

# India & The WTO

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## Anti-dumping - A perspective

- MURASOLI MARAN

In an era of open trade and globalisation, anti-dumping has acquired a special significance primarily as a means of checking unfair trade practices and promoting fair competition. It is essentially a mechanism of defence provided for under Article VI of GATT 1994 which allows all member countries to apply anti-dumping measures wherever warranted for protecting their domestic industry from unfair competition. We are availing of this facility like all other member countries of the WTO. It is our intention to provide a level playing field to our producers with regard to anti-dumping provisions and to fully safeguard the interests of our domestic industry while facing the challenges of global competition.

It needs to be understood that there are detailed rules and procedures governing the application of anti-dumping measures. In other words, such measures cannot be arbitrarily applied. Investigations in an anti-dumping case can only be on the basis of prima facie evidence of dumping and a causal link between dumped imports and injury to the industry. After initiation of the investigations, the designated authority is required to follow specified procedures to give a fair opportunity to all the interested parties-domestic as well as foreign- to defend their cases. The findings- provisional and final - have to be supported by sufficient evidence and cogent financial analysis.

**The anti-dumping mechanism has been adequately equipped to meet the challenges of the future and indeed, the government is in the process of further strengthening the Anti-Dumping Directorate under the Ministry of Commerce and Industry** as also of building a synergy with the Safeguards Cell under the Ministry of Finance. The time taken now by the Anti-dumping Directorate in recommending provisional and final measures against dumped imports compares favourably with those taken by the world's major trading nations. While adhering to the rules and disciplines mandated by WTO obligations regarding anti-dumping investigations, we are endeavouring to keep up the statutory time in arriving at the anti-dumping findings.

Recognising the need for improving the implementation of the WTO Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures, India, along with a group of like-minded developing countries, has already submitted several proposals, which would create a level playing field for our domestic industry and our exports. We have, for instance, suggested that some of the special and differential treatment provisions such as Article 15 of the Anti-Dumping Agreement, which provide for constructive remedies to be explored in the case of developing countries, should be fully implemented. These are being pursued by us.

**Anti-Dumping and Countervailing Duty actions are for removing unfair trade practices and are not aimed at retarding fair competition nor are they targetted towards any country or countries. Anti-Dumping measures, as we see them, are largely a mechanism to provide a level playing field and a form of protection allowed under the multilateral trading system that are compatible with open, fair and undistorted competition.** At the same time, as we approach a new era of reduced trade barriers, it is imperative that we seize the opportunities to take full advantage of our latent potential and carve a niche for ourselves in the new global economy. We are trying to catalyse this process of transforming our industry to face the world by focussing on our core competence and inherent strengths. Quality, cost reduction, operational efficiency and greater awareness of health and environment aspects are issues of paramount importance. Our "mantra" is this : "Increase the competetiveness !" Only then can we as a nation capitalise on all our strengths, secure a better economic future for our people and withstand the challenge of competition as many other nations have successfully done.

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## Q & A : ANTI-DUMPING

**Q1. What are the provisions of the WTO Agreement on Anti-Dumping? What is the underlying philosophy or rationale of Anti-dumping?**

**Ans:** The General Agreement on Tariffs and Trade (GATT) lays down the principles to be followed by the member countries for imposition of Anti-Dumping Duty. **Pursuant to the GATT, 1994, detailed guidelines have been prescribed under the specific agreements, which have been incorporated in the National Legislation of the member countries of the WTO.** Sections 9A, 9B & 9C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duties on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti-Dumping which is in pursuance of Article VI of GATT 1994.

