¹⁰. Dumping, as defined by the WTO anti dumping agreement, refers to the practice of exporting goods by a country to another country at a price lower than its 'normal value'. WTO allows anti dumping measures against two forms of dumping. One is 'price dumping', where the producers sells at a lower price abroad than in the home market. The other one is 'cost dumping' i.e. the practice of selling below cost in the export market.

Any anti dumping case involve three stages. First, determining the 'normal value' which is the comparable price at which the goods under complaint are sold in the ordinary course of trade in the domestic market of the exporting country or territory. Secondly they determine the 'export Price ' which is the price of the article exported from the exporting country or territory. Comparing the export price with the normal value the anti dumping authorities of a nation determine the margin of dumping which is the difference between these two. However, it is not enough to allege and prove dumping. What is important is that such dumping must cause injury to the domestic industry. The injury could be material injury, threat of material injury. In an Anti Dumping proceeding, it is imperative to prove that the dumping has caused injury to the domestic industry. No anti-dumping duty can be recommended until and unless it is established that the phenomenon of dumping has actually caused injury to the domestic industry.

In this way, WTO itself has made provision for some trade protection measures to be used by the member nations to protect its national interest and also to ensure 'level playing field' among all the countries. However, in the recent years, there has been continuous rise in the use of these contingent measures of protection. There is a lack of convincing explanation for this new trend towards protectionism, though many have tried to explain this phenomenon. One prominent view in the regard is that, most of the countries are trying to substitute the contingent measures for the conventional trade barriers that they used to enjoy earlier.

Among these different measures of contingent protection, the tool, the one which has been found to be most frequently used by a number of nations, is the anti dumping measures.

¹⁰ For a detailed discussion on the WTO anti dumping agreement and the Indian legislature on anti dumping, see the appendix of this chapter.

Hoekman & Leidy, (1989), for instance found anti dumping measures to be the most frequently used measure of protection during the considering the period 1980-87. During this period 541 anti dumping cases were implemented against 110 CVD and 23 safeguard cases. By 1999, anti dumping measures constituted more than 80 percent of all the contingent measures of protection¹¹ (Tharakan, 2000). Thus there has been an apparent preference among the nations for the anti dumping measures over other forms of contingent protection. Safeguard measures requires usually fulfillment of more strict conditions as there has to be serious injury to the domestic industry from the imports. Countries usually find difficult to satisfy this. Again, safeguard measures apply to all the exporting nations. The authority cannot discriminate among the exporting partners while imposing safeguard duty. Moreover, if a country restricts its imports of a particular commodity using safeguard measures it needs to compensate the trade partners in terms of other commodities. In case of countervailing measures, since they involve subsidy on the part of the government it involves more diplomatic visibility. Therefore, misuse of such measures are not so easy (Tharakan, 2000). But in the case of anti dumping measures, if a country's domestic industry is genuinely injured due to dumping of low priced commodities from some other countries, then it is natural and also legal for the county to take some preventive measure. Anti dumping is a measure to rectify the situation arising out of dumping of goods and its trade distortive effect. Hence, apparently it is a measure against unfair trade practices and countries can use it if it can 'prove' that dumping from a foreign country is causing injury to its domestic producers.

2.2: Rise and Spread of Anti Dumping

Use of anti dumping measures is not a new phenomenon in the history of trade policy of nations. It was first used by Canada as early as in 1904¹², followed by Australia in 1906. Considering the long history of the use of anti dumping measures GATT, which came into force in 1947, included a special provision (article VI) for the contacting parties to use anti dumping duties. This forms the basis of international rule regarding dumping. However, in the following years some member nations felt that the anti dumping measures were being used by some other countries to raise new barriers to trade, thus causing distortion to international trade flow. Therefore, during the Kennedy round of GATT negotiation (1962-1967), an 'anti dumping code' was introduced which set forth a series of procedural and substantive rules regarding the application of anti dumping duties (Jackson, 1989).

¹¹ Th shares of safeguard measures and countervailing measures were 4 percentage and 10 percent respectively.

¹² Canada introduced anti dumping law to deal with the predatory dumping of steel products by America.

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However, even then, prior to 1980s the use of anti dumping measure was not particularly common and its use was restricted to a few traditional users like the USA, the EC countries, Canada, Australia etc. Moreover, the number of anti dumping cases initiated was very less, investigated cases resulting in a duty being even lower. For example, none of the US anti dumping cases resulted in imposition of duty during the entire decade of 50's. In the 1960s all GATT members filed only about ten anti dumping petition per year. Until the early 1970s, less than 5 percentage of anti dumping cases resulted in duties. (Blonigen and Prusa, 2001).

But as pointed out by Blonigen and Prusa (2001), in the Tokyo round of GATT negotiation in 1979, two major changes were introduced in the anti dumping agreement. They are:

1. *The definition of "less than fair value" (LTFV) sales was broadened to capture not only price discrimination but also sales below cost¹³.*
2. *Secondly, there was a change to the procedures involved in showing material injury to domestic firms. The Kennedy Round Code had required that the dumped imports to be "demonstrably the principal cause of material injury", before duties could be imposed. However, in the Tokyo round this code was revised and such demonstration was made unnecessary. These changes made the anti dumping law more accessible to the countries.*

Immediately after this, there was considerable increase in the use of anti dumping measures among the traditional users like the USA and the EU¹⁴. However, a more interesting feature noticed during this time was that the traditional users were now joined by a number of other countries, a majority of them being developing countries. Six of these new users- Argentina, Mexico, India, Brazil, Turkey and South Africa accounted for 37 percentage of the total anti dumping measures in force by 2001 compared to 24 percentage in 1995. In fact during the same period the share of the four old users (USA, EU, Canada, Australia) has gone down from 70 percentage to 53 percentage. The rest of the developing country users of anti dumping, though are small users individually, have almost doubled their global share of measures in force (from 5 percentage to 9 percentage) during this period (Messerlin, 2001).

¹³ Cost-Based allegations now account for between one-half and two-thirds of U.S. AD cases and for as much as ninety percent of EU cases against developing countries. (Blonigen and Prusa, 2001).

¹⁴ Discussing the anti dumping use by the EU, Messerlin and Reed (1995) also maintain that, by the later half of 80s the trade policy of EU became more 'communitarised', due to its efforts to stimulate single European market and successive trade agreements among Central European countries. The resulting inability of the individual members to establish NTBs against successful new exporters prompted use of anti dumping actions as a major way to get protection.

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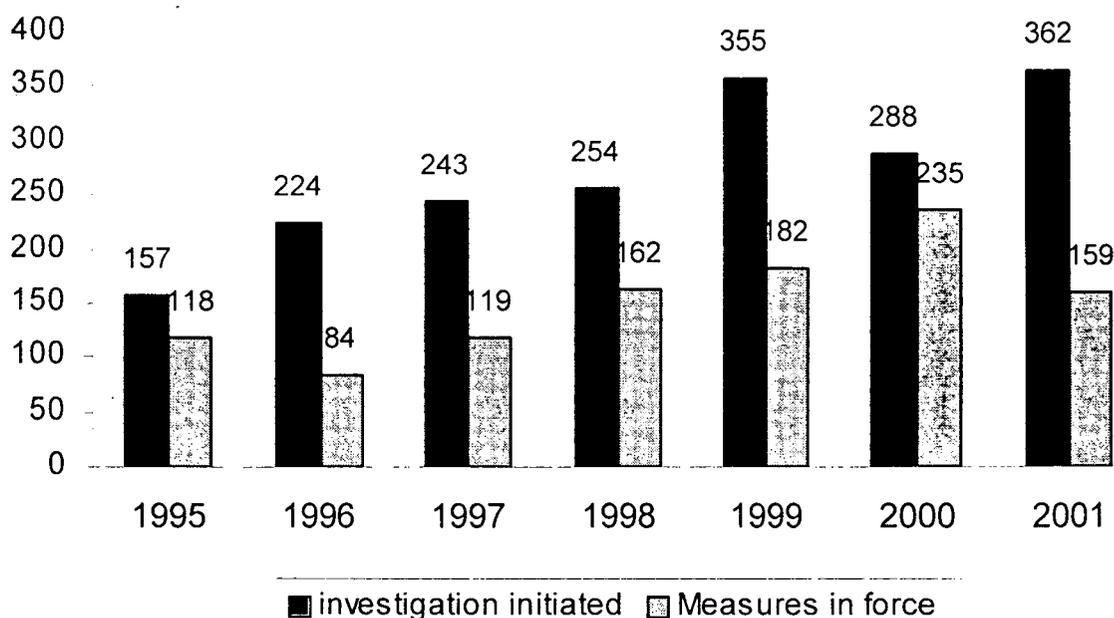


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The increasing use of anti dumping measures in the recent years is very much evident from figure2.1.

Figure 2.1: Anti dumping Investigation Initiated and Measures in Force (1995-2001)



Source: WTO Annual Report, 2003

Figure 2.1 shows a clear increase anti dumping cases initiated and anti dumping measures in force during 1995 to 2001. The number of cases initiated in the year 1995 was 157, which increased to 362 by 2001. The number of anti dumping measures in force is also showing a gradual increase.

Table 2.4 shows the initiation of anti dumping cases by some of the user nations. At the end of the year 2002 there are as many as 2160 anti dumping cases initiated by WTO member nations together. It is also evident from the table that the use of anti dumping actions is no more confined to the traditional users. A number of other countries, have become major anti dumping users, which are mainly the developing countries such as India, Argentina, Brazil etc. In fact, India has initiated maximum number of cases (331 cases) by 2002, which is followed by the USA (292 cases) and the EU countries (267 cases).

Table 2.4: Initiation of Anti dumping Cases by some WTO Member Nations (1995–2002)

Countries	1995	1996	1997	1998	1999	2000	2001	2002	Total
Total*	157	224	243	255	355	288	362	276	2160
Argentina	27	22	14	8	24	45	26	14	180
Australia	5	17	42	13	24	15	23	16	155
Brazil	5	18	11	18	16	11	17	9	105
Bulgaria	0	0	0	0	0	0	0	1	1
Canada	11	5	14	8	18	21	25	5	107
Chile	4	3	0	2	0	5	0	0	14
China, P.R.	NA	NA	NA	NA	NA	6	9	11	26
Chinese Taipei	NA	NA	NA	NA	NA	3	3	0	6
Egypt	0	0	7	12	5	1	7	3	35
European Community	33	25	41	22	65	32	29	20	267
India	6	21	13	27	65	41	79	79	331
Indonesia	0	11	5	8	8	3	4	4	43
Israel	5	6	3	7	0	1	4	0	26
Japan	0	0	0	0	0	0	2	0	2
Korea, Rep. of	4	13	15	3	6	2	4	10	57
Malaysia	3	2	8	1	2	0	1	5	22
Mexico	4	4	6	12	11	7	5	10	59
New Zealand	10	4	5	1	4	10	1	2	37
Philippines	1	1	2	3	6	2	0	1	16
South Africa	16	33	23	41	16	21	6	4	160
Thailand	0	1	3	0	0	0	3	21	28
Trinidad and Tobago	0	1	0	4	3	1	1	0	10
Turkey	0	0	4	1	8	7	16	9	45
United States	14	22	15	36	47	47	76	35	292
Uruguay	0	0	1	0	0	1	4	0	6
Venezuela	3	2	6	10	7	1	1	1	31

Source: WTO anti dumping database, 2003

Note: a) The 'total' shown here is the total anti dumping cases initiated by all anti dumping users, not only by the countries shown in the table.

b) NA: Not available

However, the developing countries are not only the users of anti dumping, but most often they are also found to be the major victims of anti dumping initiations. They face anti dumping cases initiated by developed countries. But the developing countries also seem to using anti dumping measures against each other¹⁵. This is evident from table 2.5.

¹⁵ See Finger et al., 2001; Tharakan, 2000; Neufeld, 2001 etc.

Table 2.5: Distribution of Anti dumping Cases among Developed and Developing Countries

Anti dumping Initiation		
Country Status	By Reporting Country ^a	By Affected Country ^b
Developed countries	39.81 (860)	28.33 (612)
Developing countries	60.18 (1300)	71.66 (1548)
Total	100 (2160)	100 (2160)

Source: WTO anti dumping database, 2003

Note : a) Reporting country refers to the countries, which have initiated anti dumping cases.

b) Affected country refers to the countries, which are facing anti dumping cases against them.

More than 60 percentage of the anti dumping cases have been initiated by the developing countries. The share of developed countries in the total initiation is around 40 percentage. Again, if we consider the countries against which anti dumping cases are being initiated, there also we find that more than 70 percentage of the cases are aimed against the developing countries. This supports the view that developing countries have been initiating anti dumping cases against each other.

If we look at the products, which are attracting anti dumping cases, we find that these cases are not evenly distributed across the product groups. Some products are found to be attracting more anti dumping cases than the other product groups (Table 2.6).

Table 2.6: Anti dumping Initiation across various Sectors (2003)

	Sectors	Percentage of cases initiated
1	Base metal and articles thereof	38.00
2	Chemicals articles	17.00
3	Machinery, Mechanical/electrical appliances	7.20
4	Plastic, Rubber and articles thereof	14.40
5	Textile and articles thereof	6.90
6	Pulp , wood, paperboard	2.00
7	Mineral products	4.30
8	Vegetable products	2.03
9	Articles of stone	1.70
10	Others	6.10

Source: WTO anti dumping database, 2003

For instance, 38 percentage of the total anti dumping cases is concentrated in the base metal sector. The next position is occupied by the chemical sector, which accounts for around 17 percentage of the cases. Articles made of rubber, plastic etc are facing around 14 percentage of the anti dumping cases. In fact, these two sectors have been found to be attracting anti dumping actions for a long time. Messerlin and Reed (1995) showed that during the 1980s

also these two sectors accounted for a major share of the anti dumping initiations by the frequent users, the USA and the EU¹⁶. Compared this, mineral products (2.03 percentage), vegetable products (1.70 percentage) etc, are facing less anti dumping cases. Thus, we can see that initiation of anti dumping cases is mostly concentrated in few industrial sectors. As an explanation of the observed concentration Messerlin (2002) maintained that sectors like metals and chemicals are characterised by a high proportion of relatively standardised products and by oligopolistic market structures. Even in the case of sectors like machinery and clothing, a look at the sub sectors reveals that, that anti dumping measures are concentrated in sub sectors characterised by same features. Such a pattern according to him, suggests that complaining firms ‘use antidumping as an additional -cheap and powerful- instrument for segmenting the markets that ongoing or scheduled trade liberalizations aim at making more competitive’.

We have already seen that developing countries account for a major share of the total anti dumping initiations. Even, when we look at the distribution of the anti dumping across product groups, for most of the products groups, developing countries are having a higher share in the total anti dumping initiation (table.2.7).

Table 2.7: Percentage share of Developing and Developed Countries in the Sector wise Initiation of Anti dumping Cases

Sectors	Developing Country	Developed Country
Vegetable product	33.33	66.67
Chemicals and allied products	75.46	24.54
Mineral products	74.14	25.86
Plastic, rubber and articles thereof	65.71	34.64
Textile and textile products	70.00	30.00
Base metals and articles of base metal	46.07	54.49
Machinery, Mechanical/electrical appliances	62.31	37.69
Articles of stone	60.00	40.00
Others	67.96	33.33

Source: WTO anti dumping database, 2003

In the case of chemicals and allied products, developing countries have initiated more than 75 percentage of the total anti dumping cases. It is the same case for mineral products (74.14 percentage), mechanical and electrical appliances (62.31percentage), etc. Only, in case of base metal and vegetable products developed countries enjoy a higher share. In the case of base metal the share of developed countries is around 55 percentage while that of developed

¹⁶ During 1979-89, metal industry accounted for 49.7 percent and chemical industry for 15.3 percent of total anti dumping cases initiated. The corresponding figures for the EU are 14.8 percent and 40.3 percent respectively.

countries is 46 percentage. Again, in case of vegetable products developed countries are having higher anti dumping initiation (66.67 percentage) than the developing countries (33.33)¹⁷. Nevertheless, the overwhelming popularity of anti dumping measures in developing countries is evident from the sector-wise distribution of the anti dumping cases also.

2.3: Dumping and Anti dumping: Theoretical Foundation and Emerging Issues

Discussion so far has made it very clear that use of anti dumping measures has increased manifold in the recent years, across the globe. Before we try to analyse this trend any further, it is imperative to understand the theoretical explanations given for dumping and anti dumping practices and also the issues that have emerged in the context of this sudden rise in the anti dumping use. In this section we make an effort in that regard in the light of the existing literature.

2.3.1. Rationale behind dumping

Conventional wisdom says that, under monopolistic competition, a firm may charge different prices in different markets if the elasticities of demand differ in these markets. This practice is known as price discrimination. The most common form of price discrimination is charging lower prices in the international market than in the domestic market.¹⁸ This international price discrimination was termed as 'dumping' by Viner. Successful dumping requires fulfillment of certain conditions. Three essential conditions are¹⁹:

1. The industry must be imperfectly competitive, so that firms set price rather than taking the market price as given. In a perfectly competitive market a firm will rather choose to sell all its output at a higher rather than discriminating price between markets.
2. For successful dumping market must be segmented. If two markets are tied together, a buyer for example, in one market can resell without any extra cost in the other market or buyers from one market can travel costlessly to the other to make their purchases. Segregation of markets makes these transactions costly or impossible.
3. Demand in the export market should be more elastic than the home market. So that the exporter can sell more output in export market by lowering the price.

¹⁷ Interestingly, the developing countries are supposed to be having a comparative advantage in the export of such primary products.

¹⁸ This may be other way round also, i.e. charging higher price in the international market than the home market. But such practice of 'reverse dumping' is not only rare but also not objected to as high price in the international market may be due to high transport cost or some other associated cost.

¹⁹ See Hoekman and Leidy (1989) ; Boltuck (1987)

The decision of a firm to discriminate prices between domestic and foreign market may be guided by various reasons. Traditional theorists focused mainly on the profit maximising and predatory motive behind dumping. Dumping was seen as attempts by the discriminating monopolists to maximise his profit by taking advantage of the differences in elasticities in the segmented market. Or in other instances it was seen as oligopolistic tactic by the predator to drive the domestic producers out of the market by charging low prices to establish his monopoly. However, both these two rationales relates to dumping when it is defined strictly as price discrimination where the exporter is essentially a monopolist. But of late, the definition of dumping has been extended to include cost dumping also. In this situation, monopoly is not a pre condition for dumping to occur. In this context a number of other explanations have been put forward, when dumping on the part of the firm may not be intentional.

Excess capacity existing with the firm may also lead to the firm charging lower prices for the product. Excess capacity may arise as a cyclical phenomenon. A firm, which increases its capacity to meet demand, which do not get materialised, may try to sell its products at a lower price not only in the international market but also in the domestic market. But it may also be termed as dumping²⁰. In this context we can also mention the study by Ethier (1982) where he showed that demand uncertainty in the international commodity market and factor market rigidities in the domestic country may result in unintentional cost dumping by the exporting firms.

Another reason put forward for dumping is the steep learning curves. A learning curve plots yield of a firm against the time dimension. A steep learning curve may indicate that, as the optimum production conditions are attained, the yield rises very sharply and there can be very big unit price declines. Since the early phases of production thus yield not only output but also cost reducing experience, firms tend to 'forward price' i.e. price below current cost. (Vermulst, 1993).

Dumping has also been explained in term of strategic trade theory. According to this line of argument, industries, which are of strategic importance, may decide to dump to attain a specific scale of production. It is argued that 'strategic dumping'²¹, gives foreign firms an

²⁰ Warner (1992), Kronby (1991), Staiger and Wolak (1992)

²¹ It is the dumping in strategic industries such as high technology electronic and communication sector, which confer beneficial spill over on the rest of the economy.

advantage. If the exporter's home market is foreclosed to foreign rivals and if each independent exporter's share of their home market is of significant size relative to their scale economies, the exporters will be able to have a significant cost advantage over foreign rivals. With access to both home and foreign markets they gain a cost advantage over domestic firm (Krugman, 1986).

2.3.2 Rationale for Anti dumping Measures

Against such dumping whether anti dumping measures should be used or not is a of debatable issue. Many argue that dumping is like any other business strategies of a firm. Moreover, when there is dumping the consumers of the importing country gain from low prices. So it should not be considered as an offence. But against this, a number of arguments have been put forward in favour of using anti dumping measures. They may be broadly classified into the following groups:

Consumer Welfare Argument: This line of argument was originally put forward by Viner (1932). According to him, if the dumping is predatory in nature, then the consumers may gain in the short run. But in the long run when the predator establishes its monopoly, it may raise the price, which will ultimately harm the consumers²². So there should be some action against such practices. Thus, in the predation rationale for anti dumping actions, interests of the consumers, rather than that of domestic import competing firms is advanced (Hoekman and Leidy, 1989). However, empirically predatory dumping was found to be rare, as it requires fulfillment of strict conditions. For example the firm who has the predatory motive should have a dominant position in the global market. Again, there is a chance the monopoly position of the firm may attract the other firms into that market. So the predator must be in a position to check entry of other firms to that market (Tharakan, 1995). Moreover, a predator not only has to drive the domestic competitors out of the market but has to keep them out of the market for a long time, by keeping its price low. Again, for some products, a number of foreign exporters may be charging low prices. So after the domestic firms are eliminated, these exporters may get engaged in aggressive competition among themselves (Deardorff, 1989). Because of such stringent conditions this aggressive form of dumping 'though often used to frighten public opinion into imposing tariff, they seldom occur' (Haberler, 1937)

²² However, one line of argument also exist that in the strictly classical form of dumping when the price discriminating exporter is a monopolist in the domestic market, it is the high price that he charges in the domestic market, that should be condemned.(Deardorff, 1989)

Optimum tariff Argument: This line of reasoning emphasises the revenue mobilising facet of anti dumping duties. If the domestic market accounts for a large share of the exporter's international market, then at the imposition of tariff the exporter is most likely to absorb the amount of the tariff instead of losing the market share by increasing the price. In such cases the anti dumping duties may be used to earn revenue for the imposing country.

Strategic Trade Policy Argument: Such theories argue that, the traditional assumption of perfect competition is an unworkable assumption for the real world trade policy. A good deal of trade now seems to arise because of the advantage of larger scale production and the advantages of cumulative experience and transitory advantages resulting from innovation. Nowadays, in the case of many industries, there are few identifiable rivals (firms), which have some distinct ability to affect prices and make "strategic moves" designed to affect their rivals' actions. In this way, there is an imperfectly competitive environment that exists in the world trading system. Now, according to this school of thought a strategic trade policy can benefit a country relative to free trade, through:

- a) The ability of government policies to secure for a nation a large share of rent²³
- b) The ability of these policies to get the country more external economies. Anti dumping duties, they argue, can shift rents from foreigners to domestic companies, assuming other governments do not retaliate (Spencer 1986, Brander, 1986).

According to strategic theorists, a nation may have some industries, which are of strategic importance. These are the industries, which may experience large cost reduction if a certain scale of production is attained or which may have beneficial spill over effects on the other sectors of the nation. The authority may try to protect such industries from excessive imports by imposing anti dumping duties. Anti dumping duties have been recommended on this ground too.

Thus arguments have been put forward both in favour of and against the use of anti dumping measures. However, while the debate whether anti dumping should be used as a trade restrictive tool or not continues, the last two decades have seen an unprecedented rise in the use of anti dumping measures. This has prompted the economists extend their analysis to explain this new trend.

²³ Rent is the payment to input higher than what that input could earn in an alternative use.

2.3.3 Increasing Use of Anti dumping Measures: Emerging Issues

In recent years a large number of studies have come up examining various aspects related to the use of anti dumping measures. This has been prompted by the unprecedented rise in its use. One group of studies focused on the various provisions of the WTO anti dumping agreement and the national legislations of the user nations. The WTO anti dumping agreement gives only the broad guidelines for the nations to frame their own anti dumping legislation. This gives the nations ample opportunity to interpret the different clauses of the agreement in a way that serve their protectionist objectives. Thus, the ambiguity of the WTO anti dumping agreement has caused widespread misuse of the law by the countries to protect their domestic industry. According to Fischer and Prusa, (1999) 'no other trade instruments has anti dumping's unique combination of political and economic manipulability, incentives and intrigue.' Many studies are of the view that the dynamics of national trade policies have led inexorably to creeping 'procedural protectionism' in anti dumping laws, as administrating authorities and legislatures develop rules and practices that increasingly tilt decision making process in favour of domestic interest²⁴. This has been pointed out as one of the major reason for the immense popularity of anti dumping. These studies have pointed out a number of shortcomings of the anti dumping measure at the operational level. A few of them are discussed here.

