Miscellaneous

EEPC Official conferred Ph.D. Degree

Shri Neeraj Varshney, Officer on Special Duty, EEPC has been conferred Ph.D. for his work on 'Application of Anti-dumping Measures under the WTO Regime'. Reproduced below the Abstract of the Topic submitted by Shri Varshney :

Abstract

Topic : 'Application of Anti-dumping Measures under the WTO Regime'

The WTO is an organisation for liberalizing trade. It embodies a system of rules dedicated to open, fair and undistorted competition. The rules on non-discrimination – MFN and National treatment - are designed to secure fair conditions of trade and so are the rules on 'Anti-dumping Measures'.

The concept of 'Anti-dumping' found its place in international trade around the beginning of the 20th century, even though 'Dumping' was known in medieval times and has been documented by Adam Smith in 1776. Although the anti-dumping measures are about a century old, but in many Member countries of the WTO, such as India, these are relatively of recent origin.

Broadly stating, 'Dumping' is a situation of international price discrimination. Neither Article VI of GATT 1994 nor the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade 1994 (popularly known and hereinafter referred to as the Anti-dumping Agreement), however, disapproves of dumping per se. 'Dumping' is to be condemned only if it causes or threatens to cause material injury to a domestic industry in the importing country or materially retards the establishment of a domestic industry. But determining, whether or not to impose anti-dumping measures, is never so simple and more often than not involves a series of complex analytical steps.

Article VI of GATT, 1947 dealt with Anti-dumping and Countervailing Duties. (the present study only deals with the anti-dumping measures). Article VI provided that the anti-dumping measures may only be taken in case the products have been introduced in the commerce of the importing country at less than the normal value and that it has caused injury to the domestic industry. This discipline on anti-dumping measures was sought to be improved during the Kennedy Round Negotiations (1964-67), which fructified in the form of Anti-dumping Code of 1967, which was later on improved during the Tokyo Round Negotiations (1973–1979), in the form of 1979 Code.

Anti-dumping measures were again put on the agenda of the Uruguay Round Negotiating Group on Multinational Trade Negotiations (MTN) Agreements and Arrangements. A number of countries tabled proposals to improve the GATT Anti-dumping Code and were subject to lengthy and difficult discursions in Geneva. The result was an 'Agreement on Implementation of Article VI of GATT 1994' (Anti-dumping Agreement) concluded on 13 December, 1993 which is essentially a compromise between the conflicting demands presented by two major groups of countries in course of the negotiations : on the one hand, the US and the European Community (EC) and on the other hand, Japan and most of the newly industrialized countries (NICs), like South Korea, Taiwan, Hong Kong.

With the advent of WTO, many Members of the WTO have put the anti-dumping provisions in their Statute books. Although there have been quite a few WTO Panel and Appellate Body decisions on the anti-dumping matters yet the perusal of Members papers floated within the WTO forum itself indicates that the ambiguities and complexities involved in understanding this important subject need to be appreciated and resolved, especially in relation to its impact on the state of 'domestic industry' and the market-access to the exporters. The indiscriminate use of this vital measure in international trade, denies the greater market access achieved by Members through painstaking negotiations over the years.

The Anti-dumping Agreement has asymmetries and gaps in its text, which are on account of a consensus because of the existence of divergent national interests. This resultant lack of clarity has also enabled the Members to include subtle variations in their national anti-dumping legislations and has led to different interpretations, understanding and applications by the WTO Members.

The indiscriminate use of this instrument has caused a concern amongst the Members. Infact this sentiment has been the guiding principle of current negotiations on the subject, which are underway as per the mandate of Doha Ministerial Conference of the WTO (2001).

This subject has assumed great importance and has lots of implications, as anti-dumping measures are becoming rampant and are important tools in the area of international trade. In the past 10 years,[1] 2517 anti-dumping investigations were initiated and 1567 anti-dumping measures were taken. The increasing recourse, by the traditional and non-traditional users of anti-dumping instrument, has been the matter of concern because of likely trade distorting effects these measures cause in case of

[1]*From 1.1.1995 to 30.6.2004, Source : WTO Secretariat Report.*

misuse. This contemporary area of international trade is the subject mater of the present study.

The study has been conducted to understand and appreciate the application of anti-dumping measures under the WTO regime. It seeks to address the concerns reflected by the Members and as well as by various stakeholders from time to time. The study notes that over the years, the rules governing anti-dumping measures have been refined and additional rules developed. However, the essence of these rules is that they all restrict the freedom of the importing country to take recourse to this trade protective measure.

Apart from the application of anti-dumping measure, it needs to be appreciated that the very initiation of anti-dumping measures causes a trade-chilling impact, despite the fact that ultimately no anti-dumping measure may be imposed.

The study aims to provide an appreciation of the complex provisions of the Anti-dumping Agreement. It examines and evaluates the spread of the anti-dumping measures essentially from a legal prospective. This has been done with the help of the decisions of various WTO Panel and Appellate Body reports and as well as the perusal of the practices and decisions of the national courts of some of the principal users of this instrument. In the process, the concerns reflected in the papers floated by the Members during the negotiations and as well as issues raised by various stakeholders have sought to been addressed.

The study undertakes an analysis of various submissions made by Members from time to time to the 'Negotiating Group on Rules' of the WTO and the practices of principle users of the anti-dumping instrument. It is based on both the primary sources and the secondary sources. The primary sources include the GATT and WTO Agreements; relevant Acts of the principal users of the anti-dumping instrument, WTO annual reports, reports of the WTO's Committee on anti-dumping practices, reports of the expert committees constituted by GATT and WTO, various submissions made by Members from time to time on the subject to the 'Negotiating Group on Rules' of the WTO.

The secondary sources include practices of some of the principal Members using the instrument like EU, USA and India etc, Panel and Appellate Body reports of the WTO DSB. Decisions of the Central Excise and Service Tax Appellate Tribunal (CESTAT), High Courts of India and Supreme Court of India, important decisions from other Members' national courts on anti-dumping measures, Analytical writings of different legal academicia, books, national and international journals and information available on the Internet.

This study deals with the observations, problems and possible solutions to the issues raised in respect of anti-dumping measures. The study observes that while it is essential to protect the domestic industry from undesirable trade practice of dumping, but it is also important to restrict the trade distortion caused by indiscriminate use of these measures as any trade protection law should separate and distinguish between trade distorting practices from normal price behaviour and competitive advantage of the exporting firms.

The study suggests certain changes in the Anti-dumping Agreement to bring in rationality and attempts to reduce its ambiguities, in order to prevent trade restricting practices under the garb of trade protective actions, which is also in line with the Doha Ministerial mandate.

The study is timely as it is considered that time is ripe to attempt and resolve these in-built asymmetries and discretionary elements in the Anti-dumping Agreement. The study recommends certain changes in the Anti-dumping Agreement in order to clarify and improve the disciplines under the Anti-dumping Agreement, while simultaneously preserving the basic concepts and effectiveness of the Agreement.

It is hoped that the suggestions made in study will be helpful in attempting a revised framework of law to adequately meet the challenge of removing the trade-distorting effect of the anti-dumping measures. It may also enable the national authorities to make their legislation compatible with the WTO Agreement. Besides, it is hoped that the study would also be useful to the producers, exporters, importers and other interested parties as well as to the students and the practitioners of this important trade-protection instrument.

Shri Neeraj Varshney, Officer on Special Duty, EEPC is being conferred Ph.D. degree in the Convocation of Delhi University held on 25th February, 2006.