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**A CRITICAL STUDY OF ANTI-DUMPING LAWS IN INDIA WITH
SPECIAL REFERENCE TO THE HAZARDOUS WASTE**- Rishabh Dedha¹**ABSTRACT**

The proliferation of hazardous waste poses significant environmental and public health risks, necessitating robust regulatory frameworks to address its importation and disposal. India, as a rapidly developing economy, faces escalating challenges in managing hazardous waste, exacerbated by global trade dynamics and the influx of waste from foreign sources. In response, India has enacted stringent anti-dumping laws to mitigate the adverse impacts of hazardous waste dumping.

This paper provides a comprehensive overview of anti-dumping laws in India, focusing on their application to hazardous waste importation. It examines the legal framework governing anti-dumping measures, including relevant statutes, regulations, and international agreements. Furthermore, it analyzes the enforcement mechanisms and institutional arrangements for monitoring and regulating hazardous waste imports.

Key considerations such as the definition of hazardous waste, criteria for determining dumping, and assessment of injury to domestic industries are explored within the context of anti-dumping investigations. The paper also evaluates the effectiveness of anti-dumping measures in deterring illegal waste disposal practices and safeguarding the environment. This study also highlights the challenges and opportunities associated with enforcing anti-dumping laws in the context of hazardous waste management.

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This research contributes to the ongoing discourse on sustainable waste management by elucidating the role of anti-dumping laws in safeguarding environmental integrity and promoting circular economy principles. It underscores the imperative for comprehensive and coordinated efforts at the national and global levels to address the complex challenges posed by hazardous waste proliferation in an increasingly interconnected world.

INTRODUCTION

India's rapid industrialization has led to increased generation of hazardous waste across various sectors, including manufacturing, mining, pharmaceuticals, and electronics. This surge in waste production necessitates effective regulatory mechanisms to prevent its improper disposal and mitigate environmental contamination. The improper disposal and management of hazardous waste pose serious environmental and public health risks in India. Dumping of hazardous waste not only contaminates soil and water but also leads to air pollution through incineration. Anti-dumping is a leading controversial issue in the area of foreign trade. It divided the key exporting nations from the key importing nations. The organizations that find them slipping in the global marketplace always abuses anti-dumping measure for protectionist purpose. The growing anti-dumping instances across the globe has been a subject of great concerns for WTO as it tends to impairs the WTO's key objectives of attain market access liberalization among the contracting party.²

Anti-dumping laws in India play a crucial role in safeguarding domestic industries, promoting fair trade practices, and protecting the economy from unfair competition. The management of hazardous waste is a critical concern for both developed and developing countries due to its potential adverse impacts on human health and the environment. India, as one of the world's largest and fastest-growing economies, faces significant challenges in regulating the importation and disposal of hazardous waste.

² Bagchi, J K, *Dumping and Anti Dumping Measures Policy and Practice*, 2009, Research and Information System for the Non Aligned and other Developing Countries, New Delhi

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India's commitment to international agreements and conventions, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, shapes its approach to managing hazardous waste imports. Compliance with these obligations influences the formulation and enforcement of anti-dumping laws. By examining these contextual factors, the study aims to provide a comprehensive understanding of the background conditions shaping India's approach to regulating hazardous waste imports through anti-dumping laws. This understanding is essential for identifying gaps, formulating effective policies, and enhancing regulatory enforcement to promote sustainable waste management practices and protect human health and the environment.³.

Comparing anti-dumping laws regarding hazardous waste across countries involves examining their legal frameworks, enforcement mechanisms, and effectiveness in combating the dumping of hazardous waste. The USA has comprehensive legislation such as RCRA and CERCLA. These laws regulate the generation, transportation, treatment, storage, and disposal of hazardous waste. The EU has directives such as the Waste Framework Directive and the Hazardous Waste Directive, which set out requirements for the management of hazardous waste. These directives establish a framework for member states to regulate the generation, transportation, and disposal of hazardous waste. In comparing these countries, several factors could be considered, including the stringency of regulations, the effectiveness of enforcement mechanisms, the level of compliance, and the impact on domestic industries and the environment. Additionally, case studies of specific instances of hazardous waste dumping and the respective responses of each country could provide valuable insights into the strengths and weaknesses of their anti-dumping laws.

Even though nations levy anti-dumping tariffs to safeguard their domestic economies, such protectionism will not assist expand the economy in the long term. Problems of

³ Singh, S. K. (2005). An analysis of anti-dumping cases in India. *Economic and Political Weekly*, 40(11), 1069–1074.

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nondisclosures of confidential information - WTO provision considered leave without interested parties from significant ways to defend their interest because in the leeway given by the ADA, in excess of information is in practices treated as confidential.⁴

PROBLEM STATEMENT

The dumping of hazardous waste poses significant environmental and public health risks globally. To mitigate these risks, countries have implemented various anti-dumping laws and regulations. This comparative study aims to analyze and evaluate the effectiveness of anti-dumping laws concerning hazardous waste in India in comparison to select countries, including the United States, the European Union, and China.

