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# MANAGEMENT ACCOUNTANT

## SPECIAL MESSAGE



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## EXCLUSIVE INTERVIEWS



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# Trade, Tariff and Taxation

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# Anti-Dumping Laws – Lifeline for Domestic Industry in Era of Trade Liberalization



Protectionism for the domestic industries has a long history which dates back to the 12th century, starting from the ban on imports and movement of skilled personnel. During the 18th century, high tariffs were considered as a tool to control imports and protect the domestic industry. However, high nominal tariffs often provided negative protection to emerging activities and contributed to misallocation and under-utilization of capital in capital-scarce economies. Over-valuation of the exchange rate resulting from import restrictions discouraged exports and penalized agriculture - further reducing the size of the market for import-competing industries. After World War II, countries felt the need for trade liberalization which required reduction in tariff and removal of non-tariff barriers to promote free trade. Trade liberalization started with the General Agreement on Tariffs and Trade (GATT) signed amongst 23 countries in 1947 that aimed at reducing tariffs and increasing international trade. But its exception clause was so liberal that every signatory excessively took shelter under the clause making it virtually ineffective. Although, it remained effective until a new protocol was

signed by 123 nations in Marrakesh on 14 April 1994, of the Uruguay Round Agreements which established the World Trade Organization (WTO) on 1st January 1995. The WTO is a successor to the GATT, and the original GATT text (GATT 1947) is still in effect under the WTO framework, with modifications of GATT 1994.

This trade liberalization and its resultant gains in wealth also brought along unfair trade practices that caused harm to emerging and established industries alike. These practices also included dumping, which is a type of price discrimination whereby a firm charges a lower price for its exported



Saifullah Khan, FCMA

**“ In Pakistan, the National Tariff Commission (NTC), as an autonomous government agency, is entrusted to conduct trade remedy investigations and has the sole authority to impose anti-dumping duties ”**

products than it charges in its home market for the same products.

*Goods are considered to be 'dumped' when an overseas supplier exports goods to a country at a price below its 'normal' value (i.e. the price charged in the supplier's home market) or less than its cost.*

The use of tariffs to target specific imports (such as dumping) began in 1904 when Canada sought to discourage a U.S. manufacturer from selling steel to the Canadian railroads. The first U.S. antidumping law was passed in 1916, and subsequent revisions of the law have made it progressively easier for domestic firms to get protection against imports perceived as

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unfairly priced. Assessing the importance of trade remedy laws after trade liberalization, dumping had been a part of GATT negotiations and Antidumping Agreement was included in GATT 1994 as *The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*. The Antidumping Agreement sets out the rules and principles that countries must follow to counter the effects of dumping.



### Rationale Behind Dumping and its Consequences on Domestic Industries

Dumping follows the concept of variable costing technique (also known as direct or marginal costing) wherein the only variable cost is considered for the pricing decisions. When an exporter is covering its fixed costs from domestic market sales or sales to an already established export market and has surplus/idle capacity, he is in a position to explore new export destinations with variable plus pricing considering that every additional unit sold with a contribution margin will positively contribute towards overall profitability. Companies, normally, engage in dumping in order to; dispose of their piled-up inventories and utilize their idle capacities in order to capture more shares in the export market.

The situation of the domestic industry gets even worse when the competing exporters beyond indulge in a price war which is very

difficult for the local producer to sustain. Local industry has to set its prices absorbing all of its costs incurred in production and sales of its products which makes it uncompetitive against the unfairly low priced imports. Dumped imports have a direct impact on market share, sales volume and prices of the domestic industry which is then translated into reduced production and capacity utilization, higher cost of production due to absorption of fixed costs on fewer units, reduction in profitability and return on investment, deterioration in cashflow, inability of the domestic industry to raise investment and grow, leading to reduction in employment. Not being able to compete, the local industry collapses and eventually shuts down its operations. Resultantly, market gets completely dominated by imports and foreign exporters are then in a position to charge prices of their own choice. In short, dumping leads to erosion and in some cases the disappearance of domestic industries. In markets where dumping is occurring for reasons unrelated to the relative competitiveness of local industries, it may enable less efficient firms to prevail over more efficient firms in international competition.