**Dumping is said to have taken place when an exporter sells a product at a price less than the price prevailing in its domestic market.** However, the phenomenon of dumping is per se not condemnable as it is recognised that producers sell their goods at different prices to different market. It is also not unusual for prices to vary from time to time in the light of supply and demand conditions. It is also recognised that price discrimination in the form of the dumping is a common international commercial practice. It is also not uncommon that the export prices are lower than the domestic prices. Therefore, from the point of view of anti-dumping practices, there is nothing inherently illegal or immoral about the practice of dumping. **However, where dumping causes or threatens to cause material injury to the domestic industry of India, the Designated Authority initiates necessary action for investigations and subsequent imposition of anti-dumping duties.**

**Q2. What are the functions of the Directorate General of Anti-Dumping & Allied Duties?**

**Ans:** The Directorate General of Anti-Dumping and Allied Duties (DGAD) in the Ministry of Commerce and Industry (Department of Commerce) Is responsible for

Anti-Dumping and Countervailing Duty actions in the country in consonance with WTO and the National Law. **DGAD initiates investigations on the basis of prima-facie evidence of dumping, injury and causal link thereof.** The domestic industry has to make available a fully documented petition before the case can be taken on record. During such documentation, the Officers in the Directorate assist the domestic industry. After initiation of investigation, the Designated Authority is required to follow specified procedures to give a fair opportunity to all the interested parties—domestic as well as foreign—to defend their cases. Besides examination of voluminous trade data, the price trends, normal values, product analysis etc., the Investigating Officers are required to carry out detailed verifications to analyse cost in the domestic industry, as well as prices indicated by exporters in the exporting countries. **The findings-provisional as well as final-are required to be supported by sufficient evidence and cogent financial analysis. DGAD is endeavouring that preliminary findings are recommended after the completion of 60 days from the initiation of investigation. Final findings are to be given within 12 months of initiation of the case.** After completion of investigations, DGAD recommends Preliminary findings/Final findings to Department of Revenue, Ministry of Finance, which notifies the imposition of Anti-Dumping Duty.

**DGAD also undertakes periodic review of the cases** and defends its recommendations in the CEGAT, High Court and Supreme Court when its orders are challenged in appeal.

**Besides, the DGAD provides for various facilities to the domestic industry like publishing of literature on Anti-Dumping guidelines, application proforma and exporter/importer questionnaires. The DGAD has launched a website,** which contains detailed information concerning the Directorate, which is of interest to trade & industry. Various interactive meetings with domestic industry by way of seminars and conferences are held to familiarise the domestic industry with Anti-Dumping procedures and concepts.

**Q3. With just two months to go for ending the country's remaining Quantitative Restrictions (QRs) on imports, is the Directorate General of**

### **Anti-Dumping & Allied Duties sufficiently equipped to face the challenges ahead?**

**Ans.** It has been understood that dumping is not increased imports or cheap/imports but a case of imports wherein the normal value of the product (i.e. the price of the product in the domestic market of the country concerned) is higher than its export price. The **Anti-Dumping measure as a remedy against unfair trade practice is being felt more in the wake of removal of QRs and progressive reduction in Customs Tariff.** The free import regime coupled with the reduced Tariff levels has generated a tendency among several countries to dump their goods into Indian market at an increased volume and at an unfairly low price. **The DGAD is fully equipped to check dumping that causes injury to domestic industry and is constantly interacting with various Ministries/Departments to cope with post QRs scenario of dumping.**

**Q4. Is the present workforce of the Directorate General of Anti-Dumping & Allied Duties adequate to handle anti-dumping cases which are likely to further increase with the phase-out of QRs?**

**Ans.** The DGAD has a slim workforce at present. It is headed by the Designated Authority of the level of Additional Secretary to the Government of India. The Designated Authority is assisted by a Joint Secretary, a Director, 4 investigating Officer, 3 Costing Officers and a Section headed by a Section Officer to provide secretarial assistance and coordination. There has been no delay in the completion of cases because of the lack of the adequate staff at any point of time. All the officers are well trained not only to deal with the complaints but also to facilitate and help domestic industry complete their documentation. The endeavour to deal with complaints faster and finalise action earlier is a continuous process in DGAD. Further, as and when cases increase, more Investigating Officers will be posted to the Directorate

**Q5. An update on anti-dumping cases initiated by India?**

**Ans. The DGAD has so far initiated 87 cases for investigation. The break-up of cases is as under:**

Cases in which final Anti-Dumping Duty is recommended	62
Cases in which provisional Anti-Dumping Duty is recommended.	8
Cases initiated for investigation pending provisional duty	17