In dumping investigations, the use of constructed value for 'normal value' and 'export price' has become increasingly common. Construction of these values however, involves complicated cost calculations and allocations. A number of shortcomings have been pointed out in this respect. While constructing normal value administrative authorities have adopted a very expensive definition of costs, which includes overhead as well as variable costs, i.e., 'fully allocated cost' rather than 'marginal cost'. However, any firm behaving in a rational manner will be willing to reduce prices to the level of marginal cost in short periods of slack demand. Therefore, under 'fully allocated standard', rational firms in every country and every industry can be expected from time to time to sell at prices below 'fair value' in the normal course of business. Thus, the practice constructing 'normal value' raises the chances of a firm being accused of dumping.

One more shortcoming cited in this regard is that, while calculating the 'normal value' most of the countries ignore the sales below cost by the exporter in the domestic market. However,

²⁴ Matsumoto K and Finlayson G (1990).

the GATT document did not specify that the sales below cost should be disregarded. This practice, in certain cases raises the foreign market value above national market prices—a tilt, which places a constraint on import prices that, does not apply to domestic product (Koulou, 1990).

The EU, while calculating selling, general and administrative (SGA) cost, in case of ‘normal value’, uses domestic SGA of the exporting country. Thus dumping may result if domestic SGA costs are higher than the export SGA cost. But, domestic SGA cost may be higher due to numerous reasons; one for example, higher advertising cost. But, allowances are not made for such differences. In the process of determination of profits also, it has been argued that the EU anti dumping regulation effectively introduces a tilt factor to find higher than normal profit margin. The EU usually determines the profit by looking only at profitable sales of the like products. But GATT anti dumping code refers to the ‘profits normally realised in the same category of goods’; it does not contain any restriction to the profits realised only on profitable sales of the same category of goods (Waer P,1993). Besides this, while calculating profit, the EC does not look at the profitability of the company as a whole. Instead, it looks profitability of the company of each individual model. If a model is sold at a profit, it is included for calculation. But if the model is not sold at a profit, it is not taken into account while calculating the average profit. This may lead to profit margins which are considerably higher than any company realises in practice in it’s overseas sales (Bael, 1990).

The export price, when it is constructed is done on the basis of the price at which the imported product is first resold to an independent buyer. In such cases, allowance should be made for costs including duties and taxes, incurred between importation and resale and for profit it is accruing. However, different countries take different position in this regard. The United States normally does not deduce profit of the related importer. The EU on the other hand makes an allowance for ‘reasonable margin of profit’, which it has been argued, may lead to artificial dumping finding (Bael, 1990).

Several drawbacks have also been pointed in the definition of like product. First, the definition of like product is very vague in the WTO anti dumping agreement. This permits the authorities to interpret the scope very extensively to include components and later developed products, that do not ‘closely resemble’ the original product in any physical sense. Because of the vagueness, single injury determination influences all goods under investigation, even

goods, which cannot injure domestic industry, as there exists no domestic competitor (Baker, 1990).

The period of time over which costs and prices are compared also appears to cause problem. Sales below cost needs only to be disregarded when they are sold at prices which will not permit recovery of all costs within a ‘reasonable period of time’. But in practice, administrative authorities generally do not assess the prospects of recovery of costs either over a complete business or production cycle, but have rather consider only the period of investigation and this period is usually not more than six months.

Injury finding is the most technically complicated step of anti dumping investigation. As Boltuck (1991) said: ‘it is the stage where if the law is misinterpreted or improperly administered, a protectionist bias can be surreptitiously injected into the Anti dumping decision making process, under circumstances that are difficult to detect and therefore difficult to challenge legally as unfair’. Till now there is no generally accepted methodology for finding injury. There is evidence that, the test for injury finding is limited to mere co-existence of dumping and injury, without making much attempts to find the causality between the two.

Besides these general issues, problems specific to particular countries also exist. For example, in the case of non market economies, the practice of using “surrogate country”, has been criticised by many²⁵. Again, article 15 of the anti dumping, which provides for special treatment for the imports from developing countries hardly is considered while investigating, in many countries.

Thus the way the national authorities interpret the WTO anti dumping agreement and frame their own anti dumping legislation, leaves ample scope for them to use it to protect domestic industries from foreign competition. Such discretion on the part of the national authority gets very much reflected in the comment made by Krueger (1998) that,

‘In United States, a foreign firm can be found to be dumping even if it is selling well above marginal cost, if it fails to provide adequate information in the time stipulated by the

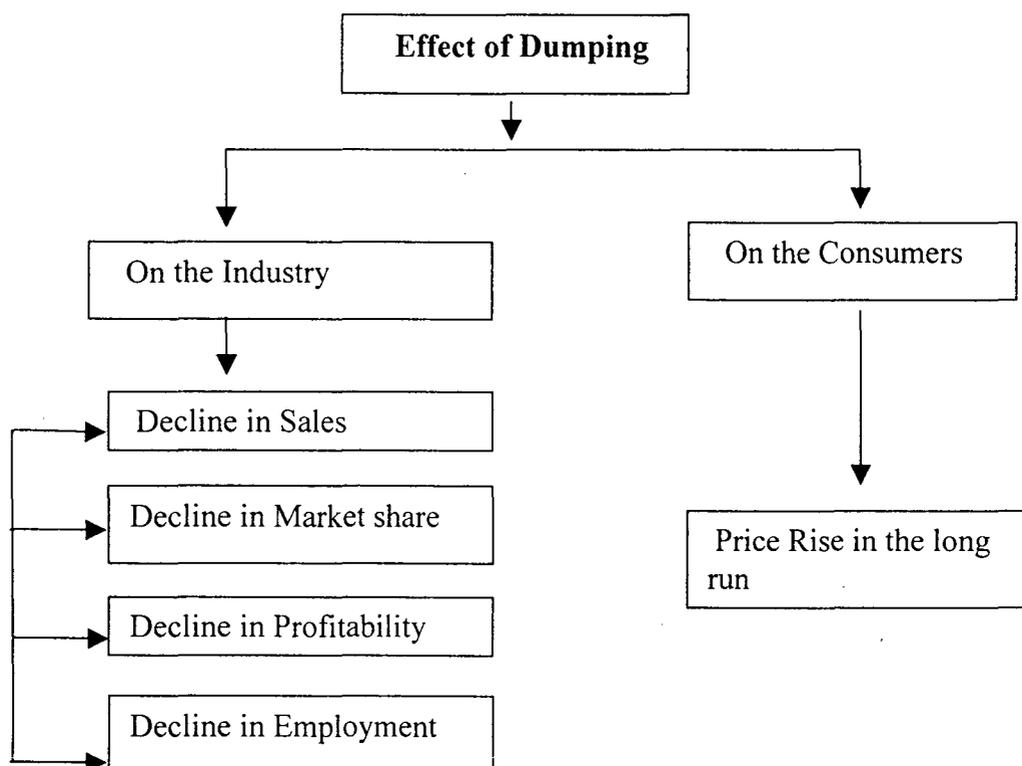
²⁵ Since in non-market economies, prices are not determined exclusively by the market forces, in cases of anti dumping investigations prices prevailing in a country exporting same type of commodities is taken into consideration.

American authority. Even, difference in timing of the recording of sales in the home and foreign market could result in finding of dumping when the sale prices are in fact, identical.'

Such technical shortcomings in the anti dumping agreement made it possible for nations to use it more frequently and thus may use it as a powerful weapon of protection.

Another set of studies tried to address the problem of increasing use of anti dumping measures through empirical examination of various forces influencing the anti dumping procedure.. To discuss the issue we first look at the possible adverse effects of dumping. This is schematically shown in figure. 1.2

Figure 2.2: Possible Effect of Dumping



When a particular product is dumped in a foreign market, it may have two opposite implications for two sections of the society. The consumers of the market gain initially because of the low prices. However, if the dumping is predatory in nature then once the exporter establishes its monopoly in the domestic market driving the domestic producers out of the market, it may start charging higher prices. So the consumers may lose in the long run²⁶. The other section of the economy, which gets affected due to dumping, is the domestic

²⁶ WTO anti dumping agreement is however concerned mainly with the domestic industry. It says that 'Anti-dumping measures are unilateral remedies which may be applied by a Member after an investigation and determination by that Member, in accordance with the provisions of the anti dumping Agreement, that an imported product is dumped and that the dumped imports are causing material injury to a 'domestic industry' producing the like product. (WTO, anti dumping legal text).

producers of the like products. The injury to this sector is particularly analysed in terms of 'volume effect' and 'price effect' of the dumped imports. While the volume effect refers to fall in the market share, domestic sales, production etc, the price effect refers to the price suppression and depression caused by the dumped imports. Thus, the injury to the domestic industry may get reflected in a number of ways, such as—reduction in the market share of the domestic producers, fall in sales, fall in profitability and also contraction of employment level in those industries. The demand for protection by the domestic industry and the provision of such protection by the authority in the form of anti dumping duty should be guided by the fact whether the alleged dumping by the foreign firms have caused material injury to the domestic firms. However, studies investigating the anti dumping behaviour of different nations found that many a times the excessive use of anti dumping measures cannot be explained merely in terms of the economic performance of the domestic industry. Studies done mainly in the 'political economy framework' have put forward a number of hypotheses to explain such preference for protection. Baldwin (1985) discussed the theoretical foundation of these hypotheses. These may be broadly classified into the following groups (Gawande & Krishna, 2003).

- *The Pressure Group or Interest Group Model:* This framework brings out the importance of the incentives faced by the capitalists to influence politicians to move policy in a direction that would favour them. Here the basic proposition is that if a particular group in the society know that their income under protection will be higher than under free trade, they will be willing to spend part of their expected increase in income to campaign for protection. (Tharakan, 2000).

The Adding machine Model: It emphasises the voting strength of an industry in determining the extent of trade protection it receives. According to this model, elected officials tend to favour industries with the largest number of voters. This is because when the government chooses to protect an industry 'the political benefits in terms of votes and contribution presumably exceed from the loss of support from those harmed by the policy (Hansen, 1990).

The status Quo Model: This model maintains that government officials have 'conservative respect' for the *status quo* based either on the regard for existing property rights or on a cautious response to the uncertainty associated with the change in policy. Besides this, government wants to avoid the adjustment cost. Thus the present levels of protection depends on the previous levels of protection.

- *The Social Justice or Equity Model:* Government may try to maintain some levels of protection on social justice ground also. Thus there may be a tendency for the government to impose higher levels of protection in the sectors which are characterised by low-income, unskilled workers.
- *The Comparative Model:* It suggests that industries where the ratio of exports to production is high and import penetration ratio is low will receive lower protection. Because in that cases government officials may not consider such industries as the one, requiring protection since the competition from foreign exports will be less in these sectors.
- *The Foreign policy Model:* It suggests the bargaining ability of countries in trade negotiations as an important determinant of trade policy outcomes. For instance, during the initial periods of trade negotiations under GATT, the developing countries were given a number of exemptions. Therefore, there was high probability of higher import barriers against the exports from these countries.

Guided by such hypotheses, a number of empirical works have been undertaken to analyse the trend towards protectionism. Different studies focused at different stages of anti dumping procedure. While some tried to examine the interest of the firm in initiating anti dumping cases, others focused on why the government or the authority should provide with more protection in the form of anti dumping measures. In this context Takacs (1981) discussed the concept of 'protectionism' and the 'pressure for protectionism'. While the pressure for protectionism comes from the domestic industry where dumping is experienced, protectionism gets reflected in the ultimate decision of the government. Both may be subject to a number of pressures from various sources.

One major study, which came up investigating the influence of such forces on anti dumping procedure, was by Finger, Hall and Nelson (1982). They analysed the decision making process of International Trade Commission (ITC)²⁷ of the USA, considering the safeguard and the anti dumping and CVD cases. They considered both economic as well as possible domestic and international political influences in their study. To represent the international political influences they considered the proportion of total US exports that are imported by countries against which anti dumping or 'less than fair value' (LFV) case is filed and also a dichotomous variable to find whether the country is LDC.²⁸ To represent the domestic

²⁷ ITC is responsible for making the injury determination in anti dumping investigation.

²⁸ LDCs were expected to have less political pressure in decision making.

political pressure they considered size and concentration of the domestic industry. Results found the technical economic factors such as industry's physical capital output ratio, industry average wage per worker, extent of economies of scale to be more significant in case of anti dumping and CVD cases, though political factors found not to be having much bearing in the anti dumping and CVD cases. These political factors however showed clear influence in case of safeguard cases.²⁹

Herander and Schwetz (1984) also analysed the decision making by ITC, though they limited their study only to the anti dumping cases. Moreover he considered only industry level variables for his study. But unlike the Finger et al. (1982), he found industry concentration measured in terms of number of firms in the industry, having a positive influence on the ITC decision. Besides this, results also showed that affirmative ITC decision is negatively related to the change of employment in the industry, ratio of profits to the sales at the time of decision and the skill level of the workers in the industry. The negative relation between the skill levels of the workers and the decision, supports the 'social justice hypothesis', according to which governments try to protect sectors characterised by low skilled workers.

The study, which came out very loud about the influence of political variables, was done by Hansen (1990) investigating all anti dumping, CVD and Safeguard cases for the US.³⁰ Her study found various political factors reflecting the importance of industries petitioning the ITC in the districts of members of the "Ways and Means Committee" to be significant determinants of ITC decisions. Besides she also found economic factors such as percentage change in industry employment, market share and the US trade deficit to be significant. Moore (1989) also looking into only the anti dumping cases found both economic and political factors do matter. These results differs from the results of the study by Finger, Hall and Nelson, who found political factors not to matter much in case of anti dumping cases.

However the methodologies adopted by these studies were criticised by Baldwin & Steagall (1993). They criticised the study by Hansen (1990) for clubbing together anti dumping, CDV and safeguard cases, as the injury criteria for safeguard and anti dumping/CVD cases differ.

²⁹ The authors considered safeguard cases to be more political than the ANTI DUMPING/CVD cases, mainly because the president need not accept the decisions of the ITC in safeguard cases whereas he plays no direct role in case of AD/CVD determination.

³⁰ She run separate regressions for different commissioners. Moreover she used a 'two step nested logit model', where the industry first decides whether to petition and then the petition is either successful or not. The advantage of this econometric specification was that she could show that the second stage outcome decision affects the first stage petition decision in a statistically significant manner.

According to them, even in case of anti dumping and CVD, though the statutory criteria are identical, the determinants may significantly differ. Therefore considering these together is also not appropriate, as was done by Finger et al. Besides this, both these studies considered 4-digit SIC sector which cover the product in which petition has been made, as a proxy for the economic characteristics of that product. But a particular 4-digit sector included lot more other products than the one under consideration; the economic characteristics of those may not be same as that of the product concerned. To overcome the first drawback Baldwin and Steagall (1993) run different regressions for anti dumping, CVD and safeguard measures to find the economic determinant for these cases. Secondly, they used industry performance data from the individual reports of the ITC to ensure that the various economic factors related to the decisions of the commissioners actually coincide with the particular tariff line item covered by the petitions³¹. They found a of number economic as well as political variables to be influencing the anti dumping procedure. Among the economic variables, the ratio of total imports in the industry to the consumption of the product, (the higher the ratio more likely an affirmative decision), percentage change in the capacity over the most recent years, (greater decline in capacity utilisation leads to greater likelihood of affirmative decision) appear as significant variables. However, surprisingly, factors like ratio of unfair imports to consumption, percentage decline in profits and percentage changes in employment did not show significance in case of either CVD or in anti dumping cases.

Studies done examining anti dumping behaviour of the EU such as Tharakan, Greenway, and Tharakan (1998)³² also brings out similar tendency. They found those political economy variables, such as industry concentration, value added, capital intensity and average daily wages to be significant. It can be inferred that they had important influence on EC's injury determination in anti dumping cases.

The influence of macro economic variables has also been highlighted by a number of studies. These studies however concentrate more on government's inclination for protection rather than pressure for protection by domestic industries. This is due to the fact that, there is higher possibility for the government to consider these factors, rather than individual petitioners. A

³¹ However, according to Blonigen and Prusa (2001), though this helps to get the data at a very disaggregated level, but it reduces the number of observation; because, USITC while providing data in public reports does not release any confidential information. So those studies taking data from USITC reports could get data for only about 20 percent of the total cases during the sample period.

³² The primary objective of the study was to examine the implication of the practice of cumulation in the injury determination. It found that cumulation introduces a strong affirmative finding bias in injury determination of the EC.

number of domestic as well as external macro economic determinants of anti dumping and also other forms of contingent protection have been pointed out by these studies. For example Leidy (1997) found domestic pressure in the form of unemployment rate, over all capacity utilisation to be having significant bearing on the number of newly initiated cases. However, she could not find a significant relation between external pressure and anti dumping initiations. Similar kinds of results were also found by Backer and Theuringer (2000) in the context of the EU³³. But on the other hand, Prusa and Knetter (2000), also examining the macro economic determinants of anti dumping found external pressure, in the form of fluctuation in the exchange rate not only affect the dumping determination, but it affects the injury determination too. And these two effect move in opposite direction. A real appreciation of the filing country's currency will lead to a significant increase in anti dumping filings. Again, a depreciation of US dollar decreases import penetration, thus making an injury determination less likely.

Attempt has also been made to explain the anti dumping use of nations as a part of their strategic behaviour. One such study has come in 2001, by Prusa and Skeath. In this study the authors try to identify the motives behind the increasing anti dumping usage. They have classified the motives into 'economic' and 'strategic'. The economic motives they considered were based on the traditional view that anti dumping is a response to unfair trade. To approximate that they looked into the anti dumping cases filed against 'big suppliers' and suppliers with 'large import surge'. On the other hand to identify the strategic behaviour, they "club" and "retaliation" motives. Countries who have used anti dumping protection previously were considered as club members. The retaliation motive was referred to a country filing anti dumping cases against those countries, which have previously surged it for dumping. Looking at the worldwide anti dumping filing patterns from 1980 to 1998, the study found strategic motives to be more important in explaining the pattern. For the traditional users though both economic and strategic motives were found to be important, for the new users the strategic motives reflected in the form of retaliatory behaviour were found to be of far more significance.

³³ They found that pressure for anti dumping protection in the EU is inversely related to the domestic macro economic situation approximated by variables like real GDP, total industrial production and also by percentage change in the unemployment rate. However, the external pressure variables such as real effective exchange rate, trade balance and the ratio of import penetration showed strong insignificance.

Thus all these studies have discussed a number of biases that may creep into the anti dumping investigation process at various stages. The demand for protection may come from the domestic industries because, they get injured by excessive dumping of foreign goods at low prices. But, such demand may also arise merely due to the fact that the industry is capable of lobbying for extra protection, i.e. the rent seeking behaviour of the industry. As the conventional means of protection with the nations are being drastically reduced, the domestic industries of a nation have to face more competition from abroad. This may prompt these industries to ask for protection through other channels like anti dumping measures. On the other hand, government may acquiesce with such demands if it finds that there is real injury to the domestic firms or sometimes merely to conform to certain trade or commercial policies of the government which may be referred to as 'government policy bias'. Besides these certain 'regulatory process bias' may also creep into the final decision- making process of anti dumping. For example the practice of commutation found to increase the chance a dumping case getting an affirmative decision. (Hansen & Prusa, 1997 and Tharakan, Greenway, & Tharakan, 1998). Similarly, most of the studies found cases facing repeat investigations stand higher chance of getting a positive injury.

Another crucial aspect of the extensive use of anti dumping measures, is the implication of such practices for global trade. Gallaway, Blonigen and Flynn (1999) have estimated for the US economy that only the Multi Fibre Agreement imposes larger welfare costs than what anti dumping actions have done. Many argue that anti dumping duties have far more distortionary impact than what the actual level of duty implies. This distortionary impact originates from the uncertainty due to the threat perception as to what would happen, rather than what the actual duty itself (Hoekman & Leidy 1989). Future capacity expansion becomes casualty in the face of such threat. In such cases anti dumping also acts as an incentive for the firms to relocate their productive facilities.

The anti dumping duty investigations also has harassment effect, in terms of loss of time and financial costs to provide data as required by the regulatory authorities and for organising legal support. For the small exporting firms from the developing countries it is too expensive to take the advantage of the procedure and substantive rights, theoretically available for them. Although anti dumping cases are supposed to be purely temporary, they actually turn into a long-term obstacle to trade and competition, aggravating the negative impact of these measures on developing countries. Moreover, many times a new case is slapped when the negotiation is over for the earlier one.

For developing countries such rise in the use of anti dumping measures may have very serious implication, as majority of the anti dumping cases now a days are aimed against these countries. High domestic price of the developing countries may arise due to 'infant industry cost structure' followed by these countries (Tharakan 1999). As a result products from these countries are more vulnerable to cost dumping. Many a times, these countries do not have adequate information and also the expertise to present their case. Therefore, extensive use of anti dumping measures against the imports from these countries may appear as a big hurdle in increasing participation of these countries in the international trade.

2.4 Chapter Summary

The objective of this chapter was to set the background before we take up a detailed analysis of India's experience with anti dumping measures. The first two sections examined the changing environment in the world trading system over the decades, as well as the emergence of anti dumping as a frequently used measure of trade protection. Even though protection has remained popular for many policy makers, a major attempt was made since the Second World War, to liberalise trade under the banner of GATT and later WTO. This has resulted in significant reduction in conventional barriers to trade, more noticeably in the case of tariffs. However, what has been seen in the recent years is that, this move towards liberalisation of world trade has been accompanied by a disturbing trend of rising use of contingent measures of protection, particularly anti dumping measures.

Looking at the worldwide trend in the use of anti dumping measures we find a sharp increase both in frequency of cases and number of countries using anti dumping measures. Many of these new users are developing countries. In fact the developing countries now account for more than 60 percent of the total anti dumping initiations. Interestingly, we also see that more than 70 percent of the cases are aimed against the developing countries. The developed countries no doubt are using these measures against the exports from developing countries. But, obviously, the developing countries are also using them against each other.

Considering such massive rise in the use of anti dumping measures, a number of studies point out the legal loopholes in the anti dumping agreement and how it has facilitated misuse of the provision, which was included in the WTO agreement with the intention of promoting fair trade. The empirical studies on the anti dumping behaviour of user countries found that the anti dumping procedures were subjected to a number of pressures from different sections. Thus, anti dumping legislations have gone far beyond their mandate of promoting fair-trade and have emerged as vehicles of contingent protection.

Appendix to Chapter 2

Anti dumping procedure in India, in the light of WTO Anti dumping Agreement and the Indian Anti dumping legislation

The agreement on anti dumping of WTO (article VI) provides the broad guidelines for the nations to frame their own anti dumping legislations. All the nations design their anti dumping law accordingly. In India, Anti dumping investigation is carried out under section 9A of the custom tariff Act, 1975. Sections 9A, 9B and 9C of this act, as amended in 1995 and the Customs Tariff Rules, 1995 framed thereunder form the legal basis of anti dumping investigations. To administer anti dumping and anti-subsidies and countervailing measures in India, the 'Directorate General of Anti-dumping and Allied Duties' was set up on 13th April 1998. The Directorate General of Anti- dumping and Allied Duties' functions in the Department of Commerce in the Ministry of Commerce and Industry and is headed by the 'Designated Authority', who is also the 'additional secretary' to Government of India in this ministry. The function of the designated Authority, is to conduct the anti-dumping and anti-subsidy/countervailing duty investigations, against the exporting firms/companies of other countries and to make recommendations to the Central Government for imposition of antidumping or anti-subsidy measures. Such duty is finally imposed/levied by a notification of the Ministry of Finance. Thus, while the Ministry of Commerce recommends the Anti-dumping / countervailing duty, it is the Ministry of Finance, which levies such duty.

The anti dumping investigation involves a number of stages. Various articles of the WTO anti dumping agreement and the domestic legislation framed thereunder discuss in details the provisions relating to methodologies and procedural issues.

Article 1 of the WTO agreement on anti dumping lays down the basic principle that, a member country may not impose an anti dumping measure unless it determines on the basis of an investigation that there are dumped imports, material injury to a domestic industry and casual link between the two. According to Article 2 of the agreement, product is to be 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. Ordinary course of trade here refers to such sales, which are profitable and are made to unrelated customers.

