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The Incompatibility of Anti-Dumping Laws

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Abstract

This research paper is an evaluation as to how far the anti-dumping laws and rules enabled WTO to resolve relevant trade disputes and to protect the interests of developing countries. The paper primarily examines in a legal and procedural paradigm, whether anti-dumping measures provided in the WTO-DSB forum and incorporated into respective foreign trade laws of countries have been effective or merely costing the importing countries, while countries that keep dumping do so with impunity, because dumping is just condemned, not prohibited. The Article VI of the General Agreement on Trade and Tariffs (GATT) deals with Anti-dumping and Countervailing Duties. Interpretation of the Article VI.1 would reveal that: 'that dumping is an act by which products of one country are introduced into the commerce of another country at less than the normal value of the products'. In connection with the effect of Article VI on the practice of dumping itself, in the Havana Meet in 1954-55, it was agreed that contracting parties should, within the framework of their legislation, refrain from encouraging dumping, as defined in that paragraph, by private commercial enterprises'. This lopsidedness in the GATT regulations was not corrected in the WTO regulations. The cost of anti-dumping investigations and substantiating the same and all the associated consultative processes are time consuming and not evenly poised on the two parties to the dispute concerned. One instance is the unsustainable practice of DSB constituting Panel with members drawn from the country which initiated action. This goes against the very root of natural justice. One of the principles of natural justice and the related legal maxim is that, 'No person shall sit in judgment of his/her own cause'. Fairness demands that the members should be drawn from a third country. The structure of the panel should be three; one each from developed and developing countries and the third to be elected by majority of the parties. This structure is to facilitate to decide by majority voting, in case where consensus fails. In sum, the legal paradigm and the procedural drags involved in anti-dumping measures, have costed the developing import-intensive countries more while countries that exported keep dumping, at will, because dumping is just condemned, not prohibited.

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