Under Rule 5 (4) of the Anti-Dumping Rules under the Customs Tariff Act, 1975 as amended in 1995, the Designated Authority may initiate investigation suo-moto, if it is satisfied with the information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source that sufficient evidence exists regarding dumping of foreign goods, material injury to the domestic industry and causal link between the two. The Designated Authority had initiated suo-moto investigations against imports of 3 consumer products (Dry Batteries, Sports Shoes and Toys) from China in Nov., 2000 on the basis of Directorate of Revenue Intelligence of Ministry of Finance. While provisional duty has been recommended in the cases of Dry Batteries and Sports Shoes, provisional duty on Toys could not be confirmed in the absence of full substantiation of injury to domestic industry.

**Q6. It is sometimes alleged that there is substantial delay in recommending imposition of anti-dumping duty. How far is this correct?**

**Ans. The procedures in India are specified in the Rules for Anti-Dumping, which are not only in consonance with WTO requirement but are similar to those in other countries.** The Designated Authority has to follow time norms at various stages in order to ensure that the case is dealt with in an open and transparent manner with access to information and opportunity to defend to all interested parties concerned. India is one of the leading users of Anti-Dumping measures in the world. **In terms of time taken for issue of preliminary findings India compares favourably with other important users of Anti-Dumping measures in the world as given below:**

Country	Average time taken
India	Approx. 2½ -3 months
USA	Approx. 4-5 months
EU	Approx. 7-8 months
Australia	Approx. 5 months
New Zealand	Approx. 5-6 months

The DGAD has ensured in the recent cases (Potassium Permanganate from China, Hong Kong & Taiwan; Sodium Hydrosulphite from China; Dry Batteries from China & Sports Shoes from China) that preliminary findings are recommended within 70 days of initiation of the investigation.



# MONTHLY REPORT ON IMPORTANT EVENTS FOR THE MONTH OF JANUARY, 2001

## HIGHLIGHTS

- **The Cabinet Committee on WTO Matters met on 6th January 2001 and approved India's negotiating proposals for the ongoing negotiations on the WTO Agreement on Agriculture.** These negotiating proposals, in the areas of Market Access, Domestic Support and Food Security, approved by the Cabinet Committee, were filed with the WTO on 15.1.2001. These proposals have also been put on the Web Site of the Department of Commerce on 16.1.2001. Proposals filed by other countries/ groups of countries, have been circulated by the WTO Secretariat to all members and are expected to be placed before the Special Session of the Committee on Agriculture to be held in Geneva from 5th to 7th February 2001 for discussion. The proposals received have been analysed for preparing suitable interventions on the position to be taken by the Indian delegation at the Special Session.
- **Preparations for the 4th Ministerial Conference have started in WTO.** Chile has opted out of the race for the venue of the Conference, leaving Qatar in the field. Based on consultations, **a decision has been taken to hold the next Ministerial Conference in Doha during the third week of November 2001 (9th to 13th November 2001).**
- The 11th meeting of the Standing Board on Safeguards was held on 22nd January 2001, to discuss the report of DG (Safeguards) on the investigation into increased imports of Methylene Chloride.
- On 1st December 2000 EC filed its notice of appeal in the **bed linen dispute**. EC has appealed against the legal interpretation developed by the Panel regarding zeroing under Article 2.4.2. **In consultation with Ministry of Textiles, PMI Geneva, our cross appeal was finalised and submitted on 18th December 2000. India's appellee submission rebutting the points made by EC in its appellant submission was filed on 8th January 2001.**
- **It has been decided to seek consultation with Brazil under the DSU regarding continuation of anti-dumping duties imposed on imports of jute bags from India.** Draft request for consultation has been sent to PMI, Geneva seeking their views and comments thereon, which are awaited.
- **India has notified its third stage of Integration under Article 2.8(b) of Agreement on Textile and Clothing (ATC).** The integration proposed represents 18.4% of the import of these products in 1990-91. The only implication of this integration for India would be that India will not be able to take transitional safeguard measures under Article 6 of ATC for the items as get integrated under Article 2.8(b) of ATC. The third stage of Integration would take effect from 1st January 2002.
- Special Secretary, Mr. Nripendra Misra, attended an informal meeting arranged by EC at Geneva for ascertaining the views of India and other countries for the launch of a new round of negotiations. India reiterated its known opposition about the launch of a new round unless there is a broad convergence of views among the membership of WTO. Such a convergence according to India can come about only if implementation issues are resolved satisfactorily and the contentious non-trade issues are kept off the table.
- A Workshop, jointly organised by the World Bank, UNCTAD and SAARC on "A New WTO round - Agriculture, Sanitary and Phyto-Sanitary (SPS) and the Environment " , capturing the benefit for South Asia, was held in New Delhi from 11 to 13 January, 2001. Representatives from Bangladesh, India,