### Legal Remedies to Restrain Dumping

Under the Anti-dumping Agreement, any local industry which is facing injury due to dumped imports can file an application with its local authority to seek protection from unfair practices of dumping. The applicant industry needs to prove injurious effects of the dumped imports to the domestic industry, for which a detailed examination of all the relevant economic factors is required. A 'causal link' must also exist between the material injury being suffered by the local industry and the dumped imports. The administering authority after conducting a thorough investigation may impose anti-dumping duties on products being dumped and causing injury to the domestic industry. Anti-dumping duty is actually a measure to rectify the situation arising out of the dumping of goods and to neutralize its trade distortive effect eliminated so as to re-establish fair trade.

As a result of levy of anti-dumping duty, landed price of the imported products increases easing downward pressure on the prices of domestic industry. Since, the landed price of the imported products increases, it does not remain lucrative for the users to go for the imports, hence their reliance on domestic product increases. Eventually, the sales price of the local industry products gets a chance to attain a reasonable level and thereby dumped imports start reducing and market share of the local industry starts increasing. This results in a positive effect on overall performance indicators of the domestic industry.

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Until the 1990s, Australia, Canada, the European Communities, and the United States initiated most anti-dumping investigations. However, by now, many other countries have also adopted anti-dumping legislation and applied anti-dumping measures. According to recent WTO statistics, from 1995 to 2018, 5,725 anti-dumping investigations were initiated and India has been a leading user of anti-dumping law with 919 initiations. Indeed, it has been observed that developing countries now initiate about half of the total number of antidumping cases and some of them employ anti-dumping measures more actively than most of the developed country users. Thus, the anti-dumping law is by far the most actively used trade remedy instrument. Pakistan is also one of the prominent users of antidumping laws with 131 initiations and 85 measures applied until now.

### Pakistan, in the Context of Anti-dumping Laws Practice

Pakistan, as a member of the WTO and being signatory to the GATT, is obliged to ensure that its anti-dumping proceedings comply with the Agreement. Its anti-dumping mechanism is derived from internationally agreed rules and procedures under the auspices of the WTO. In Pakistan, the National Tariff Commission (NTC), as an autonomous government agency, is entrusted to conduct trade remedy investigations and has the sole authority to impose anti-dumping duties. The governing law in Pakistan to deal with the matters of dumping is 'the Anti-dumping Duties Act 2015' (previously the Anti-dumping Duties Ordinance 2000). The first anti-dumping investigation by NTC was initiated in 2002 against the dumped imports of Tinplate from South Africa and since then, it has initiated 131 anti-dumping investigations and imposed 85 measures involving all major industries of Pakistan like Iron & Steel, Chemical, Paper & Paperboard, Textile, Petrochemical, Tiles & Sanitary Ware, Packaging, Automotive Parts, etc.

All these measures were imposed after thorough investigations on applications by the affected industries facing unfair trade competition from dumped imports.

The process of an antidumping investigation starts with application by the domestic industry aggrieved from the dumping practices of foreign exporters. NTC initiates an investigation upon the application received from the domestic industry. After initiation of the investigation, NTC collects

information/evidence from domestic industry, importers, exporters, and other interested parties for the purpose of arriving at the determination of dumping of the investigated product, injury to the domestic industry and causal link between dumping and injury. During the course of investigation, NTC issues its preliminary findings within 60-180 days of the initiation of the investigation and, in order to provide relief to the domestic industry during the course of investigation, imposes provisional anti-dumping measures for a period of four months. After preliminary determination, NTC continues its investigation and collects further information/evidence to conclude its final findings. Within 180 days of the date of preliminary

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determination, NTC concludes its investigation and if satisfied, issues its final determination thereby levying final anti-dumping duties for a period of up to 5 years which is further extendable subject to sunset review investigation and so on.

### Anti-dumping Measures-Success Stories of Pakistan's Domestic Industry

Anti-dumping measures have proved to be very helpful in uplifting the performance of various industries in Pakistan. From chemicals, paper & paperboard to steel industries, there are many examples of industries being devastated by the harmful effects of dumping from the very start of their inception or expansion and anti-dumping measures provided sigh of relief to such industries.