Thus the process of dumping investigation involves three main stages:

1. Determination of the normal value
2. Determination export price
3. Comparison of these two

Normal value is the comparable price at which the goods under complaint are sold in the ordinary course of trade in the domestic market of the exporting country or territory. However, if that particular product is not sold in the domestic market, then two alternative methods are used. In that case normal value is determined, either on the basis of comparable price of the like product when exported to an appropriate third country, provided the price is representative. Or, it could also be determined on the basis of production in the country of origin plus a reasonable amount for selling, general and administrative costs (SGA) and for profits. These methods are known as 'constructed normal value method'¹.

In the 3rd stage of the investigation, in order to determine whether dumping has taken place or not, the normal value is compared with the "export price", which is defined as the price of the article exported from the exporting country or territory. Export price may also be constructed if there is no export price or export price is unreliable, due to the association between buyer and the seller.

According to the WTO agreement on anti dumping, the phenomenon of dumping per se, is not condemnable, as it is not unusual for prices to vary from time to time in the light of supply and demand conditions. The anti dumping legislation of India also recognises the fact that price discrimination in the form of dumping is a common international commercial practice. Therefore, to characterise it to be an offence, it should create material injury to the domestic industry. Material injury is defined as material injury itself, threat of material injury or material retardation of the establishment of a domestic industry. The domestic industry here, shall be interpreted as, referring to the 'domestic producers as a whole, of the like products² or to those of them, whose collective output of the products constitutes a major proportion of the total domestic production of those products' (Article 4, GATT agreement on Anti dumping), excluding importers and those related to importers and exporters. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote

¹ These are laid down in Article 2 of the WTO Anti dumping agreement and in case of India, in the Section 9A(1)(C) of the Customs Tariff Act.

² Like products are the products identical to or in the absence of such a product, one has characteristics closely resembling those of the imported dumped products.

possibility. The change in circumstances, which would create a situation, in which the dumping would cause injury, must be clearly foreseen and imminent. The decision on the material injury will be based on both (a) the volume of the dumped imports and the effect of the dumped imports on prices, in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products. Thus while determining dumping and resulting injury, the authority looks into whether there is any significant increase in the imports, both in absolute and relative terms and as for price effect, it investigates into whether there is depression, undercutting or suppression of prices. To see the consequent economic and financial impact of the dumped imports on the concerned Indian industry, the following indicators are looked into:

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Sales | <input type="checkbox"/> Return on investment |
| <input type="checkbox"/> Output | <input type="checkbox"/> Capacity utilisation |
| <input type="checkbox"/> Profits | <input type="checkbox"/> Employment |
| <input type="checkbox"/> Market share | <input type="checkbox"/> Investors/Stocks |
| <input type="checkbox"/> Productivity | <input type="checkbox"/> Ability to raise capital or investment |

However, it is not necessary that all the factors considered relevant should individually show injury to domestic industry. To find the causal relation ship between dumping and injury, besides these factors, some other factors are also considered, such as, volume and price of other imports, demand contraction, productivity, technology etc; so that injury caused by factors other than dumping is not attributed to it.

The investigation on the dumping cases is initiated on the receiving of an application on behalf of the domestic industry to the designated authority³. A petition must express the support of those, who account for more than 25 percent of the total domestic production and more than 50 percent of production should be accounted by those supporting and opposing the application. Besides, the application should be accompanied by required information. If the designated authority is satisfied with the information provided, then a formal case may be initiated. Though no specific time period has been fixed by the WTO or by the Indian law

³ Under certain special circumstances, the authorities concerned may decide to initiate an investigation without having received a written application by or on behalf of a domestic industry. For the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, to justify the initiation of an investigation. (article 5.6, WTO anti dumping agreement)

about the period of investigation, there is indication that the period should not be less than 6 months. Period taken into consideration should be recent and representative.

Once the case is initiated, the designated authority notifies the diplomatic representative of the government of the exporting country before proceeding to initiate the investigation. The initiation notice is usually issued within 45 days of the date of receipt of a properly documented application. Normally, within 150 days of initiation, preliminary findings are issued. And normally within 150 days of preliminary findings final determination is made.

The investigation by the designated authority determines the dumping margin, the injury margin and the duty to be imposed. Margin of dumping is the difference between the normal value and the export price of the product under consideration, while the 'injury margin is the difference between the 'non-injurious price' for the goods under complaint as manufactured by the domestic industry and the landed value of the dumped imports. Here, however the "De minimis" rule is applied. In this, exporters will be exempted from Anti dumping duty if, margin of dumping is less than 2 percent of export price or if it is less 3 percent from the individual country and cumulatively not more than 7 percent.

After the final finding anti dumping duty is imposed⁴. The decision, whether or not to impose an anti dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. 'It is desirable that the imposition be permissive in the territory of all members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry' (Article 9.1, GATT agreement on anti dumping). Thus, as per the guidelines of GATT agreement, India has opted for lower duty rule. It has restricted its duty to the lower of the two, i.e. between dumping margin and the injury margin.

An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating

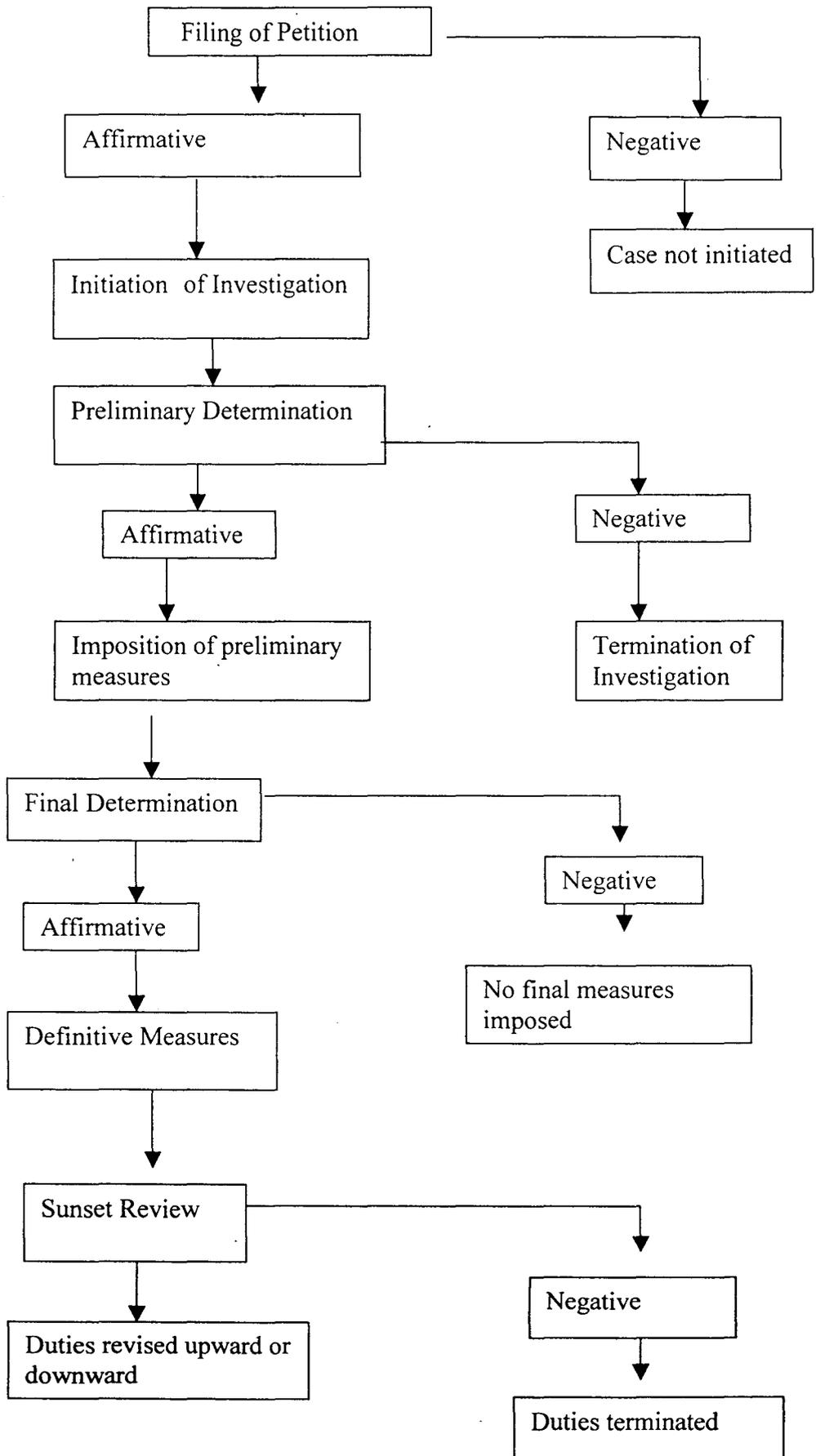
⁴ Duty may also be imposed retroactively after the provisional findings if the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury.

the need for a review. (Article 11, GATT agreement on anti dumping). In India, an anti-dumping duty imposed normally has the effect for 5 years from the date of imposition, unless revoked earlier. The review of a case can be done 'suo motu' or on the basis of request, received from an interested party in view of the changed circumstances. A review shall also follow the same procedures prescribed for an investigation to the extent they are applicable. The designated authority is also required to carry out a review for determining margins of dumping for any new exporter or producer from a country, that is subject to anti-dumping, provided that these exporters or producers are new and are not related to any of the exporters or producers who are subject to anti-dumping duty on the product.

To conclude, one important fact should be noted that anti dumping duty is not payable on products imported by units in EPZs and 100 percent EOUs, as well as on products imported by advance license holders in terms of Customs notification No. 41/97-Cus dated 30.4.1997.

Figure: 2.3A

The Anti dumping Procedure



Chapter 3

GROWTH AND DISTRIBUTION OF ANTI DUMPING CASES

Introduction:

In this chapter, our endeavour is to outline the trends and patterns of the use of anti dumping measures by India against other countries as well as the trends in its use against India by others. India, as we have already noted is a late entrant in the club of countries using contingent measures of protection, including anti dumping measures. India perhaps did not have to resort to the contingent measures because of the inward oriented economic regime, which relied heavily on conventional measures of protection. However, since 1990s there has been a gradual shift in the policy regime in India. The inward looking policy regime was replaced by a more outward looking liberal regime to make India a globally competitive economy. Accordingly, a number of measures were introduced to liberalise the external sector. These included reducing the tariff rates, doing away with the import licensing system and phasing out of other NTBs both with respect to imports and exports. However, as we shall try to illustrate in the present chapter, liberalisation of conventional barriers has resulted in an apparent rise in the use of contingent measures of protection, among which the anti dumping measures features prominently. This has made India, one of the most frequent users of anti dumping measure.

The present chapter is organised in three sections. In section 1, we present the background in which contingent measures, specially anti dumping duties have emerged as an important trade policy tool in India. In section 2, we analyse the growth and the distribution of anti dumping investigations initiated by India. In the 3rd section, our attempt is to capture the growth and distribution of the anti dumping investigations initiated against India.

3.1: Changing Policy Regime in India

In the 1950s and 60s, the dominant view in the literature on development economics was that the government has an important role to play in the economy, mainly to take care of the problems caused by 'market failure'. Market failure was perceived particularly in the inability of markets to optimally allocate resources over time. After independence, India too adopted a planned economy approach to face the challenges lying ahead for the newly independent country, where state was given a leading role. One major feature of this growth strategy was self-reliance, which was manifested in the 'import substitution' policy regime.

The strategy that aimed at faster growth and self-reliance was characterised by an investment pattern in favour of the development of basic industries and physical infrastructure. The public sector was envisaged to play a significant role in their development. This was accompanied by a host of policies and measures for the promotion of indigenous industry and technology, the growth of domestic savings and investment, the diversification of industry and trade in favour of manufactures and high value-added products, and self-sufficiency in essential items like food. The basic thrust of the strategy was the acceleration of the process of domestic capital and technological accumulation.

3.1.1 Import Policy during the Pre Reform Period

While characterising the post colonial trade policy regime, it should be kept in mind that it has undergone major changes over time. However, an essential attribute of this policy regime, which is of special interest to the present study, has been the cover of protection that it promised to the domestic producers. Import policies of India, during the first three decades of independence provided for imports of only those commodities, which were considered to be essential to support levels of consumption, investment and production. The need for economising on the use of scarce foreign exchange was recognised. All imports were subject to licensing or were prohibited. Thus, India's imports constituted mainly of raw materials, capital goods and oil. There was virtual ban on the import of consumer goods (Joshi and little, 1997).

Following the 'infant industry argument', the domestic industrial sectors were protected from foreign competition through a number of tariff and non-tariff measures. The tariff barriers consisted of three elements—basic customs duty, auxiliary duty and countervailing duty¹. On the other hand the number of non-tariff barriers (NTBs) prevalent were quite exhaustive including the import licensing system, canalisation of import of select items, preferential government purchases, industrial licensing etc.

From the beginning of 1970s, canalisation became an integral part of India's trade policy. All bulk items were 'canalised', i.e. they could be imported only by a government monopsony. In fact, during the period from mid-1970s to early 1980s, canalised imports constituted as much as three-fifth to two third of total imports. Given the inflexible nature of the basket of bulk

¹ Basic custom duties were mostly ad volerum and applied to c.i.f prices. The auxiliary duties were also ad volerum, which were applied to border prices. Countervailing duties on the other hand was levied against the c.i.f. price plus the basic customs duties and the auxiliary duties.

imports², it was assumed that canalisation would help to save foreign exchange through a systematic and careful planning of such imports. Further, it was thought that, canalisation would help to curb the growth of imports, thus encouraging the domestic production of such goods (GOI, 1984).

Import policy differed for capital goods, intermediate goods and consumer goods. Import of capital goods was done in three categories. Capital goods, which were not domestically produced, could be imported under Open General Licensing (OGL). There was near ban on the import of consumer goods, which were domestically produced and were placed in a restricted list. Import of goods, not included in any of the above categories was subject to license. In this way, the government tried to strike a balance between its objective of protecting an indigenous capital goods sector for sustained industrialisation and at the same time, recognising the importance of access to capital goods available in the world market for modernisation and upgradation of its capital goods sector.

For intermediate goods, the import licensing system was categorised into four groups—restricted, limited permissible, automatic permissible and OGL. In the case of intermediate commodities the degree of restriction was a function of the proportion of estimated domestic demand that can be met through domestic production. If domestic production was adequate then the import of that particular commodity was restricted. Where the domestic production is significant but available quantities and delivery schedules are not adequate, the specified intermediates are placed in limited permissible category and import license was issued. Again, when domestic production is marginal in relation to domestic demand, specified intermediates are placed in the category of automatic permissible. Those intermediate goods not placed in any of the above categories were placed on OGL. As far as the consumer goods are concerned, as we have already mentioned, except for essential commodities such as food grains and edible oil, there was complete ban on import of all commodities. In fact, the Abid Hussain Committee (1984), appointed to review the performance of the external sector of the economy, commented that:

‘Import liberalisation by itself was neither necessary nor a sufficient condition for stimulating competition and efficiency in the domestic economy. It should need to be

² Bulk imports included food grains, vegetable oils, fertiliser, crude oil and petroleum products, iron and steel, non-ferrous metals, newsprint, cement etc. These were considered essential to support the levels of consumption and production in the country.

used in conjunction with appropriate industrial and economic policies, which increase competition within the economy, through a reduction in the degree monopoly and a removal of barriers to entry, by new firms'.

The policies of import substitution and promoting domestic industrial sector, adopted by the government during first few decades of planning did show some good results. The real GDP growth rate for the economy increased from 0.9 percent during the pre independence era to an average of 4.0 percent. Industry grew at an annual average rate of around 5.5 percent. Moreover the domestic industry attained considerable diversification. Savings in the economy rose remarkably from an average of 11.9 percent of the GDP in the first one and half decades to a little over 20.0 percent during the 1980's. (Siggel, 2001 and Reddy, 2001).

However, the achievements were much lower than what was expected. At the same time a number of macro economic imbalances were cropping up, which ultimately culminated in the severe macro economic crisis during first part of 1990s. The fiscal situation of the economy was deteriorating throughout the 1980s, due to the increasing non-developmental expenditure of the government. From around 4 percent during 1970s, the fiscal deficit increased to more than 8 percent by 1990. Many of the Public Sector Undertakings (PSU), which were supposed to act as the building blocks for further industrialisation, were making losses proving themselves to be huge burden on the state exchequer. In the external sector, exports were performing badly. India's share in the world exports fell below 0.5 percent by the end of 1980's. The current account deficit increased to 3.69 percent of GDP by 1990-91 from 1.45 percent of GDP in 1980-81.

In order to fill the balance of payment gap, the government had to depend heavily on external loans. As a result, the external debt rose to as high as 23 percent of GDP at the end of 1990-91. The mounting fiscal deficit, increasing debt burden and worsening trade balance made some measures to improve the condition of the economy necessary. But, the 'gulf crisis' in the 1990s accentuated the macro economic problems, which called for some drastic measures on the part of the government. The crisis thus provided the opportunity and the necessity to address meaningfully the inefficiencies in the policy framework that had hurt the economic performance and to begin seriously the task of undertaking the necessary microeconomic or structural reforms (Bhagwati & Srinivasan, 1993). At the same time, the breakdown of Soviet Union which acted as a role model for India immediately after the independence and the success of some of the South East Asian countries in attaining fast export led growth,

provided the incentive for India to turn itself into a more outward looking economy³. Accordingly, a number of initiatives were taken to remove the structural rigidities and thus, making the economy more competitive in the international scenario.

3.1.2 The Post -Reform Scenario

The last decade of the 20th century has had immense significance for Indian economy in the context of the unilateral as well as global changes in trade policy. Apart from the various unilateral economic reforms undertaken since 1991, the economy also had to reorient itself to the changing multilateral trade discipline within the GATT/WTO framework (Chadha et al., 1998). As a member of WTO, India had an important role to play in trade negotiations under the GATT as well as the WTO. Accordingly, a number of reform measures were introduced by the government to integrate India more with the global economy. The focus of reforms have been, 'openness, transparency and globalisation with a basic thrust on outward orientation focusing on export promotion activity, moving away from quantitative restrictions and improving competitiveness of Indian industry to meet global market requirements'⁴.

The Government progressively liberalised imports by removing QRs (quantitative restrictions) maintained under the balance of payments cover. QRs were removed on 488 items in 1996, 391 items in 1997, 894 items in 1998, 714 items in 2000 and the balance QRs on 715 items on 31 March 2001. These items are classified according to ITC (HS) Classification at the 8-digit level. The Special Import License (SIL) Scheme has also been discontinued since 1st April 2001 (WTO, 2002).

It was recognised that the prevailing tariff rates were very high and tariff system was very complicated. Tariff rate came down significantly during the 90's. India granted the Most Favoured Nation (MFN) treatment to imports from all trading partners including those who are not members of the WTO. Table 3.1 shows the applied MFN tariff rates since 1990-91.

³ As long as Japan was the only country, which attained high levels of growth by integrating with the world economy, it was dismissed as an anomaly. But when it was joined by some other Asian countries, this anomaly turned into a new norm (Nayar, 2001).

⁴ Economic Survey, 2001-02, GOI

**Table 3.1: Structure of Average Unweighted 'Effective* Tariffs in India
1990-91 to 1997-98 (in percentage)**

Sectors	1990-91	1993-94	1995-96	1996-97	1997-98	2001-02
Agriculture	113	43	27	26	26	33
Mining	100	70	30	26	25	21
Manufacturing	126	73	42	40	36	31
Economy- wide	125	71	41	39	35	32
Coefficient of variation	32	42	47	49	42	13

Source: Panagariya (1999) and WTO Trade Policy Review 2002

Note: a) Effective rates are below statutory MFN rates whenever tariff reduction is brought about through exemption notification.

The average effective tariff rate the economy as a whole has gone down from as high as 125 percent in 1990-91 to 32 percent by 2001-02 for. Different sectors in the economy have also experiencing considerable tariff reduction. At the end of 1997-98, the tariff rate in the agriculture and mining sectors 26 percent and 25 percent in the respectively, though for the manufacturing sector it was comparatively higher at 36 percent. But by 2001-02, though the average tariff rates in manufacturing sector came down to 31 percent, the tariff rates in the agricultural sector rose to 33 percent. Tariff dispersion however has gone down significantly to 13 percent by 2001-02 from 32 percent in 1990-91.

However, in spite of the lowering of the average tariff, the problem of escalation of tariff across the stages of production still exist. This is evident from the table. 3.2.

**Table 3.2: Average Unweighted 'Effective' Tariffs by Processing Stage
(1990-91 to 2001-02)**

Stages of production	1990-91	1993-94	1995-96	1996-97	1997-98	2001-02
Unprocessed	107	50	27	25	25	29
Semi – processed	122	75	44	38	35	32
processed	130	73	43	42	37	33

Source: Panagariya (1999) & WTO Trade Policy Review 2002

From 1990-91 to 2001-02, there has been fall in the average tariff rates across the different stages of production. But escalation is found to be specially prevalent for products like food, beverages, tobacco, wood and furniture, textile and leather and basic metals (WTO, 2002).

Nevertheless, during the post reform period, the external sector of Indian economy has witnessed considerable reform. In this context a study done by Nayar (2001), examining the openness of Indian economy concluded that, there has been significant advance in India's

external integration during the 1990s⁵. However, he maintained that this advance has been modest and gradual. Moreover, compared to other nations considered in the study, India's openness was found to be lower than those countries.

3.1. 3 Provision for Contingent Measures

In accordance with the provisions made in the WTO agreement, like other countries, India has also maintained some 'trade defense measures', to protect the domestic consumers and producers from any adverse impact of the removal of the QRs. As noted earlier, the WTO framework allows member nations to maintain some form of restrictions on their imports if such imports cause problems for the domestic industry thus providing a level playing field to domestic players vis-à-vis imports. These include, countervailing duty and anti dumping duty, protection under safeguard provisions etc. Table 3.3 shows the use of such contingent measures by India by the end of the year 2002.

Table 3.3: Use of Contingent Measures of Protection by India (2002)

Measures	No. of cases	Percentage
Safeguards	8	4.06
Anti dumping	153	77.66
countervailing	36	18.27
Total	197	100

Source: WTO, 2003

By 2002 there were 8 (4.06 percent) safeguard cases and 36 (18.27 percent) countervailing actions initiated by India. However, it is very clear from the above table that anti dumping measures are the most frequently used contingent measures of protection in India. Anti dumping measures accounted for more than 75 percent (153 cases) of all contingent measures adopted at the end of the year 2002.

3.2: Growth and Distribution of the Anti dumping Cases Initiated by India

The first Indian Anti-dumping legislation came into existence in 1985 when the Customs Tariff (Identification, Assessment and Collection of duty or Additional duty on Dumped Articles and for Determination of Injury) Rules, 1985 were notified. Sections 9, 9 A, 9 B and

⁵ He considered four aspects of the economy for his analysis – proportion of India's GDP that is involved in the international trade of goods and services, levels of tariff, degree of transnationalisation of production i.e. the extent to which exchange of capital takes place for purposes of production, which primarily refers to foreign direct investment (FDI) and lastly, the extent of state control over the movement of capital.

9 C of the Customs Tariff Act, 1975 (Annexure-1) as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (Annexure-2) as amended in July 1999 vide Notification No. 44/1999 and May 2001 vide Notification No.28/2001) and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 framed thereunder form the legal basis for anti-dumping and anti-subsidy investigations and for the levy of anti-dumping and countervailing duties. To administer anti-dumping and anti-subsidies and countervailing measures in India the Directorate General of Anti-dumping and Allied Duties was set up on 13th April 1998, which acts under department of commerce and industry. Thus, India has the provision for anti dumping measures since 1980s, though it was not used until the beginning of 1990s.

3.2.1 Distribution over the Years and Across the Countries

India initiated its first anti dumping case⁶ against the USA, Japan and Brazil for the import of PVC Resin in 1992. Since then there has been a consistent rise in the use of anti dumping measures by India. The initiation of anti dumping cases by India, over the years is shown in table. 3.4.