Nepal, Pakistan and Sri Lanka participated and made presentations in this workshop. The United States also participated and made a presentation highlighting their views on the "New Opportunities in the New Trade Round - the view from the United States". India's presentation in the Workshop was made by Mr. R.P. Agrawal, Joint Secretary (TPD) on "Issues of Interest to a Large Agrarian Developing Economy Like India in the Ongoing Agricultural negotiations."

## MISCELLANEOUS

- Inputs were furnished regarding the portion of the **Economic Survey** on WTO issues, the main focus of which was on the impact of removal of QRs, India's proposals for the ongoing negotiations under the Agreement on Agriculture and General Agreement on trade in services.
- In the **Turkey Textiles dispute**, a non-paper was handed over to by the Turkish Ambassador. Without making any concrete offer, the non-paper requested for consultations for resolving the dispute. The consultations are scheduled for 29th and 30th January 2001.
- **Market Access** - The Work on the consolidated Tariff Schedules was completed. This is the electronic version of India's Schedules consolidating the UR Round commitments, HS 96 transposition, concessions under ITA and results of other tariff negotiations.

- **India's bilateral agreement with China signed** as part of the process of China's accession to WTO on 22-2-2000 has been placed on Department's **WEBSITE**.

## Electronic Commerce

India participated in the OECD Emerging Markets Economic Forum on E-Commerce in Dubai on 15-17 January. The panelists in this seminar included consumer activists/organisations and lawyers. The main thrust of the presentations was that there is an immediate need to have national governments enact necessary legislation for the protection of consumers. The present regime of 'Self regulation' had proved ineffective in protecting consumer interest as was highlighted by the low growth of B2C transactions in Europe. Significantly, some American NGO's reiterated this view as well. The presentation on the legal framework in the UAE showed that the present civil and penal codes were ineffective in ensuring protection of privacy in the cyber space. Governmental role was deemed essential for: (a) enacting legislation to protect consumer interest, and set up Alternate Dispute Resolution systems; (b) to address privacy and trust issues; (c) harmonise the domestic laws, internationally; and (d) to provide the necessary backup for creating infrastructure.

*(Source: Trade Policy Division/Department of Commerce incorporating inputs from PMI/Geneva)*



## The Multilateral Trading System

(Speech of DG/WTO Mike Moore at the Partnership Summit; Hyderabad, January 2001)

"Ten years ago, India's computer industry had sales of \$ 150 million. This financial year, its exports are set to reach \$ 6 billion- 13% of India's total exports. Hyderabad is now known as Cyberabad. Soon Indian companies such as Infosys, Wipro and Satyam could be household names around the world.

This outstanding success shows how information technology and open trade together offer new opportunities for people to better their lives. Thanks to strong political leadership, economic liberalisation, and the inherent entrepreneurial skills of Indian businesspeople, India's economy is now growing at over 7% a year. As trade barriers have fallen, trade has become a more prominent part of this success story. This is powerful evidence that globalisation has the potential to lift more people out of poverty more quickly than at any time in human history.