The study tried to examine the legal framework governing hazardous waste management and anti-dumping measures in India and the selected countries.

Identify similarities and differences in the scope, coverage, and enforcement mechanisms of anti-dumping laws. Assess the effectiveness of enforcement agencies and mechanisms responsible for implementing anti-dumping laws in each country. Analyze the resources, capacities, and strategies employed to detect, prevent, and penalize instances of hazardous waste dumping. Evaluate the level of compliance with anti-dumping regulations among industries, importers, and exporters in India and the comparison countries. Investigate the economic, environmental, and public health impacts of hazardous waste dumping, considering factors such as pollution levels, ecosystem degradation, and human health risks.

OBJECTIVES OF THE STUDY

- To examine the trend and patterns in the proliferations of antidumping measures among the WTO members and a comparative perspective.
- To analyze the effectiveness of anti-dumping laws in India

⁴ Abhay Narayan, Anti-Dumping Laws in India, The Legal Alpha, (Dec 16, 2021)

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- To study the antidumping laws related to the hazardous waste and procedures of anti dumping users and their consistencies and compatibility with the WTO anti dumping laws
- To examine the basic objective of the Hazardous Waste (Regulation of Exports and Imports) Act 1989

THE ANTI-DUMPING AGREEMENT UNDER THE WTO

The Anti-Dumping Agreement, administered by the World Trade Organization (WTO), is a key international agreement that establishes rules and disciplines governing the use of anti-dumping measures by WTO member countries. The Agreement defines dumping as the export of goods by a country at prices lower than their normal value, typically the comparable domestic market price or the cost of production.

Conditions for Imposing Measures: The Agreement sets out the conditions under which WTO members may impose anti-dumping measures on dumped imports. These conditions include evidence of dumping, injury to domestic industries, and a causal link between the two.

Investigation Process: The Agreement provides detailed procedures for conducting anti-dumping investigations, including the establishment of investigation timelines, notification requirements, and opportunities for interested parties to present evidence and arguments.⁵

Calculation of Dumping Margins: The Agreement outlines methods for calculating the margin of dumping, which determines the amount of anti-dumping duties that may be imposed on dumped imports.

Duration of Measures: Anti-dumping measures are typically imposed for a renewable period of five years, although this can be extended under certain conditions if the

⁵ Kazemi and Ramesh, Anti-Dumping In International Trade: Issues and Prospective, AJDM (2018)
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investigation determines that the expiry of the measures would likely lead to continued dumping and injury.

Review and Sunset Provisions: The Agreement includes provisions for reviewing and, if necessary, revising or terminating anti-dumping measures. It allows for periodic reviews to assess whether the measures are still necessary and whether the circumstances have changed.

Notification and Transparency: WTO members are required to notify the WTO of any anti-dumping measures they impose and to provide relevant information regarding their investigations and findings. This promotes transparency and facilitates monitoring of members' compliance with their obligations under the Agreement.

Special and Differential Treatment: The Agreement recognizes the special needs and circumstances of developing and least-developed countries and provides for special and differential treatment in certain aspects, such as the duration of anti-dumping measures and technical assistance.

Article 11 establishes the conditions under which an investigating authority in a member country can initiate an anti-dumping investigation. It stipulates that such investigations can only be initiated upon a written application by the domestic industry that is producing a like product to the allegedly dumped product or upon a complaint from a trade association representing the domestic industry. The investigating authority must examine the accuracy and adequacy of the evidence provided in the application or complaint. This evidence should demonstrate the existence of dumping, injury to the domestic industry, and a causal link between the two.⁶

ANTI-DUMPING LAWS IN INDIA

Customs Tariff Act, 1975

Section 9A and 9B of the Customs Tariff Act, 1975, as amended in 1995, pertain to anti-dumping measures in India. Here's an overview of these provisions:

⁶ Anti-dumping, subsidies, safeguards https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm
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Section 9A: This section deals with the imposition of anti-dumping duty on dumped articles. It empowers the Central Government to impose anti-dumping duty on imported goods if it determines, after conducting an investigation, that the goods are being dumped into the Indian market and are causing injury to domestic industries.

Section 9B: This section outlines the procedure for the investigation of dumping and imposition of anti-dumping duty. It provides for the initiation of investigations by the designated authority (usually the Directorate General of Trade Remedies, formerly known as the Directorate General of Anti-Dumping and Allied Duties) based on an application filed by the domestic industry alleging dumping of goods and injury to domestic producers.