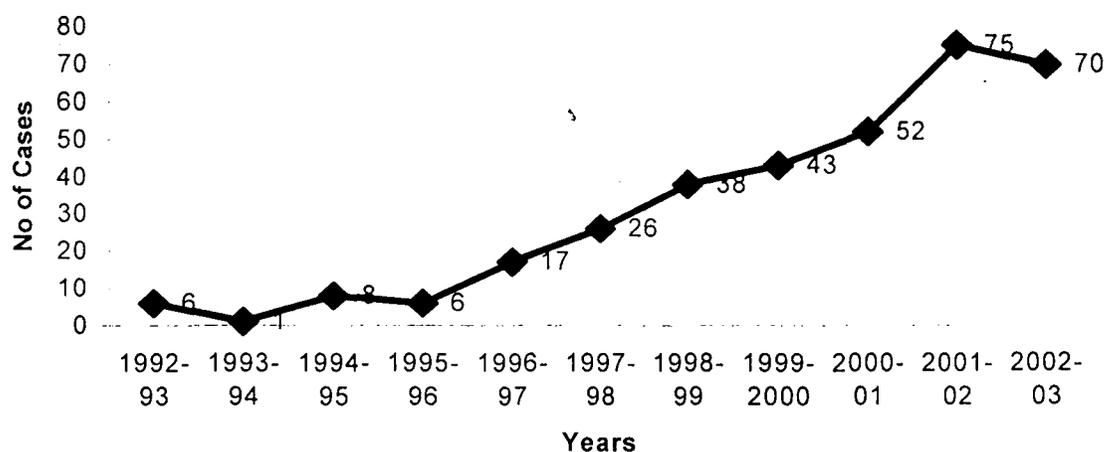
Table 3.4: Year wise Distribution of Anti dumping Cases Initiated by India

Financial Years	Frequency	Percent change in the number of cases
1992-93	6	---
1993-94	1	-83.33
1994-95	8	700.00
1995-96	6	-25.00
1996-97	17	183.33
1997-98	26	52.94
1998-99	38	46.15
1999-00	43	13.16
2000-01	52	20.93
2001-02	75	44.23
2002-03	70	-6.67
Total	342	---

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

⁶ A case here refers to an anti dumping case involving a particular nation and a particular country.

Figure 3.1: Distribution of Anti dumping cases over the years



Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

In the year 1992-93, India started its use of anti dumping measures initiating 6 cases. Though in the next year, there was only one case initiated, over the period there has been a steady rise in the number of anti dumping cases initiated by India. By the end of the year 1996-97, the number of cases initiated reached two-digit level when 17 cases were filed. The figure increased to 75 cases in the year 2001-02 and 70 cases in 2002-03, which is more than four times the cases India initiated in 1996-97. Thus, it is the later phase of 90s, which witnessed very sharp rise in the use of anti dumping measures. By the end of the financial year 2002-03, India was having as high as 342 anti dumping cases against various nations of the world. This, as we have seen in the previous chapter, is a very high number compared to even the traditional users of anti dumping measures such as the EU and the USA.

The number of countries against which India has initiated cases is also quite high. By now, India has initiated cases against 47 countries of the world. Table 2.5 reports the first 15 countries (ranked according the number of cases filed) against which India has initiated cases along with the number of cases that each country is facing. These countries account for more than 75 percent of the total anti dumping cases initiated by India.

Table 3.5: Countries against which India has initiated Anti dumping Cases

No	Countries Involved	Frequency	Percent	Cumulative Percent
1	china	66	19.30	19.30
2	Taiwan	25	7.31	26.61
3	EU	25	7.31	33.92
4	Korea	24	7.02	40.94
5	Japan	19	5.56	46.49
6	USA	18	5.26	51.75
7	Singapore	18	5.26	57.02
8	Russia	14	4.09	61.11
9	Thailand	12	3.51	64.62
10	Indonesia	11	3.22	67.84
11	Brazil	6	1.75	69.59
12	Hong Kong	6	1.75	71.35
13	France	6	1.75	73.10
14	Iran	6	1.75	74.85
15	Canada	5	1.46	76.32
	Others	81	23.62	100
	Total	342	100	

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03.

Note: Anti dumping cases against the EU as well as against Individual members of the EU were separately reported.

Table 3.5 reveals that China tops the list with 66 cases initiated against it. Thus China alone accounts for the 19.3 percent of the total anti dumping initiations, which is more than double than that of the second country i.e. Taiwan (25 cases). This is not unusual for China as it is facing large number of anti dumping cases in other countries too⁷. China is followed by Taiwan and the EU with 25 cases (7.31 percent) each. The first 6 countries account for more than 50 percent of the cases initiated.

We have already noted that majority of the anti dumping cases has been initiated in the second half of the 1990s. To bring out this fact more clearly, we divided the period 1992 to 2003 into two time segments, 1992-93 to 1998-99 and 1999-00 to 2000-03 (Table. 3.6).

⁷ By 2003, China is facing more than 300 anti dumping cases. Interestingly, according to Chinese official sources, exports from China facing anti dumping cases accounts for only 0.5 percent of China's total exports (Messerlin, 2001).

Table 3.6: Distribution of Anti dumping Cases over the Years for 15 major countries

No.	country	1992-93 to 1998-99		1999-00 to 2000-03		1992-93 TO 2002-03
		No. of cases (percentage)		No. of cases (percentage)		No. of cases
1	china	21	(31.82)	45	(68.18)	66
2	Taiwan	4	(16.00)	21	(84.00)	25
3	EU	3	(12.00)	22	(88.00)	25
4	Korea	10	(41.67)	14	(58.33)	24
5	Japan	9	(47.37)	10	(52.63)	19
6	USA	7	(38.89)	11	(61.11)	18
7	Singapore	1	(5.56)	17	(94.44)	18
8	Russia	5	(35.71)	9	(64.29)	14
9	Thailand	5	(41.67)	7	(58.33)	12
10	Indonesia	3	(27.27)	8	(72.73)	11
11	Brazil	2	(33.33)	4	(66.67)	6
12	Hong Kong	1	(16.67)	5	(83.33)	6
13	France	4	(66.67)	2	(33.33)	6
14	Iran	0	(0.00)	6	(100.00)	6
15	Canada	1	20.00)	4	(80.00)	5
	Others	26	(32.10)	55	(67.90)	81
	Total	102	29.82	240	70.18	342

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

It appears that except for a few countries, all the countries reported here faced more than 60 percent of the anti dumping cases during 1999-00 to 2002-03. As for China, it had 21 of its cases (31.82 percent) till 1998-99. In the next phase there were 45 anti dumping cases (68.18 percent) against it. Countries like Taiwan, the EU, Singapore and Hong Kong have faced more than 80 percent of their cases in the second sub-period. Taking all the cases into consideration, more than 70 percent of the cases (240 cases) were initiated between 1999 to 2003. In fact, among the 48 countries facing anti dumping cases in India, 14 countries did not face any case before 1998 (table.3.23A, appendix). Thus during the second period, the countries already facing anti dumping charges in India, saw an increase in the number of cases they faced. Further, some new countries started facing anti dumping charges in India such as Iran.

As we have seen in the previous chapter, in recent years the developing countries have not only become major users of anti dumping measures but also the principal victim of anti dumping cases. The new users of anti dumping, i.e. the developing countries have been found to be initiating most of the cases against other developing countries. This fact gets reflected in the cases initiated by India too.

Table 3.7: Distribution of Cases Initiated by India among Groups of Countries

Economic status	Frequency	Percent	Cumulative percent
Developed country	127	37.13	37.13
Developing country	177	51.75	88.89
Transition economies	38	11.11	100
Total	342	100	

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

Table: 3.7 reveals that, more than 50 percent (177 cases) of the cases initiated by India are targeted against developing countries. The developed countries are facing 37.13 percent (127 cases), while there are 11.11 percent (38 cases) of initiation against the transition economies. This distribution of anti dumping cases initiated by India between developed and developing countries has not changed much over the years. Almost every year around 60 to 70 percent of the cases were initiated against the developing countries, as is evident from table.3.8.

Table 3. 8: Distribution of Cases between Developed and Developing countries Over the Years

Economic status of the country					Total
Financial Years	Developed Country		Developing Country*		
	Cases	Percentage of Cases	Cases	Percentage of Cases	
1992-93	2	33.33	4	66.67	6
1993-94		0.00	1	100.00	1
1994-95	2	25.00	6	75.00	8
1995-96	1	16.67	5	83.33	6
1996-97	10	58.82	7	41.18	17
1997-98	8	30.77	18	69.23	26
1998-99	15	39.47	23	60.53	38
1999-00	15	34.88	28	65.12	43
2000-01	17	32.69	35	67.31	52
2001-02	36	48.00	39	52.00	75
2002-03	21	30.00	49	70.00	70
Total	127	37.13	215	62.87	342

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

Note a) *Transition economies have also been included in this group

3.2.2 Distribution across Product Groups

In this section we will discuss the distribution of the anti dumping cases across various product groups. The Directorate General of Anti dumping and Allied activities, India in their annual report on anti dumping has categorised the anti dumping cases into six broad product groups. For our study we have maintained the same classification. Data presented in table 3.9 show the distribution of the anti dumping cases across these product groups.

Table 3. 9: Distribution of Cases across the Product Groups

Industry group	Frequency	Percentage
chemical & petrochemicals	160	46.78
Pharmaceuticals	43	12.57
Fibres / yarn	34	9.94
Steel & other metals	49	14.33
Consumer goods	21	6.14
Others	35	10.23
Total	342	100.00

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

There is a clear concentration of anti dumping cases in a narrow range of product groups. The most prominent among them is chemical and petrochemical sector. Of the total of 342 cases, 160 cases (46.78 percent) involve products belonging to this sector. Steel and other metals accounting for 49 cases (14.33 percent) occupy the second place. This is followed by pharmaceuticals (12.57) and Fibre and yarn (9.94). These four sectors account for about 84 percent of the anti dumping investigations initiated by India. Besides these, there are some consumer goods also, which are attracting anti dumping initiation in the recent years.

Year wise distribution of the cases across the industry groups shows that all the sectors have been experiencing substantial increase in the number of anti dumping cases over the years (Table. 3.10).

Table 3.10: Distribution of the Anti dumping Cases across Product Groups over the Years

Financial years	Product Groups						Total
	chemical & petrochemicals	Pharmaceuticals	Fibres/yarn	Steel & other metals	Consumer goods	Others	
1992-93	4	1	0	1	0	0	6
1993-94	0	1	0	0	0	0	1
1994-95	5	3	0	0	0	0	8
1995-96	4	2	0	0	0	0	6
1996-97	4	0	3	8	0	2	17
1997-98	10	4	4	4	0	4	26
1998-99	23	0	8	1	0	6	38
1999-00	21	9	2	7	0	4	43
2000-01	27	9	4	3	9	0	52
2001-02	32	9	11	9	6	8	75
2002-03	30	5	2	16	6	11	70
Total	160	43	34	49	21	35	342

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03.

But the increase is very sharp in case of chemicals and petrochemicals. Pharmaceutical sector is also showing a steady rise in the anti dumping cases, though the number of cases is not as high as the chemical sector. Before 1996-97, incidence of anti dumping cases was confined

only to these two sectors. In 1996-97, the list of sectors affected was extended to include fibre/yarn and steel and other metals.⁸ The anti dumping cases related to consumer goods started much later in 2000-01. However, by 2002-03, there were 21 cases involving various consumer goods. Nevertheless, what we see is a clear concentration of anti dumping cases in some specific sectors of the economy. This pattern shows similarity with the worldwide pattern of filing of anti dumping cases. We remember from the discussion in the pervious chapter that, the base metal and chemical sectors attract a large number of anti dumping cases at the worldwide level also. However, in case of India, chemicals sector has more cases than the base metal sector, while reverse is the case in the worldwide filing pattern.

Table 3.11: Distribution of Anti dumping Cases across Product groups among Countries

NO.	Countries involved	Industry Groups						Total
		chemical & petrochemicals	Pharmaceuticals	Fibres/yarn	Steel & other metals	Consumer goods	Others	
1	china	30	15	1	6	9	5	66
2	Taiwan	12	4	4	-	3	2	25
3	EU	15	7	1	1	-	1	25
4	Korea	14	-	5	1	1	3	24
5	Japan	9	3	1	1	1	4	19
6	USA	10	4	1	2	-	1	18
7	Singapore	11	3	-	2	-	2	18
8	Russia	5	2	-	6	-	1	14
9	Thailand	5	1	4	-	-	2	12
10	Indonesia	6	1	2	-	-	2	11
11	Brazil	3	1	1	1	-	-	6
12	Hong Kong	2	-	-	-	2	2	6
13	France	3	-	-	1	-	2	6
14	Iran	5	-	-	-	1	-	6
15	Canada	1	1	-	2	-	1	5
	Others	29	1	14	26	4	7	81
	Total	160	43	34	49	21	35	342

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

Note: a) Refer to table 3. 24A in the appendix for all the countries.

Table: 3.11 shows the number of anti dumping cases and the involved countries in each sector. Here also we see the predominance of the chemical sector. Almost all countries, which are shown in the table, are having maximum number of cases in this sector. China, for example has 30 cases in the chemical and petrochemicals sector, followed by 15 cases in the pharmaceutical sector. For the first seven countries, around 40 to 60 percent of the cases belonged to the chemical & petrochemicals sector. Thus, when we look at the individual

⁸ Steel and other metals however faced one anti dumping case in 1992-93.

countries, no definite pattern of relationship between countries affected vis-à-vis sectors affected emerges. But when we aggregate the cases into developed and developing countries some interesting patterns emerge (table.3.12).

Table 3.12: Distribution of anti dumping cases across Product Groups among Developed and Developing countries

Product Groups	Economic status of the country				Total
	Developed country		Developing country		
	Cases	Percent	Cases	Percent	
chemical & petrochemicals	59	36.88	101	63.13	160
Pharmaceuticals	18	41.86	25	58.14	43
Fibres/yarn	9	26.47	25	73.53	34
Steel & other metals	18	36.73	31	63.27	49
Consumer goods	6	28.57	15	71.43	21
Others	17	48.57	18	51.43	35
Total	127	37.13	215	62.87	342

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

In the case of pharmaceuticals (58.14 percent) and 'others' (51.43 percent), the proportion of cases initiated against developing countries is less than the proportion of cases against developing countries in general (62.87 percent). In the cases of chemicals and steel and other metals, the proportion of cases against developing countries is almost the same as the aggregate level. Interestingly, the proportion is higher than the average in the case of fibre/yarn (74 percent) and consumer goods (71 percent). For developed countries the proportion is higher than the average (37.13 percent), in the case of pharmaceuticals (41.86 percent) and others (48.57 percent). Similarly, the share is lower than the average in fibre/yarn and consumer goods.

3.3: Anti dumping Cases against India

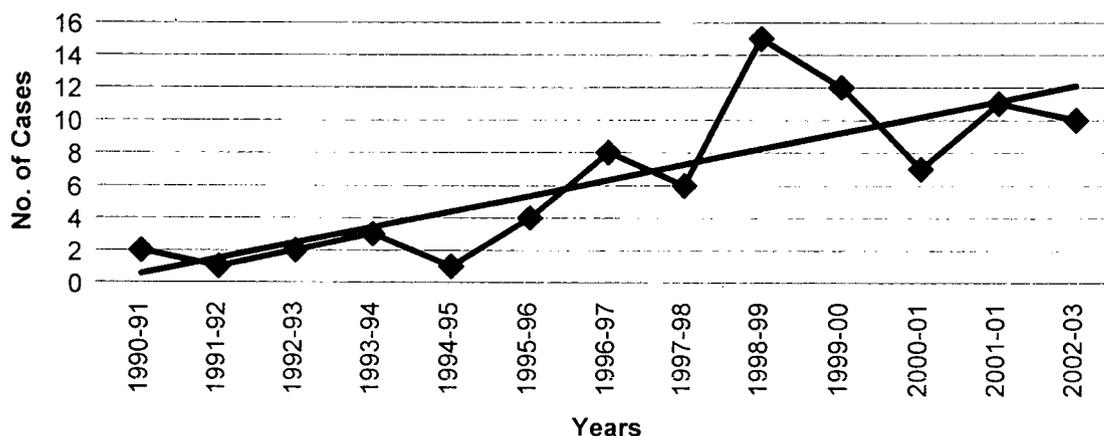
India faced its first anti dumping case in 1990-91, one year before it initiated its first anti dumping case. The first anti dumping action against India was initiated by the EU on 1st Nov 1990 on the exports of synthetic fibre of polyester from India. In the same year another case was initiated by Brazil for the import of jute bags. Since then till the end of the financial year 2002-03 India has all together 82 anti dumping cases initiated against it. The number of cases initiated in different years is reported in table 3.13.

Table 3.13: Distribution of the Cases against India over the Years

Year	Frequency	Percentage
1990-91	2	2.44
1991-92	1	1.22
1992-93	2	2.44
1993-94	3	3.66
1994-95	1	1.22
1995-96	4	4.88
1996-97	8	9.76
1997-98	6	7.32
1998-99	15	18.29
1999-00	12	14.63
2000-01	7	8.54
2001-01	11	13.41
2002-03	10	12.20
Total	82	100.00

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

Figure 3.2: Distribution of the Cases against India over the Years



In the year 1990-91, India was facing 2 anti dumping cases. The number increased to 8 in 1996-97. The financial year 1998-99 saw the maximum initiation of anti dumping cases against India with 15 cases. The number of cases came down from the peak level in the subsequent years. However the pattern is clear: the anti dumping cases against India are showing an increasing trend over the years.

There are 16 countries all together who have filed anti dumping cases against India. By the end of 2002-03, the EU have initiated maximum number of cases against India (27 cases),

followed by the USA (14 cases) and South Africa (11 cases). These three together accounts for almost 64 percent of the total anti dumping cases against India (table.3.14).

Table 3.14: Countries Initiating Anti dumping Cases against India

Countries	Frequency	Percentage
Argentina	1	1.22
Australia	2	2.44
Brazil	4	4.88
Canada	5	6.10
China	1	1.22
EU	27	32.93
Indonesia	6	7.32
Mexico	1	1.22
Republic of Trinidad & Tobago	1	1.22
Russian Federation	1	1.22
South Africa	11	13.41
South Korea	1	1.22
Thailand	2	2.44
Turkey	4	4.88
USA	14	17.07
Venezuela	1	1.22
Total	82	100

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

One more fact that come into sight from the table is that, besides the traditional users of anti dumping measure there are a number of developing countries, which have filed anti dumping cases against India. Brazil was the first developing country to file a case against India⁹ which was joined by Mexico in 1994¹⁰. Indonesia launched 3 anti dumping cases against India in the financial year 1996-96. These countries were joined by more developing countries during the later part of 90's, and by the end of 2002-03, India is facing anti dumping cases in 12 developing countries.

However, going by the number of cases initiated, we can find that the traditional anti dumping users still dominate the scene. Table 3.15 shows that, the developed countries, which are also the traditional users of anti dumping, have initiated around 59 percent (48 cases) of the total cases against India. On the other hand, all the developing countries put together account for 41.46 percent (34 cases) of the total cases.

⁹ Refer to the table in the appendix.

¹⁰ Mexico filed a case of Ad against India for the export of Bicycle Tyres and Tubes.

Table 3.15: Distribution of the Cases among Developed and Developing Countries

Countries	Numbers	Percentage
Developed countries	48	58.54
Developing countries	34	41.46
Total	82	100

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

Studies discussing the motives behind the increased use of anti dumping measures in the recent years, point out the fact that anti dumping measures may be used by countries in a strategic way to retaliate against the cases it faces in other countries.¹¹ To see whether that line of argument can explain the case of India, we tried to match the countries that have filed cases against India and countries, which are facing anti dumping cases in India. Going by numbers, we find that India has initiated a much larger number cases than the number of cases it is facing in different countries. The number of cases initiated by India is more than four times higher than the cases that India is facing. Out of the 47 countries that are facing anti dumping initiations in India, 14 of them have initiated anti dumping cases against India. There are however two countries (Argentina and Republic of Trinidad & Tobago) which have initiated cases against India, while there are no cases by India against them. Table 3.16 reports those countries that have initiated anti dumping cases against India and also are facing anti dumping cases in India, along with the number of cases and the date of first initiation.

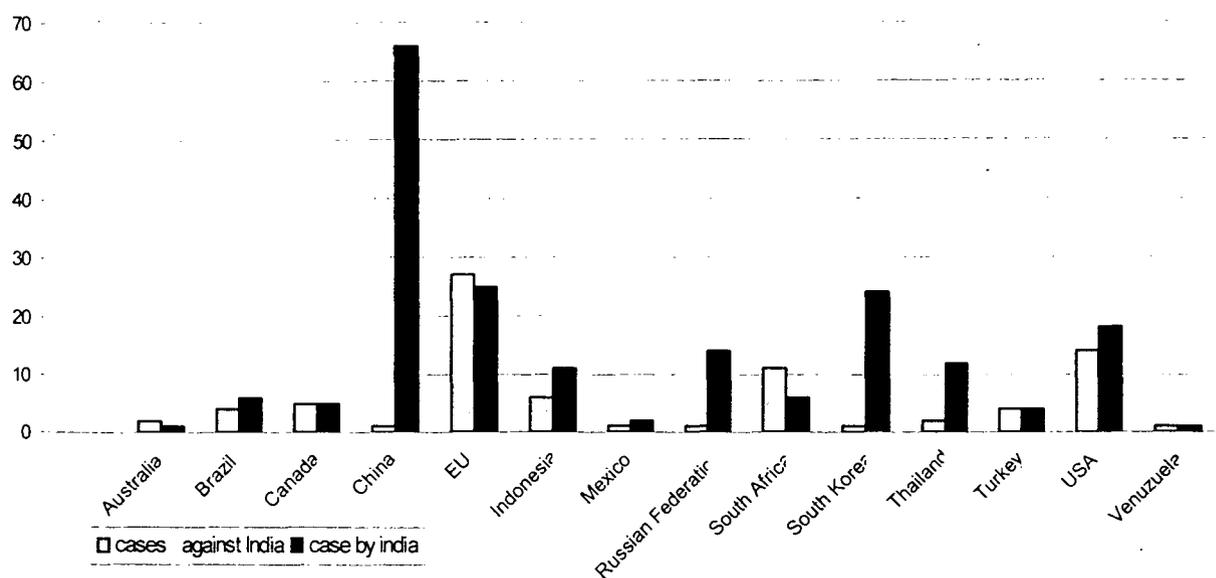
Table 3.16: Anti dumping Case against India and cases Filed in India

Countries	Cases against India	Year of first case	Case initiated by India	Year of first case
Australia	2	1999-00	1	2002-03
Brazil	4	1991-92	6	1992-93
Canada	5	1997-98	5	1998-99
China	1	2001-02	66	1993-94
EU	27	1990-91	25	1998-99
Indonesia	6	1996-97	11	1996-97
Mexico	1	1994-95	2	1992-93
Russian Federation	1	2001-02	14	1994-95
South Africa	11	1996-97	6	1998-99
South Korea	1	2000-01	24	1992-93
Thailand	2	1998-99	12	1996-97
Turkey	4	1998-99	4	1998-99
USA	14	1992-93	18	1992-93
Venezuela	1	2002-03	1	2002-03

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

¹¹ See Prusa and Skeath (2001)

3.3 Figure: Anti dumping Case against India and cases Filed in India



Considering the countries, which are facing anti dumping cases by India and also have filed cases against India, EU features prominently in both the sides. The EU has been alleging Indian exports of dumping since the beginning of 1990's, initiating 27 anti dumping cases (highest number of cases) till 20002-03. However, India's first anti dumping case against EU was launched only in 1998-99. But during this small time span, it has filed 25 cases against EU. Taking the case of China, it is facing the maximum number of anti dumping cases in India (66 cases) starting from the year 1993-94. But China has only one anti dumping case against India, which was initiated only in 2001-02¹². Similarly in case of South Korea, India has filed 24 anti dumping cases starting from 1992-93, as against only one case that India is facing in South Korea, initiated in 2000-01. Same thing holds for countries like Russian Federation, Thailand, and Indonesia. However, in case of South Africa number of cases initiated by it against India (11 cases) is higher than the cases India has filed against it (6 cases). Given such a situation, how far retaliation can be put forward as an explanation for increasing use of anti dumping measures is a doubtful question. It could be a probable situation, but only in the case of a few countries.

Next, we consider the broad product groups in which India has been facing anti dumping cases. This is reported in table.3.17.

