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A discouraging message to South Asian exporters



Photo: Star

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Several media reports have observed that on the basis of prima facie evidence of dumping of jute products from Bangladesh and Nepal, the Directorate General of Anti-Dumping and Allied Duties (DGAD) of India has launched an investigation to assess whether anti-dumping duty should be imposed on such imports from these two countries so that India's competing domestic industry is not harmed. In layman's terms, dumping is selling a product below its cost of production with a design to drive the competitors out of the market and then to recoup the loss in a less competitive market. And an anti-dumping duty is a tariff imposed on imports dumped by foreign manufacturers to counterbalance the damage caused by the dumping.

While in theory anti-dumping duty is nothing but a response to unfair commercial practices of foreign manufacturers, many trade analysts are sceptical about its rationale, mode of imposition and impact. The theory of dumping is premised on the idea that the manufacturer resorting to

dumping has to be economically established enough to be capable of sustaining temporary loss or at least of having its goods exported to more than one market. This is to ensure that loss in one market is offset by profit in one or more markets. Secondly, a manufacturer resorting to dumping does not only need to eliminate existing competitors but also make sure that future entrants in the market face hurdles in entering it. After all, if a new entrant enters the market and can compete effectively, the manufacturer of a dumped product has to continue to resort to dumping.

Many trade analysts believe that when globally tariff and non-tariff barriers are declining, anti-dumping duties and other so-called responses to unfair trade practices of foreign manufacturers are used only as a backdoor to protect domestic industries. The fact that during the early years of the General Agreement on Tariffs and Trade (GATT) - the predecessor of the World Trade Organization (WTO) - just a handful of countries had any domestic law on anti-dumping and now most of the WTO members have anti-dumping laws, feeds to this cynicism about the not so legitimate motive for resorting to anti-dumping. Similarly, during the recent global financial crisis in 2007, the WTO Secretariat found an increasing tendency of WTO members to launch investigations to examine the case for imposing anti-dumping duties on imports. In view of many analysts, this epitomised a desire to protect domestic products and was not necessarily a justifiable response to unfair commercial practice by exporters.

In the case of India, this anti-dumping duty is being imposed at a time when India has virtually given zero tariff access (save a very limited number of excepted products) to exporters from Least Developed Country members of the South Asian Free Trade Agreement (SAFTA), a Preferential Trade Agreement (PTA), and this includes exporters from both Nepal and Bangladesh. Thus, it is not improbable that this investigation on exports from Bangladesh and Nepal has been triggered not by unfair trade practices of exporters but by their ability to compete efficiently.

Assuming that there is an economic case for this issue, the bigger problem is with the way the domestic regulatory bodies investigate the allegations of dumping. The laws of the WTO permit investigations into alleged cases of dumping. They also permit the imposition of anti-dumping duties when there is evidence backing the allegations, but are only subject to fulfilling certain requirements. For instance, the WTO laws require that the dumping of imported products must cause injury to the domestic industry, and there must be a direct connecting link between the alleged dumping and injury to the domestic industry. Similarly, it is a legal requirement that any petition from domestic producers alleging dumping would only be investigated if domestic producers making the allegation account for at least 25 percent of the total domestic production. However, it has been found that in some cases, investigations have been launched although the petitioners have failed to prove that they do fulfil this minimum threshold.

India is one of the most frequent users of anti-dumping investigations and imposers of anti-dumping duties. In fact, this investigation into jute imports from India would be a *déjà vu* for some trade observers. In January 2004, Bangladesh had to request consultations with their neighbour

concerning an anti-dumping measure imposed by India on imports of lead acid batteries from Bangladesh. Bangladesh alleged that some aspects of the investigation by the Indian authorities leading to the imposition of the anti-dumping duty did not comply with relevant laws of the WTO. In fact, this was the first and so far only dispute involving an LDC member state as a principal party to a WTO dispute. The dispute was ultimately settled mutually, before it reached the stage of judicial settlement by the WTO panel.

Indian authorities should also not forget that Bangladesh, India, and Nepal - being members of the SAFTA - have vowed to increase intra-SAFTA trade. This investigation and potential imposition of an anti-dumping duty would send a dismaying signal to business communities. Exporters from other SAFTA member countries could feel that whenever they have a large share in the Indian market, there might be the risk that their entry in that market would be curtailed not by economic factors, but by the domestic protectionist impulses of India.

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