Key provisions of Section 9B

Initiation of Investigation: The designated authority may initiate an investigation upon receipt of a written application from the domestic industry, or upon its own initiative if it has sufficient evidence to suggest the existence of dumping and injury to domestic producers.

Investigation Process: The designated authority conducts an investigation to determine whether dumping is occurring, the extent of dumping, and whether such dumping is causing injury to domestic industries. This investigation may involve examining evidence provided by interested parties, including exporters, importers, and domestic producers.

Imposition of Anti-Dumping Duty: If the designated authority finds that dumping is causing injury to domestic industries, it may recommend the imposition of anti-dumping duty to the Central Government. The Central Government then has the authority to impose anti-dumping duty on the imported goods in accordance with the recommendations.

Review and Appeal: Section 9B also provides for review and appeal mechanisms for interested parties aggrieved by the findings of the investigation or the imposition of anti-dumping duty.

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These provisions of the Customs Tariff Act, 1975, as amended in 1995, provide the legal framework for the imposition of anti-dumping duty on dumped articles in India, aimed at protecting domestic industries from unfair competition and ensuring a level playing field in the international market.⁷.

Anti-dumping rules such as (Identification, Assessment and Collection of Anti-dumping Duty on **Dumped Articles and for Determination of Injury**) **Rules of 1995**

It is a set of regulations formulated under the Customs Tariff Act, 1975, to govern the implementation of anti-dumping measures in India. These rules provide detailed procedures and guidelines for conducting investigations, determining dumping and injury, and imposing anti-dumping duties. **Initiation of Investigations:** The rules outline the procedure for initiating anti-dumping investigations, including the submission of a written application by the domestic industry or the initiation of an investigation by the designated authority based on its own initiative.

Provisions are included to ensure the confidentiality of information submitted by interested parties during the investigation process, while also allowing for the disclosure of relevant information to parties directly concerned.

Evidence and Information Gathering: The rules specify the types of evidence and information that may be considered during the investigation, including data on production, sales, prices, costs, and other relevant factors.

Procedures are laid out for calculating the margin of dumping, which is the difference between the export price of the imported goods and their normal value in the exporting country. Guidelines are provided for determining whether the dumped imports are causing injury or threatening to cause injury to the domestic industry, taking into account factors such as volume and price effects of the dumped imports on the domestic industry.

⁷ Chaminda Wijethilake et al, Regulatory Capture in Transboundary Waste Dumping, Sage Journals (2024)

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The rules specify the conditions and procedures for recommending the imposition of anti-dumping duty by the designated authority to the Central Government, including the calculation of the duty based on the margin of dumping and injury to the domestic industry. Provisions are included for review and appeal mechanisms for interested parties aggrieved by the findings of the investigation or the imposition of anti-dumping duty.

These rules provide the procedural framework for the implementation of anti-dumping measures in India, ensuring transparency, fairness, and due process in the investigation and imposition of anti-dumping duties on dumped articles. They aim to protect domestic industries from unfair trade practices while also respecting the rights of all parties involved in the investigation process.

Lacunas Related with Enforcement of Anti Dumping Laws

Lengthy Investigation Process: The process of initiating and conducting anti-dumping investigations in India can be lengthy and time-consuming. This delay can undermine the effectiveness of anti-dumping measures, as domestic industries may continue to suffer from dumped imports while investigations are ongoing.

Procedural Complexities: The legal and procedural requirements for initiating and pursuing anti-dumping cases in India can be complex, making it difficult for domestic industries to navigate the process effectively. This complexity can discourage companies from pursuing anti-dumping actions, even when they are justified.

Lack of Resources: India's Directorate General of Trade Remedies (DGTR), responsible for investigating anti-dumping cases, may face resource constraints that limit its ability to effectively enforce anti-dumping laws. Insufficient staffing, expertise, and funding can hamper the timely and thorough investigation of dumping allegations.

Judicial Backlog: Legal challenges and appeals related to anti-dumping decisions in India may contribute to a backlog in the judicial system. Delays in resolving these legal disputes can further prolong the enforcement process and undermine the effectiveness of anti-dumping measures.

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Transparency and Accountability: There may be concerns regarding the transparency and accountability of anti-dumping investigations and decisions in India. Lack of transparency can erode confidence in the process and lead to perceptions of bias or favoritism.

Trade Diplomacy and International Relations: Enforcement of anti-dumping laws in India can sometimes become entangled with broader trade diplomacy and international relations. Trade disputes arising from anti-dumping actions may strain diplomatic relations with trading partners and lead to retaliatory measures that could harm Indian exporters.

Market Distortion: In some cases, anti-dumping measures implemented by India may inadvertently distort domestic markets or create inefficiencies. Excessive protectionism through anti-dumping actions could lead to higher prices for consumers and limit competition in the domestic market.⁸

Addressing these problems need concerted efforts to streamline procedures, enhance transparency and accountability, allocate adequate resources, and strengthen cooperation with trading partners and international organizations. Additionally, there needs to be a balance between protecting domestic industries and promoting free and fair trade..