¹² However, we should remember that China's anti dumping legislation came into force only in that year.

Table 3.17: Distribution of Anti dumping cases Against India across the Product Groups

Product groups	No of anti dumping cases	Percentage
Engineering including Steel product	27	32.93
Textiles and Articles of Textile	16	19.51
Drugs and Pharmaceuticals	15	18.29
Electronics	4	4.88
Rubber, Plastics, Glassware and articles thereof.	10	12.20
Consumer & Industrial goods	9	10.98
Agricultural Products	1	1.22
Total	82	100

Source: Annual Report, Directorate General of anti dumping and Allied Duties, 2002-03

India is facing the highest number of anti dumping cases i.e. 27 cases (32.93 percent) in the area of engineering products. Next place is occupied by textile and textile products accounting for 16 cases (19.51 percent). Drugs and pharmaceutical exports from India, which accounts 15 (18.29 percent) anti dumping cases, occupies the third position. Together these three product groups account for more than 70 percent of the total anti dumping cases against India. Our analysis of the cases initiated by India, showed high concentration in the chemicals and petrochemicals sector which accounts for more than 45 percent of the total cases. But chemicals and petrochemicals do not figure in the list of cases initiated against India. There are more such differences and similarities between the two groups of anti dumping cases considered here. One interesting common product group to be mentioned is that of drugs and pharmaceuticals, which appear prominently in both the lists. One interesting difference that comes out between the cases initiated by India and initiated against India, if we look into the nature of these products. While, cases that India has initiated by India involve more intermediate products, the many of the products involved in the cases against India final consumer goods. For example in the case of textile products while cases initiated by India involve products like 'acrylic fibre' 'partially oriented yarn' etc., the products involving cases against India are readymade garments, bed linen etc. Again, the electronic goods export from India facing anti dumping cases include products such as 'magnetic disc', 'compact disc' etc. which are consumer goods.

3.3.2 Implication for Indian Exports

Given the large number of anti dumping cases that India is facing, the next question arises is that, what will be the impact of such behaviour on India's exports. India's share in total world trade is very low. It accounts for even less than 1 percent of the total world trade. India's exports as a percentage of world exports remained at around 0.5 percent in the first half of 1990s. Though, it has improved to 0.61 percent during 1998 and further to 0.65 percent during 1999 and 0.7 percent in 2000-01, its share in the world exports is still considerably low (WTO, 2002). However, trade policy reform measures has been initiated over the last decade aiming at creating an environment for achieving rapid increase in exports and making exports an engine for achieving higher economic growth. Over the years EXIM policy have been formulated in such a way so as to 'strengthen export production base, remove procedural irritants, facilitate input availability besides focusing on quality and technological upgradation and improving competitiveness. Steps have also been taken to promote exports through multilateral and bilateral initiatives, identification of thrust areas and focus regions'¹³. However, increasing use of disguised protectionist measures such as anti dumping may appear as serious hurdles in achieving higher growths in exports.

Looking at the export pattern of India, we find that manufactured items constitute the biggest share. The share of various product groups in the export of India during the 90s has been shown in the table 3.18.

Table 3.18: Export from India (1995-96 and 2001-02)

Product groups	Percentage share (1995-96)	Percentage share (2001-02)
A. Agricultural & Allied products	16.00	13.3
B. Ores & Minerals	4.00	2.6
C. Manufactures	77.7	76.1
i. Leather Manufacturers	3.7	3.1
ii. Gems & Jewellery	16.8	16.0
iii. Drugs/ Pharmaceuticals	3.00	4.5
iv. Manufactures of Metals	2.6	3.8
v. Iron & Steel (Primary & Semi Finished)	1.7	1.7
vi. Cotton yarn, Fabrics, Made ups	8.2	7.4
vii. Readymade garments	12.0	11.3
D. Crude & Petroleum products	1.6	5.3

Source: Economic Survey 1995-96 and 2001-02

¹³ Economic Survey, 2001-02

We have already seen that engineering and manufactures of steel products have been facing the maximum number of anti dumping cases against India, followed by textile and drugs and pharmaceuticals. The table shows that though the share of manufactured metal was 2.6 percent in 1995-96, it increased to 3.8 percent in 2001-02. Textile and the articles of textile account for a substantial share of the total manufacturing exports. Its share was 20.2 percent in 1995-96, which however has gone down to 18.7 percent by 2001-02. Drugs and pharmaceuticals are also showing a considerable increase in its share in total exports from 3 percent in 1995-96 to 4.5 percent in 2001-02.

These three sectors together accounted for nearly 30 percent of the India's total exports by 2001-02. Thus, it may be a matter of concern that, the major sectors in which India is facing anti dumping charges accounts for a substantial portion of India's total exports.

Given this, the next point of query would be whether the initiating countries are major destinations for India's exports. If these countries are the major destinations for India's exports, anti dumping cases initiated by them will have higher distortionary effect on our exports. The EU is the biggest destination for our exports. Its share was 17.5 percent during 1980-85, which further increased to 23 percent during the later part of 1980's. North America held the second position, whose share increased from 17.5 percent in 1980-85 to 19 percent during 1985-90¹⁴. However, during 1990s we notice a few significant changes (table 3.19).

Table3.19: Destination of India's Exports (1995-96 and 2001-02)

Countries	Percentage share (1995-96)	Percentage share (2001-02)
1. EU	27.39	22.47
2. North America	18.32	20.76
3. OPEC	9.68	11.92
4. Eastern Europe	4.20	2.86
5. Developing Countries	28.93	30.88
5.1. Asia	22.98	23.58
5.1.1.SAARC	5.41	4.62
5.2 Africa	4.76	5.16
5.3 Latin America	1.19	2.15

Source: RBI Handbook of Statistics, 2003

Though the EU is still the major destinations of India's exports, its share has come down to 22.47 percent in 2001-02. The share of the USA however increased to 18.32 percent in 1995-95, which further increased to 20.76 percent by 2001-02. The share of Eastern European

¹⁴ Economic Survey, 1990-91

countries registered heavy decline in their share in the total exports. On the other hand, there has been a significant rise in India's exports to the destinations like OPEC and developing countries in Asia, Africa and Latin America. Economic survey, 2001-02, reported that, the main countries contributing to increased share in India's exports includes, Thailand, Malaysia, China, Sri Lanka, Singapore, Bangladesh, Egypt, Kenya, Nigeria, Brazil, Mexico and Chile.

Looking at the countries who have initiated anti dumping cases against India, we can see that the EU and the USA who are biggest trading partners of India, are the two regions who have initiated maximum number of anti dumping cases against India. However, in the recent years developing countries like China, Thailand, Malaysia, Brazil etc, who have emerged as new destinations for our exports have also started initiating anti dumping cases against India.

To assess the possible implication for India's exports, we report the share of the country initiating anti dumping case against India, in the total export of that commodity from India. Higher the share of the anti dumping case initiating country in the total exports from India of that particular product, more serious will be the impact on the exports.

Table 3.20: Share of the Anti dumping case Initiating country in the total Export of the Allegedly Dumped Product from India

Percentage share	Cases	Percentage of cases
0 to 10	28	40.58
10 to 20	11	15.94
20 to 30	8	11.59
30 to 40	6	8.70
40 to 50	7	10.14
50 to 60	3	4.35
60 to 70	1	1.45
above 70	5	7.25
Total	69	100.00

Source: Commerce Ministry database and UN COMTRADE

Table.3.20 shows in 28 cases (40.58 percent) the anti dumping case initiating country account for 10 percent of the total export of that commodity from India. In case of another 22 cases (31.89 percent), this share is more than 30 percent. In fact there are 9 (13.05 percent) products where the export to the particular country accounts for more than 50 percent of India's exports of that product.

If we look at the country wise distribution, in case of the EU, most of the cases involve products in which EU accounts for a major share in the total exports from India (Table3.21).

Table 3. 21: Country wise Distribution of the Share of the Anti dumping case Initiating country in the total Export of the Allegedly Dumped Product from India

country	Percentage Share of the Products facing dumping charge in the total exports from India								Total
	0 to 10	10 to 20	20 to 30	30 to 40	40 to 50	50 to 60	60 to 70	above 70	
Argentina	1								1
Australia	1								1
Brazil	3								3
Canada	4	1							5
China			1						1
EU	1	2	4	4	6	3		4	24
Indonesia	4	1			1				6
Mexico		1							1
Trinidad & Tobago	1								1
South Africa	7	1						1	9
Thailand	2								2
Turkey	2	1	1						4
USA	2	4	2	2			1		11
Total	28	11	8	6	7	3	1	5	69

Source: Commerce Ministry database and UN COMTRADE

In case 17 of the products the EU's share in the total export is more than 30 percent. For USA, which have initiated 11 cases, 6 of the products have a share of less than 20 percent and the rest of the products have more 20 percent of share in the total exports of that particular commodity. However, for the rest of the products the share is less than 20 percent.

3.4: Chapter Summary

The focus of our discussion in this chapter was to outline the trends and patterns of anti dumping cases involving India. To begin with we looked into the environment in which anti dumping emerged as a widely used contingent measure of protection in India. The trade policy of India has undergone considerable change over time. It started as an inward looking economy with the policy of import substitution, which resulted in imposition a number of restrictions on both imports as well as exports. However, as discussed in the first section of this chapter, since the beginning of the 90s, we can notice gradual shift in the trade policy resulting in opening up of the external sector for foreign competition. Anti dumping measure has emerged as a trade policy tool for India in this changed scenario.

India started using the anti dumping measures only in 1992, though the provision for its use was there for quite some time. From our discussion on the anti dumping cases initiated by India, a few significant features have emerged. There has been a remarkable growth in the use

of anti dumping measures by India in the 1990s. From a non-user till 1992, India became one of the most frequent users by the end of 2003, initiating more than 300 cases against 47 trading partners. The rise in the case initiation was found to be sharper since 1996-97. Among the nations targeted, there appears an obvious bias against developing countries, as these countries account for the major chunk of anti dumping cases. This conforms to the world-wide trend in anti dumping cases. One more important feature that emerges from the analysis is that most of the anti dumping cases are concentrated in a handful of sectors such as chemicals and pharmaceuticals and base metals. Base metals and chemicals are attracting considerably large number of anti dumping cases in developed countries too, who are the traditional user of anti dumping. However, unlike those countries, there is no anti dumping case against vegetable products in India.

The number of anti dumping cases initiated against India is not as high as the number of cases initiated by India. But, the cases against India are also showing an increasing trend over time. This increasing trend cannot be entirely explained in terms of retaliatory behaviour. Even though developing countries are found to be filing more anti dumping cases worldwide India is still facing greater number of anti dumping cases in developed countries. The sector in which India is facing maximum number of cases is engineering including steel products followed by textiles and articles of textile. The products groups involving anti dumping cases filed in India and cases against India are not markedly different. However a closer look at the products reveals that while the cases initiated by India involve more of intermediate products, the export items from India facing anti dumping charges are many final, consumer goods.

High number of anti dumping cases against India may have serious implication for Indian exports. Because the countries initiating anti dumping cases against India are the major trading partners of India to which considerable portions of our exports are directed. Moreover, in the case of many of the products, the countries, which have initiated the anti dumping cases, account for a major share in the total export of that commodity from India.

Thus, the discussion of the chapter clearly depicts India's increasing association with the anti dumping measures. This calls for a more incisive analysis of the trend.

Appendix to Chapter 3

Table 3.22 A: Distribution of Anti dumping Cases Initiated by India across the Countries over the Years

Country	Financial Year											Total
	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	
China		1	3	3	1	10	3	5	16	10	14	66
Taiwan						1	3	4	4	6	7	25
EU							3	4	6	9	3	25
Korea	1		1		2	2	4	4	1	3	6	24
Japan	1		1			4	3	3	2	4	1	19
USA	1			1	3		2	3	3	3	2	18
Singapore							1		3	9	5	18
Russia			1	1	1	1	1	4	2		3	14
Thailand					2		3		1	3	3	12
Indonesia					1		2	3	1	1	3	11
Brazil	1		1							4		6
Hong Kong							1	1		3	1	6
France					1	1	2	1	1			6
Iran								1	3		2	6
Canada							1			2	2	5
Malaysia						1		1	1	2		5
Germany			1		1		1			1	2	6
Romania	1					1		1		1	1	5
S.Africa							1			3	2	6
Ukraine						1		1	1		1	4
Turkey							2			1	1	4
Saudi Arabia								1	2		1	4
Poland								1	1	1	1	4
UK							1	1		1	1	4
UAE									1	2	1	4
Spain					1	1		1				3
Italy					1	1				1		3
Kazakhstan				1		1					1	3
Mexico	1						1					2
Austria					1			1				2
Czech republic							1	1				2
Nepal									1	1		2
Macedonia							1				1	2
Netherlands									1		1	2
Belgium					1							1
Denmark					1							1
Hungary							1	1				2
Bangladesh									1			1
Oman										1		1
Bulgaria										1		1
Portugal						1						1
Qatar										1		1
Georgia										1		1
Venezuela											1	1
Philippines											1	1
Australia											1	1
New Zealand											1	1
Total	6	1	8	6	17	26	38	43	52	75	70	342

**Table 3.23 A: Distribution of Anti dumping Cases initiated by India across countries
during two time Periods**

No.	Country	1992-93 to 1998-99		1999-00 to 2000-03		1992-93 TO 2002-03
		No. of cases	(percent)	No. of cases	(percent)	No. of cases
1	China	21	20.59	45	18.75	66
2	Taiwan	4	3.92	21	8.75	25
3	EU	3	2.94	22	9.17	25
4	Korea	10	9.80	14	5.83	24
5	Japan	9	8.82	10	4.17	19
6	USA	7	6.86	11	4.58	18
7	Singapore	1	0.98	17	7.08	18
8	Russia	5	4.90	9	3.75	14
9	Thailand	5	4.90	7	2.92	12
10	Indonesia	3	2.94	8	3.33	11
11	Brazil	2	1.96	4	1.67	6
12	Hong Kong	1	0.98	5	2.08	6
13	France	4	3.92	2	0.83	6
14	Iran	-	0.00	6	2.50	6
15	Canada	1	0.98	4	1.67	5
16	Malaysia	1	0.98	4	1.67	5
17	Germany	3	2.94	3	1.25	6
18	Romania	2	1.96	3	1.25	5
19	S. Africa	1	0.98	5	2.08	6
20	Ukraine	1	0.98	3	1.25	4
21	Turkey	2	1.96	2	0.83	4
22	Saudi Arabia	-	0.00	4	1.67	4
23	Poland	-	0.00	4	1.67	4
24	UK	1	0.98	3	1.25	4
25	UAE	-	0.00	4	1.67	4
26	Spain	2	1.96	1	0.42	3
27	Italy	2	1.96	1	0.42	3
28	Kazakhstan	2	1.96	1	0.42	3
29	Mexico	2	1.96		0.00	2
30	Austria	1	0.98	1	0.42	2
31	Czech republic	1	0.98	1	0.42	2
32	Nepal	-	0.00	2	0.83	2
33	Macedonia	1	0.98	1	0.42	2
34	Netherlands	-	0.00	2	0.83	2
35	Belgium	1	0.98		0.00	1
36	Denmark	1	0.98		0.00	1
37	Hungary	1	0.98	1	0.42	2
38	Bangladesh	-	0.00	1	0.42	1
39	Oman	-	0.00	1	0.42	1
40	Bulgaria	-	0.00	1	0.42	1
41	Portugal	1	0.98		0.00	1
42	Qatar	-	0.00	1	0.42	1
43	Georgia	-	0.00	1	0.42	1
44	Venezuela	-	0.00	1	0.42	1
45	Philippines	-	0.00	1	0.42	1
46	Australia	-	0.00	1	0.42	1
47	New Zealand	-	0.00	1	0.42	1
	Total	102		240		

3.24 A: Distribution of Anti dumping Cases across Product groups among Countries

No.	Countries Involved	Industry Groups						Total
		Chemical & Petrochemicals	Pharmaceuticals	Fibres/yarn	Steel & other metals	Consumer goods	Others	
1	China	30	15	1	6	9	5	66
2	Taiwan	12	4	4		3	2	25
3	EU	15	7	1	1		1	25
4	Korea	14		5	1	1	3	24
5	Japan	9	3	1	1	1	4	19
6	USA	10	4	1	2		1	18
7	Singapore	11	3		2		2	18
8	Russia	5	2		6		1	14
9	Thailand	5	1	4			2	12
10	Indonesia	6	1	2			2	11
11	Brazil	3	1	1	1			6
12	Hong Kong	2				2	2	6
13	France	3			1		2	6
14	Iran	5				1		6
15	Canada	1	1		2		1	5
16	Malaysia	3		2				5
17	Germany	3		1	1		1	6
18	Romania	2			3			5
19	S. Africa	4			2			6
20	Ukraine				4			4
21	Turkey	2		2				4
22	Saudi Arabia	3			1			4
23	Poland	2			2			4
24	UK			1	1		2	4
25	UAE	1				2	1	4
26	Spain	1		1	1			3
27	Italy			2	1			3
28	Kazakhstan	1			2			3
29	Mexico	1		1				2
30	Austria				2			2
31	Czech republic	1			1			2
32	Nepal	1		1				2
33	Macedonia	1			1			2
34	Netherlands	1			1			2
35	Belgium				1			1
36	Denmark	1						1
37	Hungary			1			1	2
38	Bangladesh					1		1
39	Oman						1	1
40	Bulgaria			1				1
41	Portugal			1				1
42	Qatar	1						1
43	Georgia		1					1
44	Venezuela				1			1
45	Philippines						1	1
46	Australia				1			1
47	New Zealand					1		1
	Total	160	43	34	49	21	35	342

Table 3.25 A: Distribution of Anti dumping cases against India Across Countries over the Years

Countries	Date of Initiation													Total
	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	
Argentina													1	1
Australia										1			1	2
Brazil		1					1					1	1	4
Canada				1				1		1	2			5
China												1		1
EU	2			1		4	3	4	4	3	1	4	1	27
Indonesia							3		1			1	1	6
Mexico					1									1
Republic of Trinidad & Tobago										1				1
Russian Federation												1		1
South Africa							1		5	3	2			11
South Korea											1			1
Thailand									1			1		2
Turkey									1				3	4
USA			2	1				1	3	3	1	2	1	14
Venezuela													1	1
Total	2	1	2	3	1	4	8	6	15	12	7	11	10	82

Chapter 4

FACTORS INFLUENCING THE ANTI DUMPING PROCEDURE IN INDIA

Introduction

In the previous chapter we examined the growth and distribution of the anti dumping cases initiated by India as well as the cases which have been filed against India. The picture that emerges reveals that, within a short period of time India has become a major anti dumping user. There has been a sudden spurt in the use of anti dumping measures during the 1990s, especially in the most recent years. It is also observed that the anti dumping actions tend to concentrate in a narrow range of industries. Our endeavour in the present chapter is to explain the observed anti dumping behaviour of India. Sudden surge in the use of anti dumping measures also prompt us to ponder whether anti dumping measure has become a new protectionist tool in the hands of the authority. Like all other WTO nations, India has reduced its tariff level to a great extent, besides phasing out the quantitative restrictions. As we have mentioned earlier, the increase in the use of anti dumping measures is seen by many as an attempt by the nations to compensate for the reduction in conventional barriers. Keeping that in mind, in the first section we discuss the various possible factors, influencing the anti dumping procedure in India at different stages. We consider both demand side as well as supply side forces that tends to shape the anti dumping behaviour. It is followed in the section 2 with a statistical exercise to identify the factors influencing the final decision making process of the anti dumping authority. In section 3, we take the question of economic rationale as well as the related issue of plausible protectionist bias. In order to ensure comparative perspective, we also take up an analysis of the cases initiated against India, though not in a very detailed manner.

4.1: Demand and Supply Side Factors

The anti dumping legislation in India clearly states that ‘dumping per se is not condemnable, as price discrimination in the form of dumping is a common international commercial practice’. But, if such dumping causes ‘material injury’ to the domestic firm then it calls for suitable action on the part of the authority. Therefore, the ‘material injury to the domestic industry should be the guiding principle behind the decision by the domestic industry to file

petition for initiating anti dumping case and also for the concerned authority to make the final decision –whether to impose anti dumping duty or not. Thus obviously the imports as well as the possible injury caused by it would have implications for both supply of and demand for protection against dumping.

However, as has been pointed out by a number of empirical studies, in actual practice, a number of pressures from different sources, other than the economic performance of the particular domestic industry may influence the demand and supply of anti dumping protection. In this section we try to identify some of the possible influences on the anti dumping procedure in India.

4.1.1: Imports and Anti dumping Action

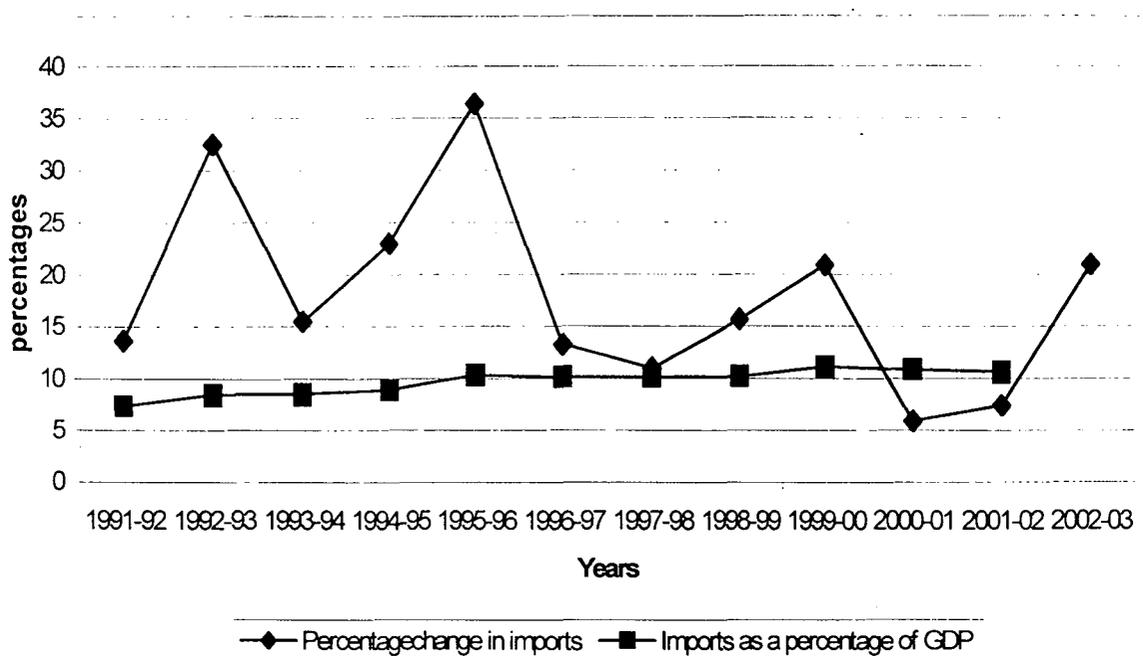
The first indication of dumping and its possible adverse impact on domestic industry comes from the extent of imports. Import is an important determinant not only for the domestic industry to ask for protection in the form of an anti dumping action, but also in coming to a final decision for the investigating authority. Sudden increase in imports may give the signal of possible dumping of the product. A Country having a high share in the imports of the supposedly dumped product is feared to act as a predator, which may have serious implication for the domestic industry. Moreover very high imports may be causing price depression or preventing price increases for the goods which otherwise would have occurred. In such cases, the authorities may provide relief to the domestic producers by imposing anti dumping duty.

Again, studies highlighting the influence of macro economic factors point out that adverse balance of payment situation which get reflected in the form of -- growing overall imports, increasing trade deficit etc, may have an impact on the willingness of the government to accept complaints¹. Thus the authority will be swayed to use anti dumping duty as a ‘safety valve’ against increasing imports. Therefore, we first look into the overall import scenario of the country and then imports of specific products facing anti dumping investigation.

The decade of 1990’s for India was characterised by a number of economic reforms in the external sector. During this period though imports in current prices increased, the rate of change in the value of imports exhibited a fluctuating pattern (figure.4.1)

¹ Tacaks, 1981; Liedy, 1997, Hansen (1992) etc.