**Hydrogen Peroxide (HP) industry** for example; started in 2008 but was continuously incurring losses under pressure from the dumped imports, NTC conducted investigation and levied anti-dumping duty ranging from 3.52% to 84.48% on imports of HP from various sources in 2011. Levy of this anti-dumping duty provided level playing field to the domestic industry and its losses turned into profits.

The same is the case with **flat steel industry** in Pakistan. A major portion of flat steel industry is covered by Cold Rolled Coils and Galvanized Coils. After the downfall of Pakistan Steel Mill, private sector started setting up its manufacturing units for flat steel products in Pakistan. The industry started its production in 2011 and was under severe

#### Summary of anti-dumping measures imposed by Pakistan

Sector	No. of Measures	Anti-dumping Duty Ranges
Products of the chemical and allied industries	31	3.48%-96.50%
Resins, plastics and articles; rubber and articles	11	3.43%-57.09%
Paper, paperboard and articles	13	1.64%-39.10%
Textiles and articles	13	2.14%-29.68%
Articles of stone, plaster; ceramic prod.; glass	2	9.35%-36.35%
Base metals and articles	13	6.09%-40.47%
Miscellaneous manufactured articles	2	9.56%
Total	85	

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pressure from dumped imports which urged it to file an antidumping application against dumped imports. NTC concluded anti-dumping investigations on cold-rolled coils & galvanized coils and imposed anti-dumping duties ranging from 6.09% to 40.47% in 2017. After levying of anti-dumping duty, the performance of the domestic industry started improving, Sales of the domestic flat-rolled industry went up by 3 times production improving capacity utilization and its losses turned into profits. By the virtue of anti-dumping duty, the domestic industry was able to increase its capacity from approx. 500,000 tons per annum to approx. 1.7 million tons per annum. Now Pakistan's steel industry, in addition to catering domestic demand, is competing in export markets with its quality products.

**Paper and Paperboard sector** is also one of the prominent industrial sectors in Pakistan which had been facing injury due to dumped imports of paper and paperboard. Paper & Paperboard industry had undergone huge capacity expansion during and after 2009 when the leading players in paper and paperboard industry commissioned their new production lines for manufacturing quality paper and paperboard. Since then Pakistan's paper and paperboard industry had to face tough competition from imports. Left with no other option, domestic paper and paperboard industry had to file an anti-dumping application with the NTC which, after its due process of investigation, levied antidumping duties on paper and paperboard products ranging from 1.64% to 35.93%. With the

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imposition of anti-dumping duties on these products, the domestic industry became competitive against the imports and had been able to capture more market share.

Anti-dumping duties also paved the way for performance improvement of the plastic film manufacturing industry in Pakistan. Facing severe competition from imports, plastic films industry filed antidumping application for imposition of anti-dumping duties on dumped imports of Biaxially Oriented



Polypropylene Films (BOPP Films) from various sources. NTC upon application of the domestic industry conducted investigation and imposed anti-dumping duties ranging from 22.95% to 57.09%. Due to levy of antidumping duty, the domestic industry became well off against imports and its sales and profitability improved substantially. At the time of investigation, there were only two producers of BOPP Films in Pakistan. As a result of levy of anti-dumping duty, not only performance of the existing BOPP Films manufacturers improved but new players also entered the domestic market by setting up their production lines in Pakistan. Now Pakistan's BOPP Films industry is serving the entire domestic of BOPP Films in Pakistan but is also exporting BOPP Films to earn precious foreign exchange.

### Conclusion:

In the changing trade dynamics where countries are required to liberalize their tariffs, high tariffs for protection of domestic industry is no more a feasible solution. In order to increase its exports, Pakistan will need to have preferential market access in other export destinations with reduced/ concessional duty rates for which it would have to undertake more FTAs, PTA and other trade agreements. In return, Pakistan will also have to allow more access to its trading partners with concessional duty rates for some tariff lines which may cause exposure for its domestic industry. In such a scenario antidumping measures will be the most workable and feasible tool for the protection of the domestic industry.

*About the Author: The writer is a Fellow member of ICMA Pakistan and has over 20 years of practical experience as an international trade lawyer and trade policy expert in the areas of Trade Remedy Laws and international trade policy. He is also serving as Advocate High Court.*