Sandisk International vs DA⁹ The DA in a case relied on import statistics sourced from the DGCI&S. This reliance came to light when parties received the Disclosure Statement for review. Despite the petitioner's request for a non-confidential summary of the information, none was provided. The Delhi High Court ruled that the DA must share information received from one party with all interested parties, including material obtained from other sources. It emphasized that without sharing this data, parties cannot have a fair opportunity to present their case. The respondents argued that since the Final Findings are recommendatory, the petition was premature. They suggested the matter

⁸ Aprajita Bhargava, Regulatory Framework Of Anti Dumping Laws In India, Asia Pacific Law & Policy Review Volume 3 (Apr, 2017)

⁹ WP(C) 744/2015

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could be remanded to the DA for a post-decisional hearing. However, the High Court bench rejected these arguments. They emphasized the time-bound nature of anti-dumping proceedings, insisting on compliance with statutory periods. Consequently, the court found a clear violation of natural justice principles, leading to the quashing of the Final Findings.

CONCLUSION

In India, anti-dumping laws primarily focus on regulating the dumping of goods that harm domestic industries by undercutting prices. However, hazardous waste management falls under environmental regulations rather than specifically anti-dumping laws. Nevertheless, India has various legal frameworks and regulations in place to address the disposal and management of hazardous waste, which indirectly contribute to preventing dumping practices

From an international standpoint, anti-dumping laws help maintain fairness in trade relations. Dumping hazardous waste in a foreign country can undermine local industries by offering artificially low-priced goods. Enforcing anti-dumping laws ensures that all parties abide by fair trading practices, promoting equity in global commerce. Despite the existence of anti-dumping laws, enforcing them internationally poses significant challenges. Varying regulations and enforcement capacities across countries create loopholes for illegal dumping activities. Strengthening international cooperation and harmonizing regulations are essential to effectively combat hazardous waste dumping. Hazardous waste dumping often transcends national borders, affecting multiple countries and regions. This necessitates a coordinated effort among nations to address the transboundary implications of dumping activities. International agreements and frameworks, such as the Basel Convention, play a crucial role in facilitating cooperation and addressing cross-border waste management issues.

In conclusion, the international perspective on anti-dumping laws concerning hazardous waste underscores the need for robust regulatory frameworks, enhanced enforcement mechanisms, and global cooperation. By addressing environmental concerns, promoting

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fair trade practices, and fostering corporate accountability, anti-dumping laws contribute to a safer and more sustainable global environment. However, continuous efforts are required to address compliance challenges and ensure effective waste management practices across borders.

SUGGESTIONS

- India can benefit from aligning its environmental policies, particularly those related to hazardous waste management, with its trade policies. This integration can ensure that trade practices do not compromise environmental standards and vice versa.
- Strengthening enforcement agencies responsible for monitoring and regulating hazardous waste disposal is crucial. Providing adequate resources, training, and technology to customs authorities, environmental agencies, and law enforcement bodies can improve their capacity to detect and deter illegal dumping activities.
- Simplifying and streamlining regulatory processes related to hazardous waste management can facilitate compliance and reduce bureaucratic hurdles. Clear guidelines, standardized procedures, and online platforms for obtaining permits and approvals can make it easier for businesses to adhere to environmental regulations.
- Increasing awareness among the public, industries, and other stakeholders about the environmental and health risks associated with hazardous waste dumping is essential. Educational campaigns, workshops, and outreach programs can promote responsible waste management practices and encourage community participation in waste reduction and recycling initiatives.
- Introducing incentives and rewards for businesses that adopt sustainable waste management practices can encourage compliance with environmental regulations. Tax breaks, subsidies for investing in waste treatment technologies, and

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preferential treatment in government procurement processes can motivate industries to prioritize environmental responsibility.



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REFERENCES

Abhay Narayan, Anti-Dumping Laws in India, The Legal Alpha, (Dec 16, 2021)

Bagchi, J K, Dumping and Anti Dumping Measures Policy and Practice, 2009, Research and Information System for the Non Aligned and other Developing Countries, New Delhi

Singh, S. K. (2005). An analysis of anti-dumping cases in India. Economic and Political Weekly, 40(11), 1069–1074.

Kazemi and Ramesh, Anti-Dumping In International Trade: Issues and Prospective, AJDM (2018)

Chaminda Wijethilake et al, Regulatory Capture in Transboundary Waste Dumping, Sage Journals (2024)

Anti-dumping, subsidies, safeguards

https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

Aprajita Bhargava, Regulatory Framework Of Anti Dumping Laws In India, Asia Pacific Law & Policy Review Volume 3 (Apr, 2017)

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