**Figure 4.1: Percentage Change in Import and Imports as a Percentage of GDP
(1990-91 to 2001-02)**



Source: CMIE

The ratio of imports to GDP shows, the threat of import penetration has been on a rise. It has increased from 7.4 percent in 1990-01 to 10.85 percent by 2001-02. However, in value terms, the rate of growth tended to stagnate or even decline. Chandrasekhar and Ghose (2002), interestingly found that behind this sluggishness of the value of imports there has been a trend of sharp increase in the quantity of imports and decline in the unit value of imports. Considering the quantum and unit value indices of India's imports from April-June 1996 to April-June 1999, they found that '*unit value index or weighted average of unit price of India's imports rose during 1996-97, reached a peak of 513 in the first quarter of 1997-98 and declined thereafter by 33 percent. On the other hand, the quantum index for imports more than doubled over the same period, and rose by 57 percent over the two year period starting April-June 1997*' (pp.118-119). This is a very significant observation from the point of view of this study, as this trend indicates possible dumping. In such a situation it will not be surprising if the government explores the available provisions for restricting imports, including anti dumping measures.

Anti dumping action works at the level of individual countries, specific products and particular firms. As such, it is important that we take the analysis of imports to a more disaggregated level. Studies have shown that countries have a tendency to file anti dumping cases against those trading partners who have a larger share in the imports, or against the

country whose share has increased significantly in the immediate past. (Prusa and Skeath, 2001).

The post- reform period experienced some significant changes in the sources of imports of India (Table. 4.1). While the share of the traditional partners declined in total imports, smaller and new players appears to have gained significantly.

Table 4.1: Sources of India's Imports – Post reform Period

Countries/Regions	Percentage share in total imports		
	1991-92	1995-96	2001-02
1. EU	29.19	28.09	20.30
2. North America	11.72	11.74	7.16
3. Other OECD	13.30	12.77	12.69
4. OPEC	19.69	20.84	5.77
5. Eastern Europe	5.11	4.56	1.84
6. Developing countries	20.99	22.21	24.85
6.1 Asia	14.80	17.52	18.02
6.1.1 Hong Kong	0.55	1.06	1.42
6.1.2. South Korea	1.65	2.25	2.22
6.1.3. Malaysia	2.03	2.46	2.20
6.1.4. Singapore	3.58	2.98	2.54
6.1.5 Thailand	0.25	0.46	0.82
6.1.6 China	0.11	3.92	3.96
6.2 Africa	4.33	3.09	4.87
6.3 Latin America	1.86	1.60	1.96

Source: DGSI&C

Note: Some of the Asian countries experiencing increased share to India's exports have also been shown in the table.

Though the EU is the region having the biggest share in India's total imports, its share has fallen from around 29 percent in 1991-92 to 20.3 percent by 2001-02. The share of North America showed a declining trend throughout the 90s and by the end of 2001-02, its share stood at 7.16 percent. Imports from Eastern Europe and OPEC registered clear decline. However, one noticeable trend appears from the above table is that, over the years, there has been continuous rise in the imports from the developing countries. This rise is more prominent in the case of Asian countries. The share of Asian countries in Indian's total imports has gone up from 14.8 percent in 1991-92 to more than 18 percent by 2001-02. Increasing imports from countries like China, South Korea, Hong Kong and Malaysia has contributed to this trend. Incidentally, some of these new and upcoming sources of imports figure prominently in the list of countries facing anti dumping action in India.

In the previous chapter we identified 15 countries accounting for more than 75 percent of the anti dumping initiations in India. Here we consider those countries to analyse the trend in import over the period from 1989-90 to 2001-02. Table 4.2 reports imports (in terms of value) from these countries in 1989-90 and 2001-02 and the growth rate in the imports during this period. The table also shows the share of the countries in total imports of India at these two time points.

**Table 4.2: Imports from the 15 Countries Facing Maximum
Anti dumping Cases India**

No	Country	Value of Imports (in crores)		CGR in value 1989-90 to 2001-02	Share in Total Imports	
		1989-90	2001-02		1989-90	2001-02
1	China	66.53	9711.92	51.48	0.15	3.96
2	Taiwan	588.37	2667.29	13.42	1.8	1.08
3	EU	12154.32	49773.85	12.47	30.95	20.30
4	Korea	569.8	5443.41	20.69	1.52	2.48
5	Japan	2817.41	10236.8	11.35	7.51	2.99
6	USA	4264.25	15021.12	11.06	12.14	7.16
7	Singapore	898.95	6219.45	17.49	3.31	2.34
8	Russia	2036.85	2553.93	1.9	5.9	0.95
9	Thailand	100.5	2017.79	28.4	0.27	0.62
10	Indonesia	89.83	4944.76	39.66	0.34	2.25
11	Brazil	391.59	1469.74	11.65	1.01	0.52
12	Hong Kong	248.31	3476.09	24.6	0.69	1.58
13	France	1609.9	4026.4	7.94	3.02	1.78
14	Iran	389.24	1353.6	10.94	2.36	0.42
15	Canada	453.3	2524.97	15.39	1.27	0.92
	Total of 15	8649.19	121441.11	13.46	72.24	50.14
	Rest	26679.16	123758.6	24.82	27.76	49.86
	India	35328.35	245199.72	17.52	100	100

Source: DGCI&S

Note: a) CGR = Compound Growth rate

b) 'Rest' includes all the other exporting countries, not only the rest of the countries facing anti dumping case.

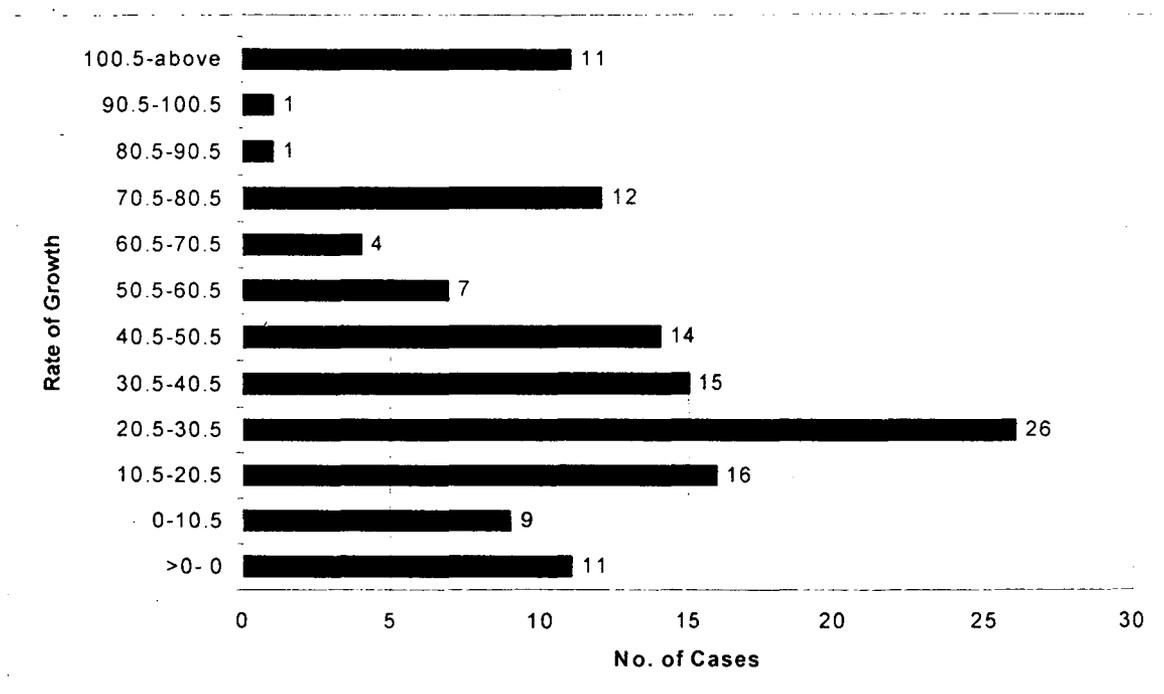
Considering the countries individually, imports from all the countries except Russia (1.90) and France (7.94 percent) are increasing at a rate higher than 10 percentage. China, which is facing the maximum number of anti dumping cases in India, experienced more than 50 percent growth in its exports to India during the period from 1989-90 to 2001-02. Its share in the total imports to India has also increased from 0.15 percent to 3.96 percent during the same period. Besides China, Indonesia (39.66 percentage), Thailand (28.4 percentage), and Hong Kong (24.6 percentage), Korea (20.69 percentage) are some of the countries which are also experiencing very high growth rates in their exports to India. These countries have also been

increasing their shares in India's imports, though from rather low initial levels. On the other hand the EU, the USA and Japan which are much bigger trade partners of India are experiencing fall in their share in the total imports. But even then, the EU and the USA together accounts for more than 27 percentage of India's total imports. As for Japan, its share in the total imports to India has declined from 7.51 percent in 1989-90 to 2.99 percent in 2001-02. Besides these, Taiwan, Singapore, Russia and Canada are some countries, which are experiencing, decline in their share in India's imports.

Imports from a country to India may not be high, but if at the level of individual product facing anti dumping case, import shows high growth, then it may stand a higher chance of getting anti dumping duty imposed. Baldwin and Steagall (1993) found change in the quantity of dumped imports to be a significant variable in getting an affirmative decision in anti dumping cases. Hence, it would be interesting to examine the growth rates in the value of imports from the 'named country' (i.e. the country, which is facing the anti dumping investigation) in the total imports of the dumped commodity. For this analysis we have taken three time points. The year 1990-91 has been taken as the initial point as all the cases were initiated in the following decade. The second time point taken is 1993-94, i.e. when the reform process gathered momentum and when anti dumping cases started appearing. The last year considered is the year in which the anti dumping cases against these products have been initiated. However, this analysis of the product specific import trend could not include 38 cases due to unavailability of data. For some of those cases the corresponding HS code was not specified. For such cases we could not find the trade data. It also needs to be cautioned here that our analysis of imports suffer from some limitations. The import figures are for the corresponding HS codes and need not perfectly match the product in question. The results therefore, should be interpreted with that limitation in mind.

By the end of the year 2002-03, India was having 342 cases involving 48 countries. However, as the import data pertaining to 1990-91, reveals, in that year products involving 182 cases were not imported at all from their respective countries.

Fig 4.2: Growth Rates in value of Imports of the Product Involving Anti dumping Case (1990-91 to the case year)



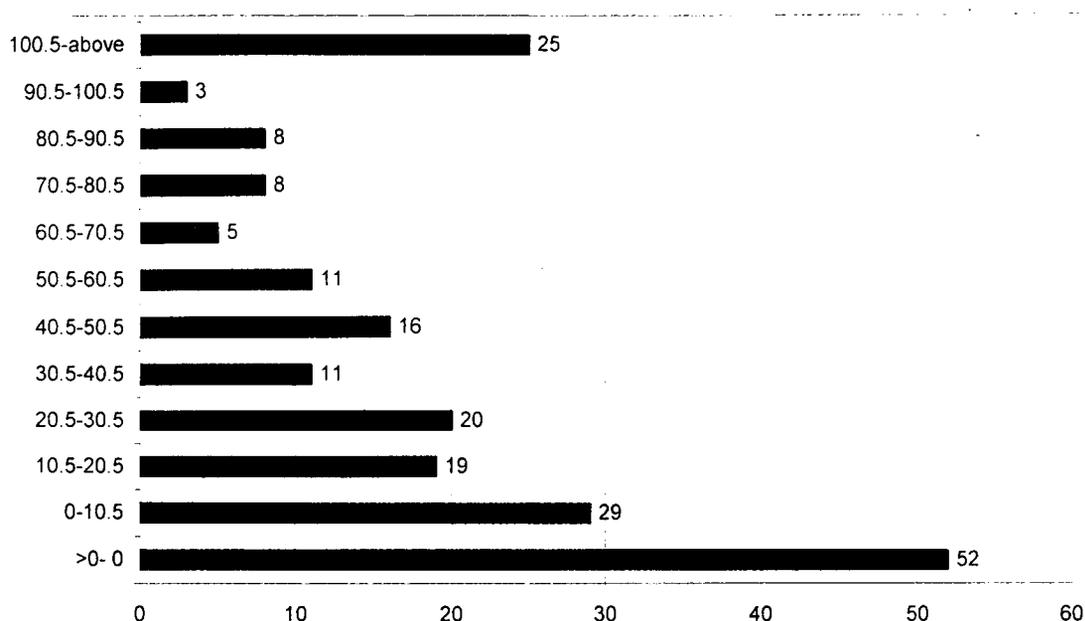
Source: DGCI&S

Note: a) The figure shows rate of growth of imports a total of 127 cases.

b) Case Year is the year in which the anti dumping case was initiated.

As figure 4.2 shows, there are 11 cases (8.66 percent of cases) where the products involved are experiencing either decline in growth or no growth at all in the total value of imports from the particular country. There are 25 cases (19.69 percent), where the import from the named countries are experiencing a positive but less than 20 percent growth rate in value during this period. The imports, in rest 91 cases (71.65 percent), from the respective countries have grown at rates higher than 20 percent. This shows a considerably high growth of imports for these products. There are in fact 36 cases (28.35 percent) involving products, which are showing growth rate of higher than 50 percent during this period. Among these, products involving 11 cases (8.66 percent) showed growth rates higher than even 100 percent. Therefore, imports appear to have contributed to the surge in demand as well as supply of protection. Nevertheless, the picture is not so clear when we take the period since 1993-94 (figure 4.3).

**Figure 4.3: Growth Rates in value of Imports of the Product
Involving Anti dumping Case (1993-94 to the case year)**



Source: DGCI&S

Note : a) The figure shows rate of growth of imports a total of 207 cases

b) Case Year is the year in which the anti dumping case was initiated.

In 52 (25.12 percent) cases, the value of imports from the named country has been either stagnant or declining. In 29 (14 percent) cases the respective countries have experienced a growth rate of less than 10.5 percent. However, in the rest of the cases imports from the named country have been experiencing relatively high rates of growth. In 107 cases (51.69 percent) imports from the named country have been experiencing more than 20 percent growth in the value of imports during the given period. Among them, in the case of 25 (12.08 percent) products the growth rate exceeded the 100 percent mark.

4.1.2 Domestic Industry

Increasing import in itself will not call for anti dumping investigation. The anti dumping authority of a nation imposes anti dumping duty, only if the imports from a country are causing injury to the domestic industry. Therefore the performance of the industries facing dumping from foreign sources is the most significant factor, which influence the initiation and the final decision making in an anti dumping case. In the previous chapter, we have seen most of the anti dumping cases in India are concentrated in four major sectors. Therefore, before going into individual cases, we will try to gather some broad idea about these sectors.

4.1.2.1 Chemical and Petrochemical Sector

The chemical industry in India is a heterogeneous sector encompassing many sub sectors like organic and inorganic chemicals, dyestuffs, paints, pesticides etc. The sector is one of the fastest growing segments of the Indian industry registering a turn over of Rs. 1200 billion in 2001-02². Some of the significant factors, which have helped in the growth and development of chemical sector in India are:

- Technically trained man power
- Priority to investment in the inputs for agricultural sector resulting in investment in the basic chemicals required for the manufacturing of fertilizers and pesticides.
- Importance of textile and leather industry, which have encouraged production of chemicals required by them.
- Abundance of salt along the long coastline, facilitating manufacturing of caustic soda and soda ash, which are two major chemicals produced by India.

The per capita consumption of chemicals in India is well below the prevailing world level. The per capita consumption of Sulphuric Acid, which is considered as the barometer of the growth of chemical industry, is only 5 kg per annum in India as compared to 40 kg in industrially developed countries³. Therefore, it would appear that there is considerable scope for development of the chemical sector in India.

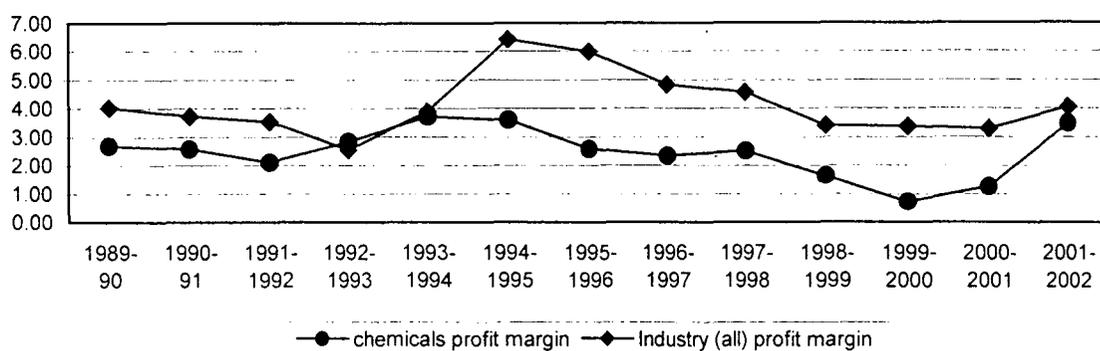
Under the ongoing liberalisation process, industrial licensing has been done away with for all industries except a few highly hazardous chemicals. The liberalised policy also aims at providing inputs at international prices. In order to attain this, a gradual process of reducing custom duties on chemical products has been initiated. Tariff levels have been reduced substantially during 1990s. Majority of the chemical products can now be freely imported or exported through simplified procedures.

To have an idea about the overall performance of this sector during the last decade, we looked at the trend in 'Net Profit Margin' of this sector from 1989-90 to 2001-02.

² Ministry of Chemicals and Petrochemicals , GoI

³ Ibid

Figure 4.4: Net Profit Margin of the Chemical Sector



Source: PROWESS database

Note: a) Net Profit Margin = $\text{Net Profit}/\text{Net sales} \times 100$

b) Chemical sector here does not include drugs and Pharmaceuticals as it is shown separately next.

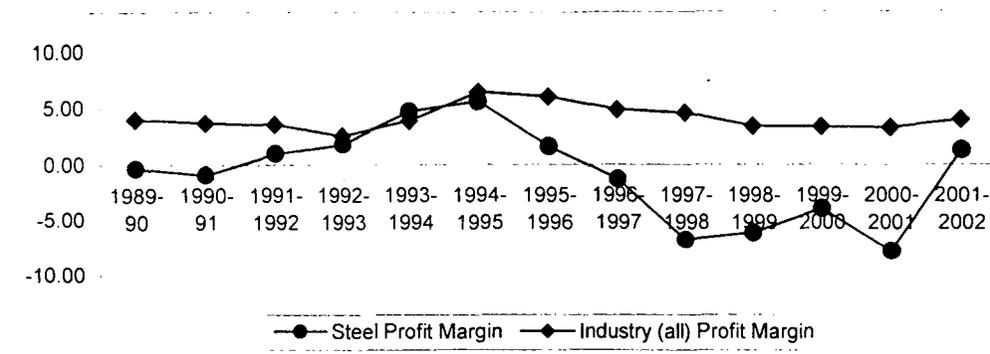
Figure.4.4 shows the net profit margin for the chemical sector as well as for the manufacturing sector as a whole. The net profit margin for the chemical sector has remained lower than the net profit margin for the whole manufacturing sector for the entire period, barring two years, 1992-93 and 1993-94. The profit margin for the sector has shown a downward trend from 1989-90 to 1991-92. Even though the profit margin improved in the next two years, it started declining again from 1994-95 and reached even lower than 1 percent by 1999-00. However, since then there has been considerable recovery of the profit margin for the sector.

4.1.2.2 Steel and Iron Sector

The sector, which has witnessed maximum number of anti dumping initiations after chemicals, is base metal, particularly steel. The Indian steel industry is the 9th largest steel producer in the world. The liberalisation of industrial policy and other initiatives taken by the government have given a definite impetus for entry, participation and growth of the private sector in the steel industry. The 'New Industrial Policy' has opened up the iron and steel sector for private investment by (a) removing it from the list of industries reserved for public sector and (b) exempting it from compulsory licensing. Imports of foreign technology as well as foreign direct investment are freely permitted up to certain limits, under an automatic route. While the existing units are being modernized or expanded, a large number of new (greenfield) steel plants have also come up in different parts of the country based on modern, cost effective, state-of-the-art technologies. However, the steel industry in India faced problems during the later part 1990s due to global decline in the steel prices, over capacity,

low level of demand, etc. The situation however has improved in the last two three years, with the increase in the domestic prices of HR coils.

Figure 4.5: Net Profit Margin of the Steel Sector



Source: PROWESS database

The net profit margin for the steel and iron sector was not at all impressive over the last decade as is evident from figure 4.5. It has remained negative for the year 1989-90 and 1990-91. It improved afterwards and reached up to 5.6 percent by 1994-95. But after that there has been a continuous fall in the profit margin, causing the sector to incur heavy losses till 2000-2001.

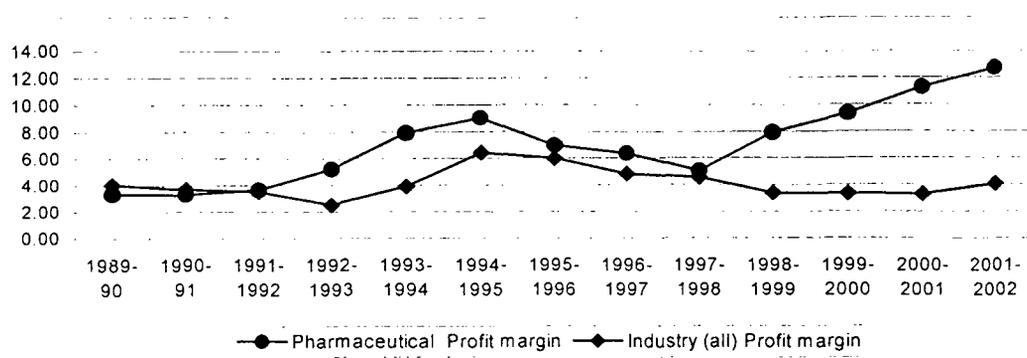
4.1.2.3 Drugs and Pharmaceutical Sector

One of the most significant segments of India’s chemical sector is the drugs and pharmaceutical sub-sector. India can boast of an almost self-sufficient drugs and pharmaceutical industry which caters to 85 percent of the domestic requirement of bulk drugs and more than 95 percent of the requirements of formulations. India is ranked 5th in the world, accounting for 8 percentage of the world’s total production of drugs and pharmaceuticals by volume. The growth of the pharmaceutical industry in India has been at around 15 percent per annum. (SIDBI report, 2002).

But, the pharmaceutical sector in India is highly fragmented. There are now more than 20,000 domestic manufacturers of end-use pharmaceuticals, particularly because of the industry's low capital requirement and the lack of product patents. Only about 300 of these are in the organised sector. This structure causes intense competition, especially in the bulk drug markets⁴. The profit margins of the sector as shown in figure 4.6 is showing comparatively better position than the other two sectors considered before.

⁴ <http://www.indiaoppi.com> (Organisation of pharmaceutical Producers of India).

Figure 4.6: Net Profit Margin of the Pharmaceutical Sector



Source: PROWESS database

Even though for the years 1989-90 and 1990-91, the profit margin of this sector was lower than the manufacturing sector, from 1991-92 it showed an upward trend, which continued till 1994-95 (figure 4.6). After that there was a brief period of lack lustre performance. But since 1997-98 the sector has been showing increasing profits which is much higher than the manufacturing sector as a whole. In the year 2001-02, there was a gap of more than 8 percent between the pharmaceutical sector on the one hand and the manufacturing sector as a whole on the other.

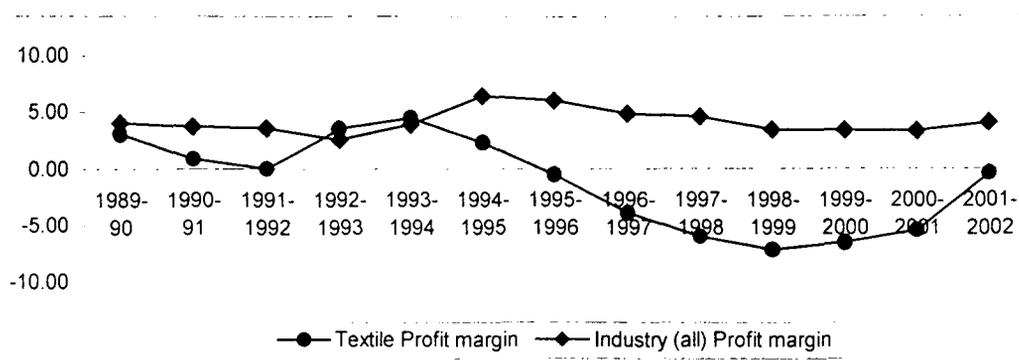
4.1.2.4 Textile Sector

Textile industry in India covers a large gamut of activities ranging from production of its own materials namely, cotton, jute, silk and wool to providing people high value added products such as fabrics and garments. Besides the natural fibres, the industry also uses large varieties of synthetic and man –made fibres such as filament and spun yarns from polyester, viscose, nylon and acrylic. It is the largest manufacturing sector in India accounting for 4 percent of the GDP and 20 percent of industrial output in 2000. It provides employment to 38 million people, being the largest employer after agriculture⁵.

The profit margin for this sector presents discouraging picture. Over most years during the previous decade the sector has been showing a profit margin lower than the manufacturing sector as a whole. More significantly, the sector has been incurring losses during many years considered (Figure.4.7).

⁵ WTO Trade Policy Review, India, 2002.

Figure 4.7: Net profit Margin of the Textile Sector



Source: PROWESS database

Thus from the above discussion we can form a broad idea about the four major segments of the Indian manufacturing sector where most of the anti dumping cases are concentrated. The profit margins calculated for these sectors for the last decade show that, except for pharmaceuticals, other three sectors have been experiencing lower profit margin as compared to the manufacturing sector as a whole. Significantly enough, their profit performance has tended to worsen in the second half of 1990s, when anti dumping cases also appear to have peaked. Thus there is evidence at the level of broad sectors for increasing pressure of imports as well as injury.

Dumping as we have said earlier, however is a firm level activity. If a particular product has been dumped in the domestic market, the affected group will be the domestic producers of that product. The injury to that industry need not necessarily get reflected in the overall performance of the sector⁶. Therefore, there is need to move on to a product specific analysis.

If the domestic industry gets materially injured due to excessive dumping of foreign goods, one way it will get reflected is in the reduced profitability of the domestic industry. However, we should mention here that the poor performance on the part of the domestic industry might not be always due to dumping. But, if there is poor performance on the part of the domestic industry, dumping by foreign firms may be a reason for that. Here we first considered two 'profitability indicators' for the domestic industries, where anti dumping investigations have been initiated. We first consider the 'Net Profit margin' for these industries. Net profit margin has been calculated using the formula: $(\text{Net Profit}/\text{net Sales}) \times 100$. Lower the margin,

⁶ However concentration of a large number of anti dumping cases in one particular sector will definitely affect the overall performance of the sector.

lower is the percentage of profit that the industry obtains from its sales. However, here we could include only 86 products for the analysis due to lack of data⁷.

Table 4.3: Net Profit Margin of the domestic industry

Net profit margin (%)	Products	Percentage
Negative to 0	56	65.12
1 to 10	24	27.91
10 to 20	6	6.98
20 to 30	0	0.00
Total	86	100.00

Source: PROWESS

Table.4.3 reveals that of the total of 86 industries considered here, 56 of them (65.12 percent) are facing losses or no profit at all. There are 24 (27.91 percent) industries where the profit margin is between 1 to 10 percentage. There are only 6 industries where anti dumping case has been initiated, which are experiencing a profit margin between 10 to 20 percent.

Next indicator we consider for assessing the profitability of the domestic industry is 'percentage return to net worth'. It is a comprehensive measure of profitability, calculated by dividing returns to capital by net worth to express returns in relation to the net assets owned.

Table 4.4: Returns to Net Worth of the Domestic Industry

Returns to net worth(%)	No of products	Percentage
Negative to 0	46	53.49
0 to 10	16	18.60
10 to 20	13	15.12
20 to 30	6	6.98
30 to 40	2	2.33
40 to 50	0	0.00
50 to 60	2	2.33
60 to 70	0	0.00
70 to 80	0	0.00
80 to 90	0	0.00
90 to 100	0	0.00
Above 100	1	1.16
Total	86	100.00

Source: PROWESS

As we can see from table 4.4, there are 46 (more than 50 percent) industries, which are facing negative returns to its net worth. There are 16 industries experiencing returns which is positive but less than 10 percent. There are 21 (24.43 percent) industries, which are experiencing, returns between 10 to 40 percent.

⁷ We have discussed problems associated with retrieving data for the domestic industry in the 1st chapter.

Another indicator, which is used by the authorities to establish material injury, is 'Capacity Utilisation'. The utilisation of capacity reflects changes in the volume of production or a change in production capacity. 'A decline in the utilisation of production capacity will lead to an increase in the unit cost of production and potentially a loss to profit. A lower percentage of capacity utilisation may imply lower production on the part of the domestic industry due to the unfair competition from the dumped products' (Czako et. al., 2003).

Table 4.5: Extent of Capacity Utilisation by the Domestic Industry

Capacity utilisation (%)	Product	Percentage	Cumulative percentage
10 to 20	3	3.49	3.49
20 to 30	3	3.49	6.98
30 to 40	7	8.14	15.12
40 to 50	8	9.30	24.42
50 to 60	14	16.28	40.70
60 to 70	7	8.14	48.84
70 to 80	9	10.47	59.30
80 to 90	15	17.44	76.74
90 to 100	5	5.81	82.56
Above 100	15	17.44	100.00
Total	86		

Source: PROWESS

Table.4.5 reveals that in the case of 21 (24.42 percent) products, the concerned industry is utilising less than 50 percent of its production plant. In case of another 45 (52.33 percent) products the rate of capacity utilisation is between 50 to 90 percent. For 20 industries the percentage of capacity utilisation was found to be more than 90 percent, of which 15 are actually over utilising the capacity.

Thus the idea we can gather from the above discussion is that, though poor performance is not uniformly true for all the domestic industries seeking anti dumping protection, considerable number of them are experiencing decrease in profitability and capacity utilisation. Whether such performance of the domestic industries can be attributed to dumping or not, is something the anti dumping authorities have to investigate and decide. But this will definitely act as a major incentive for the domestic industries to seek protection.

4.1.3 Some Other Possible Factors

Studies done in the political economy framework identify factors other than imports and injury to the domestic industry that may influence the anti dumping procedure. For instance, they attribute the increasing affinity of the domestic industry for the anti dumping measures to

the 'rent seeking' behaviour. As the Indian economy is opening up, the level of protection the domestic industries used to enjoy, in the form high tariffs as well as other restriction on the entry of foreign firms, is coming down. This has exposed them to more fierce competition from foreign rivals. In such a situation it is obvious that these industries would try to get protection through other possible means. In the literature it has been pointed out that such rent seeking behaviour on the part of the industry becomes more evident if the market is concentrated. In a concentrated market there is the possibility of a small number of firms functioning in a collusive manner enjoying monopoly gains⁸. In such a situation these firms may put pressure on the authority to provide more protection (Feinburg and Hirsch, 1989)⁹. To check the possibility of such 'political lobbying bias', we looked at the market concentration of the domestic industry. For that purpose we have considered two indicators- the number of firms in each industry and the share of the biggest firm (in terms of its share in total sales), in total sales of the industry. The distribution of the industries according to the number of firms they have is reported in table. 4.6. However, as we have already noted in the introductory chapter, CMIE's PROWESS database from which we have taken the information relating to the domestic firms, give information only on firms registered with the BSE or NSE. Therefore, when we consider the number of firms to approximate the market concentration, we do recognise the fact that, many of the small firms may be left out.

Table 4.6: Number of Firms in the Domestic Industry

No of firms	No of Products	Percentage
1 firm	31	36.05
2 firms	11	12.79
3 firms	13	15.12
4 firms	10	11.63
5 firms	7	8.14
6- 10 firms	8	9.30
More than 10 firms	6	6.98
Total	86	100.00

Source: PROWESS

Out of the 86 products considered, single firms produce 31 products (36.05 percent). There are 11 (12.79 percent) and 13 (15.12percent) products respectively which are produced by

⁸ A more competitive industry may give rise to the problem of 'free rider'. Once the protection is granted it is applicable to all firms in the industry. In that case, some firms may try to free ride without bearing the cost of getting protection.

⁹ However according to the 'need for protection hypothesis' (Leidy, 1997) market concentration may have negative correlation with the final decision by the investigating authority. The hypothesis suggest that a less concentrated market with large number of firms having less market power, will be more prone to suffer injury due to unfair imports. Therefore, the probability of such firms getting protection is high.

industries having 2 and 3 firms respectively. Another 8 industries have firms more than 6 but less than 10. There are only 6 (6.98 percent) products in the case of which the number of firms producing the product exceeds 10 firms. As the number of firms in the industries considered were found to be very less, the share of the biggest firm in the total sales of the product concerned was found to be quite high (table 4.7).

Table 4.7: Share of the Biggest Firm in the Total Sales

Percentage share of the biggest firm in total Sales	No. of Products	Percentage
0-25	5	5.81
26-50	17	19.77
51-75	21	24.42
76-100	43	50.00
Total	86	100.00

Source: PROWESS

For 43 (50 percent) products the biggest firm accounts for more 75 percent of the total sales. For another 21 firms (25.42 percent) this share lays between 51 to 75 percent. In fact, there are only 5 products where the biggest firm accounts less than 25 percent of the total production.

Thus the number of firms producing the given product and also the share of the biggest firm in the total sales gives us a clear idea that the domestic industries for the allegedly dumped products are highly concentrated. In such cases it will be easier for the firms to get organised and put pressure on the government to provide protection to them in the form of anti dumping duties. And in such a situation, material injury to these firms due to dumping may not be an 'essential condition' to seek protection.

Another hypothesis put forward regarding government's inclination for providing more protection in some sectors is that, it tends to protect industries with high levels of employment.¹⁰ This is so because, firstly, it will be difficult for the government to accommodate all these people elsewhere, if there is any job loss in these sectors due to foreign competition. Secondly, industries with more employees, possess considerable voting power and so they can lobby effectively (Caves, 1976). The table below shows the total level of employment in some of the sectors where there is very high number of anti dumping initiation.

¹⁰ Social Justice or Equity Model, the Adding machine Model

Table 4.8: Employment Situation in the Sectors having high Anti dumping Initiation

Percentage Share in the Total employment of the manufacturing sector			
Year	Textile	Base Metal & Products thereof	Chemicals
1990-91	21.26	12.09	7.8
1991-92	25.29	11.6	8.17
1992-93	20.18	11.95	8.48
1993-94	28.71	11.44	8.54
1994-95	20.88	11.28	8.92
1995-96	21.37	11.88	8.88
1996-97	21.00	11.4	9.11
1997-98	21.44	11.26	9.37

Source: Annual Survey of Industries

Note: Chemicals include pharmaceutical sector also.

Table. 4.8 shows the share of the three major industry groups witnessing the maximum anti dumping initiations, in the total employment of the manufacturing sector, from 1990-91 to 1997-98. The table shows that chemical sector, where the maximum number anti dumping initiation has taken place, employed 7.8 percentage of total manufacturing labour force in 1990-91. By the end of 1997-98, this share has increased to 9.37 percent. Textile is the biggest employer of all the sectors considered here, employing more than 20 percent of the total manufacturing sector throughout the period. The base metal sector, which is facing the second highest number of anti dumping initiation, employed around 12 percent of the total manufacturing employment, which however came slightly down to 11.26 percent by 1997-98. Considering the fact that these sectors are giving employment to a major chunk of the total manufacturing sector workforce in India, government may be interested in protecting them from excessive competition to avoid any job loss.

4.2: Factors Influencing the Final Decision-Making in anti dumping Investigation

As we have already noted, the anti dumping procedure involves many stages including filing of petitions, initial screening, final decision making and implementation. In the discussion so far our attempt has been to identify certain common features of the cases such as imports, different dimensions of injury, market concentration, etc. It has provided some valuable insights regarding the anti dumping behaviour of the country. Import competition and the performance of the domestic industry (possible injury caused by dumping) play an important role in shaping the country's anti dumping behaviour. Import competition and injury might prompt the domestic producers to come together and petition the authority for protection. India's anti dumping legislation, following the WTO guidelines, also presupposes certain levels of import penetration and injury for awarding anti dumping protection. Therefore, it is

only natural that the cases /products filed before the anti dumping authority are generally characterised by relatively high import competition and poor performance.

Another factor, which might prompt and induce the industry to approach the authority, is market concentration. Higher the concentration higher will be the chance of unity among the producers to move the petition for protection. Most products /industries under anti dumping litigation in India are characterised by relatively high concentration.

The analysis so far, therefore, has been based on common features of cases filed by the industry and screened by the authority. Next stage in the procedure is that of final decision making by the anti dumping authority. What are the factors that tend to influence the final decision by the authority, by which they reject or accept a petition for anti dumping protection? As empirical studies reviewed in the chapter 1 show a host of factors, other than the provisions of the law might influence the final decision by the authority. In view of this literature, in this section we undertake a statistical exercise to find out whether such behaviour holds true for Indian anti dumping authority too. We take the help of a logit regression model to facilitate our analysis. Our dependent variable is the 'Final Decision' by the authority i.e. the decision of the authority whether to impose anti dumping duty or not. It is categorical in nature which takes the value 1 if decision is 'Yes' and 0 if the decision is 'No'.

After reviewing the existing literature we identified a number of factors which represent the pressure from different sources. For this statistical exercise, we have taken some explanatory variables, which can represent them. They are:

1. To examine whether the exporter is in a position to exercise predatory power:
 - i) **IMP** – This is the 'percentage share of the country facing anti dumping case in the total import of the dumped product'. Higher share of the defendant country in the total imports of the 'dumped' product may indicate possible predatory dumping. This may depress the domestic price level leading to injury of the domestic producers. Higher the IMP higher will be the expected probability of a favourable verdict.
2. To represent the performance of the domestic industry:
 - ii) **PSR** -- Profit to sales ratio, i.e. profit margin
 - iii) **CU** --Percentage of capacity utilisation

Reduction in profit margin and capacity utilisation of the domestic industry may indicate the possible injury from dumping. This will thus increase the chances of getting a positive decision by the authority.

3. To approximate market concentration of the domestic industry :

iv) Firm --Number of firms in the domestic industry.

v) Bfirm-- Percentage share of that firm, which has the highest, share in the total sales of the industry.

Both are used as indicators of concentration of the industry. Opinions differ regarding the influence of market concentration on the final decision making. On one hand it is argued that a highly concentrated industry is likely to have greater lobbying power for protection. Therefore, lesser the number of firms higher is the chance of getting an 'yes' answer. Similarly, higher the share of the biggest firm in sales, greater is the concentration and more is the chance of lobbying for imposition of an anti dumping duty. On the other hand it is argued that in the case of industries with lower concentration, the industry may be characterised by a large number of small firms and therefore the chances of injury due to dumping is high. If that is the case then, less concentrated industries will get more yes answers.

4. To represent 'regulatory process bias (it is evident from unintentional bias resulting from failure of the decision-maker to exercise administrative competence):

vi) RCASE--Whether the case under consideration is a repeat case, i.e. the product had faced anti dumping case earlier.

A repeat case stands higher chances of getting anti dumping duty imposed.

For the ease of interpretation all the independent variables have been made categorical; we have divided all the observation of each variable into two groups.

1= High; representing those values which are greater than or equal to median.

0= low; representing those which are values less than median.

Table 4.9 summarises the various variables taken for the analysis. From table we can see that the coefficient of variation for all the explanatory variables are quite high, which indicate high variability of the variables. However, this is just a reflection of the presence of extreme values, because coefficient of variation gets influenced by extreme values. In fact, but for the extreme values, the variability is less. To make the point clear we calculated the 'relative mid-

spread' for these variables. This shows much lower values than the coefficient of variation, which indicate the presence of extreme values in the data set.

Table4.9 Summary Statistics

Variable	No. of Observation	Mean	Median	St. Deviation	Maximum Value	Minimum Value	Coefficient of variation	Relative Mid-Spread
Dec	173	.849	1	--	1	0	---	---
IMP	163	17.97	10.58	20.11	91.48	.02	111.91	2.19
PRS	172	20.98	2.92	248.16	2361	-605	1182.84	19.17
CU	172	77.03	73.49	31.74	166	17.01	41.20	0.55
Firms	173	5.65	3	12.58	92	1	222.65	1.33
Bfirm	173	68.69	68.59	27.27	100	15	39.70	0.75
Rcase	173	.196	0	--	1	0	--	---

Note: a) Relative Mid Spread = (Upper Quantile – Lower Quantile) / Median

From the table we can also see that ,the mean for the decision variable is 0.84. This shows that if we select a case from the sample, the probability of the case getting a positive verdict is about 0.84. Such higher probability may be due to the fact that all the cases considered here are at the last stage of investigation. And the very fact that they have been initiated and passed the preliminary round of injury finding, is indicative of the fact that they more or less fulfill the minimum criteria for getting a positive verdict.

Now before we proceed for the regression we look at the correlation among the variables.

Table 4.10: Correlation Matrix

	Dec	IMP	PRS	CU	firms	Bfirm	Rcase
Dec	1.00	-	-	-	-	-	-
IMP	-0.13	1.00	-	-	-	-	-
PRS	-0.03	0.13	1.00	-	-	-	-
CU	0.16	-0.11	0.15	1.00	-	-	-
firms	-0.13	-0.06	0.01	-0.03	1.00	-	-
Bfirm	-0.26	0.25	-0.02	-0.17	-0.48	1.00	-
Rcase	-0.02	-0.01	0.00	0.15	-0.10	-0.06	1.00

Number of Observation = 163

The correlation matrix (table.4.10) does not show very high correlation of the explanatory variables with the dependent variable, i.e. the final decision by the anti dumping authority.

The only variables which show relatively high correlation with the dependent variable are Bfirm (-.26), firms (-.13) , CU (0.16) and IMP (-.13). Considering very low correlation of other variables with the dependent variable, we decided to run the ‘logit regression’ with the above mentioned variables. However considering high correlation between the variables ‘Bfirm’ and ‘firms’, we decided to run two separate regressions using one of them at a time. The results of these two regressions are shown as ‘model 1’ and ‘model 2’ respectively, in table 4.11. In the model 3, we introduce one more variable from the last category, i.e. ‘Rcase’.

Table 4.11 Result of the Logit regression

Explanatory Variables	Expected Relation	Model 1		Model 2		Model 3	
		Odd Ratio	Std. Err	Odd Ratio	Std. Err	Odd Ratio	Std. Err
IMP	Positive	0.76	0.37	0.87	0.44	0.89	0.45
CU	Negative	2.87	1.49	2.82	1.49	2.87	1.53
firms	Positive/ negative			7.30 *	4.31	7.79*	4.68
Bfirm	Positive/ negative	0.22*	0.12*				
Rcase	Positive					0.54	0.33
No of Observations		163		163		163	
Log Likelihood ratio		-57.3269		-54.5683		-54.0713	
LR chi2		14.35		19.87		20.86	

Note: * Significant at 5 percent level of significance

The results of the first model show that, of the three variables considered, only one came significant. It is the variable ‘Bfirm’, which shows the percentage share of the firm accounting the highest share in the total sales of the industry. This was used as an indicator of market concentration. The result shows that as this share increases from low to high, the likelihood of getting a positive verdict decreases by 0.22 times. Though many argue that industry concentration should have a positive influence on the decision making through lobbying, getting a negative relation is not uncommon. According to Finger et al. (1982), this may reflect the fact that, though market concentration may help the firms of the industry to get together and make petition for initiation of an anti dumping case, once a case has been filed it depends on other factors, which are not affected by petitioner’s lobbying. Moreover, this result seems to support the argument by Leidy (1997) that a less concentrated market indicates a large number of firms with less market power, for whom the possibility getting injured due to dumping is high. Thus the probability of these firms getting protection from the authority is also high.

In model 2 we introduce the variable 'firms' representing the number of firms in the industry instead of 'Bfrim', while keeping the other two variables same. Here also we find, the variable 'firms' to be highly significant. The result shows that the likelihood of getting anti dumping duty imposed increases by more than 7 times as the number of firms in the domestic industry increases from low to high. Thus the results of the model 1 and model 2 appears to be mutually consistent.

In the third model we introduce the variable 'Rcase'. But the variable turns out to be insignificant. Moreover, its presence does not make any difference to the results we got in the previous models. Those results still hold.

Thus the above analysis shows that, the economic factors such as import from the named country, the profit ratio, capacity utilisation of the domestic producers, etc. do not seem to influence the final decision of the anti dumping authority in the 'expected manner'. This, by no means rule out the importance of such variables in deciding anti dumping behaviour of the country, especially with respect to the earlier phases of anti dumping process. What comes out to be significant however, for the final phase is the empathy of the authority towards the domestic industry, which may be a cluster of a number of small firms, which are more vulnerable to an injury from excessive imports at low prices.

4.3.1: Rationale Behind Anti dumping Initiations

If dumping and consequent injury can be proved, given the provisions of the WTO agreement and national legislations, the industry affected is likely to get protection from dumped imports. But, in the world of economic theory, dumping and consequent injury are not sufficient conditions for justifying the anti dumping action. As we have discussed in some detail in chapter 2, the mainstream economic theory would accept anti dumping duty to be a rational policy choice only if there is predatory dumping. The optimum tariff theory and the strategic trade theory are the other two frameworks, which can be used to legitimise anti dumping measures. However, according to a pioneering study by Aggarwal (2001) the recent surge in the use of anti dumping by India cannot be justified on economic grounds.

In this section our attempt is to look for the rationale of economic theory behind India's anti dumping behaviour. In the literature, preventing predatory behaviour still remains the dominant argument in favour of using anti dumping measures. However, as we discussed in

the first chapter, predatory dumping requires fulfillment of a number of conditions. For example the firm who has the predatory motive should have a dominant position in the home as well as in the global market. Again, predator must be in a position to check entry of other firms to that market Thus one primary requirement to engage in predatory form of dumping is that the country in question should have higher share in the total import of the product as well as in the total domestic consumption of the product. Only then it will be possible for the exporting firms to charge lower prices and drive the domestic producers out of the market in the initial period. In this context, we looked at the share of the exporting countries in the total domestic consumption of the product as well as in the total import of the dumped product

The share of the exporting countries in total domestic consumption of the product or the 'import penetration ratio' is reported in the semi annual reports on anti dumping measures, submitted by India to the WTO. However, this information is not available for products involving all the cases. We could find data relating to 199 cases, which is presented in table 4.12.

Table 4.12: Dumped Imports as a Percentage of Domestic Consumption

Percentage Share of Dumped Imports	Cases	Percentage	Cumulative Percentage
0-20	114	57.3	57.3
21-40	60	30.2	87.4
41-60	9	4.5	92.0
61-80	12	6.0	98.0
81-100	4	2.0	100
Total	199	100	

Source: WTO Semi Annual Reports, India

In 114 cases (more than 57 percent), dumped imports had less than 20 percent share in the total domestic consumption of India. For around 88 percentage of the cases the share is less than 40 percent. Obviously, India's dependence on the defendant country in most cases is marginal or insignificant. There are, however, 16 cases (8 percent) where the share of the dumped import in the total domestic consumption is more than 60 percent. This calls for more detailed examination of individual cases.

Coming to the share of the exporting country in the total imports during the case year, it presents an interesting picture. Our earlier discussion on growth of the value of imports revealed that in many cases, the imports from the defendant country has been showing considerable growth in the value of imports. However, as the data presented here show in a

majority of cases, the share of the defendant country, in India's import of the product is quite low. Obviously, in most cases India has multiple sources of imports, signifying lower degree of dependence on the country alleged to be dumping.

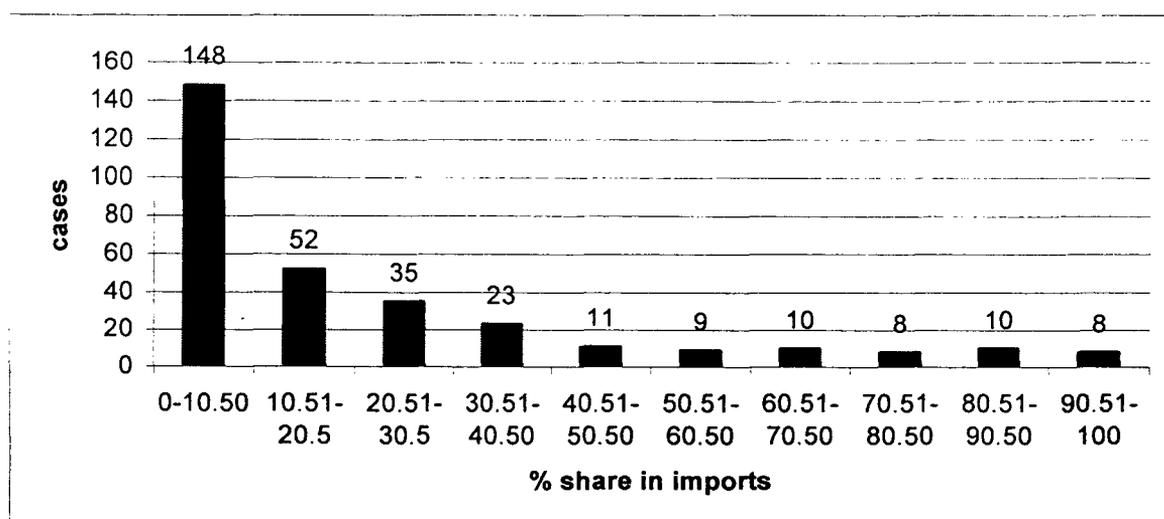
From table 4.13 we can see that for nearly half of the cases (47 percent), the country in question is having shares in the total imports less than 10 percent. For another 52 cases (17 percent), the share is between 10 to 20 percent. There are however, some cases, which show considerably higher share for the defendant country in India's import. Among them, for 45 cases (14 percent) the share of the country facing the anti dumping case is more than 50 percent. That there are quite a few cases where the defendant country enjoys very high share in imports therefore is to be underlined.

Table 4.13: Share of the Named Country in the Total Import of the Dumped Product

Percentage Share	No of Countries	Percentage
0- 0- 10.50	148	47
10.51-20.5	52	17
20.51-30.5	35	11
30.51-40.50	23	7
40.51-50.50	11	4
50.51-60.50	9	3
60.51-70.50	10	3
70.51-80.50	8	3
80.51-90.50	10	3
90.51-100	8	3
Total	314	100

Source: DGCI&S

Fig 4.8: Percentage Share in the total imports



Looking at the change in the share from 1990-91 to the case year we find that products involving 48 cases (37.8 percent) have shown a decline of the share of the defendant country. In rest of the cases, the defendant countries have improved their share in India's imports of the products under litigation. But, this growth in the share of countries alleged to be dumping in India should be seen against the fact that we have already discussed, viz., that their shares in imports and apparent consumption are rather low.

Our observation regarding changes in the share of the countries alleged to be dumping in India do not change even when we consider the period from 1993-94 to the cases year. Here the number of defendant countries experiencing a decline in the share of imports increases marginally to 41 percent. In all other cases defendant countries appear to have gained in terms of share in India's imports.

Thus the anti dumping behaviour of the country cannot be justified in terms of the predatory intentions of the foreign firms/ countries, which are alleged to be dumping in the Indian market. The defendant countries do not enjoy such market power in India, measured in terms of their share in consumption or imports, that would imply predatory motives. In most cases, India enjoys fairly diversified sources of supply from within and outside the country. We do not however, rule out the possibility of predatory dumping in exceptional cases, which calls for detailed case studies.

Lack of evidence for predatory argument however, cannot be seen as providing sufficient ground for repealing the anti dumping legislation. Anti dumping legislation may be required to prevent dumping on strategic grounds. As we have already discussed strategic trade theorists argue that a country may try to protect industries, which are of strategic importance, i.e. those industries characterised by large economies of scale or having beneficial spill over effect on other industries. In this context we looked into the extent of 'Intra Industry Trade' (IIT) for India. One theoretical justification given for the growth of IIT is the growing importance of scale economies. India in the post liberalisation period has experienced considerable increase in IIT, as found by Veeramani (2002). In table 4.14, we present extent of intra industry trade in some of the important sub-sectors of the Indian manufacturing sector.

Table 4.14: Extent of Intra Industry Trade

Sectors	1987-88	1995-96	1999-2000
Chemicals	24.3	27.28	34.79
Plastic & rubbers	13.95	34.27	40.29
Base Metals	15.15	33.39	40.1
Machinery	28.8	36.52	41.37
Gems & Jewellery	86.88	51.34	61.66
Total ^a	23.08	31.21	37.80
Total ^b	39.44	35.93	46.97

Source: Veeramani (2002)

Note: a) The extent of (IIT) is measured with the help of GL (Grubel and Lloyd) index. $GL_i = (X_i + M_i) - |X_i - M_i| / (X_i + M_i) * 100$

b) Total^a: total excluding Gems & Jewellery

c) Total^b: total for the entire manufacturing sector

The table above reveals that the percentage of IIT in Indian industry is showing an upward rising trend from 39.44 percent in 1987-88 to 46.97 percent by 1999-00. The chemical and the base metal sector, both of which together accounts for the maximum number of anti dumping initiation, are also experiencing increasing IIT. For base metals the extent of IIT has increased from 15.15 percent in 1987-88 to 40.1 percent by 1999-00, while in case of chemicals it improved from 24.3 percent to 34.79 percent. Such rise in the IIT of India is found to be export led. Further, the expansion of sectors like pharmaceuticals, which is basically a knowledge intensive industry, may have significant beneficial spill over effects. Therefore, government may be interested to protect these sectors from excess foreign competition.

However, the strategic argument rests on the condition that other countries do not retaliate. If there is a possibility of retaliation, then there is likely to be more protection in industries having less IIT (Tharakan, 1995)¹¹. According to him, countries would not like to impose restrictions on imports from countries that are major destinations of its exports. Another important feature of strategic industries is their concentrated market structure. Incidentally, as we have pointed out earlier, industries involved in anti dumping cases in India are

¹¹ Sazanami (1986) pointed out that Japan's low levels of IIT in manufacturing sector was the reason behind hostility towards imports from it to other developing countries, which ultimately prompted Japan to promote IIT with these countries.

characterised by relatively concentrated market structure. Thus, strategic motive represents one of the dimensions that require more detailed and product level probing by researchers.

4.3.2: Rationale behind Cases against India

If the initiation of large number of anti dumping cases by India cannot be justified on predatory ground, same holds true for cases against India too. In order to give a comparative perspective, we examined some of the aspects of anti dumping cases against India. Information on import penetration ratio for these products could not be gathered. Therefore, as a close approximation, we have considered India's share in the total import of the allegedly dumped product in the initiating country. Countries having high share in the imports of the particular product are likely to have high import penetration in the importing country's domestic market. For this analysis we have considered 64 out of a total of 82 cases. Data for the rest of the cases could not be acquired.

Table 4.15: India's Share in the Total Imports of 'Dumped' Product

Percentage Share in the Total Imports	Cases	Percent
0-5	31	48.44
5-10	10	15.63
10-20	14	21.88
20 - 30	6	9.38
30 - 40	1	1.56
40 - 50	1	1.56
More than 50	1	1.56
Total	64	100.00

Source: UN COMTRADE

Table. 4.15 presents the percentage share of India's exports in the total import of the products, in which they are facing anti dumping charges, in the respective countries. The table shows that, in 31 cases (more than 48 percent), the share of Indian exporters in the total imports to the country is lower than 5 percent. For 10 products (15.63 percent), the share ranges between 5 to 10 percent. For another 14 products (21.88 percent) the share lies between, 10 to 20 percent. In fact, there is only one case where we found India's share in the total imports to be more than 50 percent.

**Table 4.16 : India's Share in the Total Imports of Dumped Products : Country-wise
Distribution**

Country	Percentage Share of India in the total Import of the allegedly dumped product							
	0-5	5-10	10-20	20 - 30	30 - 40	40 - 50	more than 50	Total
Argentina			1					1
Australia	1							1
Brazil	1		1			1		3
Canada	2	2	1					5
China			1					1
EU	15	6	2					23
Indonesia	1		1	1	1			4
Mexico				1				1
Trinidad & Tobago	1							1
Russian Federation	1							1
South Africa	2		2	1			1	6
Thailand			1					1
Turkey			2	2				4
USA	7	2	2	1				12
Total	31	10	14	6	1	1	1	64

Source: UN COMTRADE

Table. 4.16 gives a more disaggregated picture at the level of countries that have initiated cases against India. In the EU, India is facing 23 cases, out of which in 15 products India's share in their imports is less than 5 percent. Only two of these products have a share, which is more than 10 percent. In case of the USA also, which is having the second highest number of cases, 9 products (out of 12) are having a share of less than 10 percent. The picture is not different in other countries.

Another condition necessary for successful predation is that, the exporters should have global dominance in the particular product, which they are selling at a lower price in the foreign market. Only then it will be possible for the firm to sell the product at a lower price in some markets with a predatory motive. Table. 4.17 reports some of the product groups in which India is facing anti dumping cases and its share in the total world exports. Even though the figures reported are at the SITC three digit level, they would help us to get some general idea.

**Table 4.17: India's share in Total World Exports in some Selected Commodities
(2000-01)**

SITC code	Product	Total exports (in million dollars)	Percentage share in the world exports
541	Pharmaceutical products	1232393	1.03
625	Rubber Tyres and Tubes	230725	0.94
651	Textile yarn	1966560	6.35
652	Cotton fabric (woven)	1082603	5.38
653	Woven man made Fibre Fabric	496834	1.79
658	Textile article	1140404	6.77
674	Iron , Steel plate , sheet	585767	1.19
699	Base Metal manufacturers	195932	0.29
893	Articles of plastic	213588	0.34
728	Other machinery for special industries	143148	0.21
778	Electrical Machinery	249328	0.27

Source: UNCTAD Handbook of Statistics, 2003

It appears that, except for textile and articles made out of it, for rest of the product groups India's share is very low. In the cases of textile yarn, cotton fabric and textile articles, India's share ranges between 5 to 6 percent of the total world exports.¹² In the case of pharmaceuticals, which is another important sector facing considerable number of anti dumping cases, India's share in the world exports is only 1.03 percent. Similarly, in the case of Iron, Steel plate, sheet (674) India's exports constitute only 1.19 percent of the world total. For other manufactured items such as base metal, electrical machinery, articles of plastic, etc, the respective shares are less than 1 percent. With such low shares Indian firms are not expected to maintain world dominance to get engaged in predatory type of dumping.

Thus given the small share of Indian exports in the total world exports and also in the total imports of the anti dumping initiating country, the increasing use of such measures can not be justified on predatory ground.

¹² This is also much lower compared to countries like china whose shares are more than 10 percent in all these products.

4.4: Chapter Summary

An anti dumping investigation involves a number of stages and different parties are involved at each stage. In the first section of this chapter, we discuss the various possible demand and supply side factors, which might influence the anti dumping procedure in India at different stages.

From the discussion of the trend in imports to India – in general and also specific to the dumped products a few ideas can be formed. India has experienced the pressure of growing imports during the 1990s and also during the first few years of the present decade, though the rate of growth has been showing a fluctuating pattern. Significantly, imports as a percentage of GDP has been showing a steady increase over time. Secondly, our data on sources of imports, shows that two of the regions i.e., the EU and the USA, which are facing large number of anti dumping cases in India, together hold very high share in the total imports to India though their share have shown significant decline in the recent years. On the other hand, some other countries which are facing considerable number of anti dumping cases in India, inspite of their low initial share have experienced significant growth in the exports to India. The best example of this is China. Such import penetration may induce the domestic government to initiate more anti dumping cases to dampen future import surges and to provide relief to domestic producers¹³. Thus the possibility of ‘government policy bias’¹⁴ can not be entirely ruled out here.

The situation relating to import of the particular products facing anti dumping investigation shows that, there are considerable number of cases where the named country’s exports to India, registered high growth. If increase in quantum of imports by reducing the price, underlies this trend, as has been pointed out by Chandrasekhar and Ghose (2002), then this will definitely depress the domestic price level and will prove detrimental to the domestic producers of like products. Therefore, it is not be surprising to see more and more petition from the domestic industry to initiate anti dumping cases.

Discussion on domestic industry reveals that many of them have been showing poor performance during the last decade. Profitability for many of the domestic industries has

¹³ This was also suggested by Chandrasekhar and Ghose (2002).

¹⁴ It get reflected in the political pressure by government to influence anti dumping decisions to conform to government trade or commercial policy objectives. (Feaver and Wilson, 2004)

either gone down or has remained stagnant. This might have acted as an incentive for the domestic industries to seek more protection. At the same time, there is evidence of high market concentration for the domestic industries seeking protection, which probably help them to come together for petitioning the authority. In short, the pressure of imports and the poor performance of the domestic industry appear to have had a bearing on anti dumping behaviour of India.

However, our statistical exercise investigating the factors influencing the final decision of the anti dumping authority found market concentration to be the only variable having significant bearing on the decision of the authority. It shows that as the number of firms in the industry increases or as the share of the biggest firm in the total sales decreases the probability of getting anti dumping duty imposed increases. This may indicate that a less concentrated industry, with large number of small firms may stand higher chance of getting injured due to dumping. Therefore, their chance of getting a positive verdict is high.

Lastly, our attempt has been to find if the anti dumping cases initiated by India as well as cases against India could be justified on economic grounds. Interestingly, the recent surge in the anti dumping actions in India or elsewhere cannot be legitimised in terms of prevention of predatory dumping. It is too rare to come across cases that satisfy the conditions of the predatory argument. However, one cannot rule out possible arguments in terms of strategic trade theory, which can be used to explain the growth of anti dumping actions. It may be possible that government try to protect industries of strategic importance with the help of anti dumping measures.

Appendix to Chapter 4

Table 4.18 A: India's Import Scenario during 1990s

Year	Imports (in Rs Crore)	Percentage change in imports	Imports as a percentage of GDP
1990-91	42095	19.16	7.40
1991-92	47841	13.65	7.33
1992-93	63375	32.47	8.47
1993-94	73177	15.47	8.52
1994-95	89971	22.95	8.88
1995-96	122687	36.35	10.33
1996-97	138920	13.24	10.15
1997-98	154176	10.98	10.13
1998-99	178332	15.26	10.24
1999-00	215529	20.86	11.12
2000-01	28307	5.29	10.85
2001-02	245200	7.40	10.68
2002-03	296597	20.96	-----

Source: CMIE, Sept 2003

**Table 4.19 A : Change in Net Profit Margin for Selected Industry Groups
(189-90 to 2001-02)**

Year	Industry (all)	Pharmaceutical	Chemicals	Textiles	Steel
	profit/sales ratio				
1989-90	4.03	3.35	2.67	3.04	-0.38
1990-91	3.71	3.30	2.57	0.86	-0.96
1991-1992	3.53	3.67	2.10	-0.05	0.96
1992-1993	2.54	5.22	2.82	3.52	1.78
1993-1994	3.90	7.91	3.70	4.44	4.72
1994-1995	6.44	9.01	3.58	2.31	5.60
1995-1996	5.99	6.96	2.57	-0.56	1.61
1996-1997	4.82	6.36	2.34	-3.91	-1.35
1997-1998	4.55	5.04	2.49	-6.05	-6.83
1998-1999	3.39	7.92	1.62	-7.21	-6.13
1999-2000	3.36	9.32	0.70	-6.51	-3.95
2000-2001	3.28	11.27	1.26	-5.48	-7.84
2001-2002	4.04	12.67	3.47	-0.47	1.33

Source: PROWESS database

Chapter 5

SUMMARY AND CONCLUSION

This study is an endeavour to analyse India's association with anti dumping measures taking into account both the cases initiated by India as well cases against India. In concluding this study, we summarise the major findings, which came out from our discussion. We also point out certain limitations of the study as well as issues for further investigation.

The extraordinary rise in the use of anti dumping measures in the recent years have become a matter of grave concern in the area of international trade. These measures have been a part of trade policies of the developing countries for a long time. However, since 1980s there has been a sudden rise in the use of these measures, which got intensified during the 1990s. This rise is evident not only in the number of anti dumping cases initiated, but also in the users of anti dumping measures. Many of the new users of anti dumping measure are developing countries such as India, Brazil etc. in fact, these developing countries account nearly 60 percent of the total anti dumping initiations by the end 2003.

Such increase in the use of anti dumping measures has led many to argue that, this is nothing but a desperate attempt by these countries to replace anti dumping actions for the conventional trade barriers, which have been brought down rapidly by the initiatives taken by WTO to liberalise world trade. This argument is born out by evidence because, the period since 1980s, especially the 1990s, was characterised by rapid liberalisation of conventional trade barriers. This story of trade liberalisation is equally applicable to the developing countries.

However, developing countries are found to be not only the initiators of anti dumping cases, but also most of the times, the victim of such cases. More than 70 percent of all cases initiated are directed against the developing countries.

India is a late entrant in the club of anti dumping users. Like many other developing countries, India maintained a very restrictive trade regime till 1990s, which was characterised by very high levels of tariffs as well as other quantitative restrictions. However, since the beginning of the 1990s, India witnessed major policy changes, which led to the opening up of the economy through reduction in existing tariffs and other trade restrictive measures. Interestingly, this decade also marked the emergence of anti dumping as a major trade policy tool for India. The

first anti dumping case in India was filed only in 1992. In spite of the fact that, hardly a decade has passed since then, it has surpassed even the traditional users of this measure by initiating an overwhelmingly large number of cases. The distribution of these cases over the years shows that majority of the cases are initiated in the second half of the 1990s. There are 47 countries against which India has initiated anti dumping cases. This includes a large number of developing countries. This bias towards developing countries is apparent throughout the period of the present study.

Most of the anti dumping cases initiated by India are concentrated in a few product groups. The most prominent among them are chemicals and petrochemicals, which is followed by base metals, pharmaceuticals and textile products. This, more or less conform to the world-wide pattern in the use of anti dumping measures as chemicals and base metals have been traditionally attracting most of the anti dumping cases.

Our discussion on anti dumping cases against India reveals that, there is large number of anti dumping cases initiated against India, though the number is not as high as the cases initiated by India. Majority of these cases is initiated by developed countries. However, we could not trace a retaliatory motive behind this pattern. This is mainly for two reasons. Firstly, the number of countries against which India has initiated anti dumping cases are much higher than the number countries in which India is facing anti dumping cases. Secondly, many of the countries against which India has initiated anti dumping cases, either have not initiated any anti dumping action against India, or even if they have initiated, the number of cases is much lower than the cases initiated by India. The best example of this is china, which is facing 66 anti dumping cases in India against only one case it has initiated against India. Nevertheless, one thing that comes out very clearly from our discussion on anti dumping cases involving India, is the increasing association of the country with this form of contingent measure of protection.

The observed surge in the use of anti dumping measures by India raises a number of interesting questions. The first set of questions is related to the determinants of anti dumping of the country. The second set of questions pertains to the economic rationale of anti dumping action.

The anti dumping procedure of a country, as we have underlined in the present study, involves some distinct stages. This distinction between different phases of anti dumping procedure is important, because, the factors that influence the process need not be the same across these

stages. Keeping this in view, in the first phase of our analysis, we consider certain important factors, which may influence both demand for as well as supply of anti dumping actions. We first considered the import scenario, as this gives the first indication of possible dumping. Even though the growth rates of imports in value terms tended to fluctuate and stagnate, the value imports as a percentage of GDP has been steadily increasing during the 90s. There is also evidence to argue that, in terms of volume, the rate of growth of imports were higher than the value terms.

We can also notice some interesting changes in the sources of India's imports. While the share of the USA and the EU countries declined, developing countries as a group has improved their position. These developing countries, which are emerging as new sources of external competition, have also been important targets of India's anti dumping actions. The data set we have used for analysing the trend in imports at the level of individual cases has some limitations. Nevertheless, in most cases, the imports from the defendant countries have been registering impressive growth. Thus at the aggregate level, there is evidence of some import pressure on the industry as well as the government, which assumes significance in the context of the phasing out of conventional barriers.

Discussion on the domestic industry reveals that, their performance has not been satisfactory. The sectors, which have attracted high anti dumping initiations, were found to be performing badly, especially during the later half of 1990s. This is true for all the leading sectors, characterised by bunching of anti dumping actions, except pharmaceuticals. When we considered the particular industries, which have petitioned for anti dumping protection, a significantly large number of them were found to be making losses as well as experiencing lower capacity utilisation. Thus, growth in the value of imports of the dumped product on the one hand and the poor performance on the part of the domestic industry on the other, might have influenced both the demand for as well the supply of protection against dumping.

Besides imports and probable injury, we examined some other factors, which were expected to influence the anti dumping procedure. One important factor, which is pointed out in the literature, having an important bearing on both demand for as well as supply of protection is market concentration. Significantly, the domestic industries seeking protection in India are found to be highly concentrated, when measured in terms of number of firms or the share of the firm having the highest share in total sales. In industries having higher concentration, with relatively few firms, it would be easy for the producers to come together to petition the

authorities. Similarly, bigger firms might be in a better position in lobbying for protection. This suggested the possibility of lobbying by the domestic industries to get protection at least in the initial stages of the anti dumping procedure. Another factor considered is the employment potential of the relevant sector. The sectors affected by anti dumping duties are characterised by high employment ratios. Our analysis of the employment aspect, however has been constrained by the limitation of data. We have not been able to take the analysis to the level of individual cases.

In the second phase, our focus shifted to the factors that enhance or reduce the probability of getting affirmative decision from the anti dumping authority. We took the help of 'logit regression' to facilitate our analysis. The results showed that a less concentrated market with large number of firms has higher probability of getting anti dumping duty imposed. This may indicate mainly two things. Firstly, the lobbying power of the concentrated market does not seem to have any favourable influence in the final decision of the authority though it might have helped in filing petition for the anti dumping case and initiation of it. Secondly, it may also indicate some amount of empathy of the authority towards small firms, which are more prone to injury due to dumping.

In the next part of our analysis, our attempt has been to examine the rationale behind the anti dumping cases involving India. The most dominant argument put forward in the literature in favour of using anti dumping measures is prevention of predatory dumping. But our analysis found that the surge in anti dumping initiations in India could not be justified on predatory grounds. Many of the countries whose products have been charged of dumping in India, not only have very low share in the total domestic consumption but also in the total import of that particular product. Moreover, for many of them, the share was found to be decreasing over time. Thus, India seems to have multiple sources of imports for these products, which makes it impossible for a single country to exercise predatory power. This finding conforms to Aggarwal (2002) who also suggested that, predatory motive behind the alleged dumping in India could not be established.

However, the possibility of strategic behaviour on the part of the industries or the anti dumping authority perhaps cannot be entirely ruled out. According to this line of argument, the government may try to protect industries of strategic nature, which can attain substantial cost reduction by expanding the scale of production. In this context, we looked at the extent of intra-industry trade of various segments of the Indian manufacturing sector, because the

driving force behind intra-industry trade is expansion of scale of production. Here we saw that intra-industry trade for many of these sectors have been increasing. This increase has also been found to be export-led. Hence, it may be possible that the government is trying to protect these industries in order to help them to grow by expanding the scale of production. Besides this, sectors like drugs and pharmaceuticals are basically knowledge-based, which may have beneficial spill over effects on other sectors of the economy. This gives an added impetus for the authority to protect these industries. However, to come to a decisive conclusion in this regard, more in -depth study is required.

The anti dumping cases against India were also found to be non-justifiable on predatory grounds. First of all, Indian exports account for a very small share of the total world export. India's share in the world market for most of the leading SITC 3-digit groups of commodities is found to be too low to exercise any significant market power. Most importantly, in the countries where they are facing anti dumping cases, they account for very low share in the total import of the allegedly dumped product. Therefore, the possibility of these exporters acting as predators, is remote.

However, the findings of the study should be taken in the light of its limitations. The biggest hurdle that the study faced was the limited availability of data. Since anti dumping investigation involves information relating to the performance of the domestic firms, access to such information is not easy. Though the authorities make some information available, lack of uniformity makes comparative analysis difficult. Therefore, we had to rely on other sources for the data relating to trade as well as performance of the domestic industry. Needless to say that the analysis therefore, suffered from lack of perfect matching of categories belonging to different systems of classification.

Further, we did not examine the legal aspects of the anti dumping cases. An investigation into the possible 'technical loopholes' of the anti dumping procedure in India would have thrown some light on the dumping behaviour of the nation.

Finally, it need to be reiterated that, dumping is a firms level activity and anti dumping duties are meant to provide relief to the firms of the injured industry. Therefore, firm level characteristics may have crucial bearing on what shape a particular case takes. Hence, this study may be complemented with detailed case studies, which will enable us to bring out the strategic behaviour on the part of the protection-seeking firms as well of the anti dumping authority.

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