But let us be clear about the scale of the challenge ahead. There are more than a billion people in India. The software industry employs a mere 3,40,000 of them.

The Indian software programmers that work for US companies using the Internet are the exception, not the rule. Many people in the developing countries can scarcely read, let alone use the Internet. Most of those who are literate do not have access to the net. In India, there is one Internet host for every 55,000 people. In the United States, there is one for every seven people. Clearly, it is a major challenge - to make sure developing countries are not left behind in the Internet economy.

To prevent the digital divide between North and South becoming a chasm, developing countries need at least four things. One is skilled workers. India has plenty of them: it accounts for a third of the world's software engineers. Two more are access to computer technology at world prices and efficient, low cost

telecoms. Here the WTO can help. Its Information Technology Agreement eliminated import duties on a range of computer hardware and its Basic Telecoms agreement supports the liberalisation of telecoms services. More still needs to be done. The final requirement for success in the digital age is free access to rich-country markets. Rich-country markets are reasonably open, but obstacles remain, for instance, for Indian software engineers who want temporary visas to work in America or Europe.

India has a huge interest in freer trade in the IT sector. It is one powerful reason why India should be fighting for a new round of negotiations at the WTO. Throw in the prospect of freer trade in agriculture and cut in industrial tariffs, and the case becomes all the more compelling. The Tinbergen Institute estimates that the annual gains to India from a new round could top \$11 billion, raising India's national income by 4.4%.

Let me run through last year's achievements. First, we welcomed six new members: Jordan, Georgia, Albania, Croatia, Oman and Lithuania. While a few thousand protested in the street of Seattle, Washington, London or Prague, 24 million people joined the WTO last year. It is a dramatic referendum in support of rule-based, multilateral trade liberalisation. And it brings us ever closer to being a truly World Trade Organisation. Many more countries should soon be joining China, Chinese Taipei, Armenia, Moldova and Vanuatu, for instance. Others, like Russia and Ukraine, are also in the queue.

Second, we worked through an important package to help the world's poorest countries reap greater benefits from the world trading system. 27 richer countries made improved market-access offers. We increased technical assistance. And we are co-operating more closely with other international organisations that promote development.

Third, we made progress on involving all our 140 members in our work. This included the development of special initiatives to facilitate the full participation of smaller missions and non-resident members in all aspects of our activities. We ran a second Geneva Week to update non-resident members on our work. We continued to set up internet reference centres in member Countries to keep members better informed of our work.

Fourth, we established a mechanism for addressing developing countries' concerns arising from the implementation of their Uruguay Round commitments. We achieved some modest but significant results at our special General Council in December. This process will continue.

Last but not the least. We launched negotiations on agriculture and services, which together account for two-thirds of the world economy. So far, they have gone remarkably well. We have probably made as much progress as we would have done within the context of a wider round. In agriculture, where the aim is to reduce protection and support, many countries and groups have submitted negotiating proposals. In services, which covers everything from tourism to telecoms and finance to computing, the aim is to expand the service agreement's country and sector coverage and remove restrictions on market access and national treatment. There is a great deal of interest from members, although negotiations on market access in specific sectors have not really started. No government is obliged to liberalise, or make commitments. But most now realise that an efficient service sector is essential if the rest of the economy is to thrive and that by making commitments, they will attract valuable foreign investment and know-how.

The negotiations on agriculture and services will pause for stock-taking in March. This pause could become a deadlock. Several countries have stated that they will not negotiate meaningfully on liberalising agriculture unless they can open new markets for their exporters in other sectors at the same time. We need trade-offs that only a wider negotiating agenda can best provide.

A similar logic applies to our implementation review. Modest progress has been achieved. India has been a leader in these negotiations. But it is naive to believe that all of developing countries' difficulties in implementing the Uruguay Round agreements, as well as its perceived inequities, can be dealt with in isolation. More substantial reforms can best be achieved through new negotiations. I have always believed that we can do more for the most people through a new round. If the present system is unsatisfactory, if the status quo is not good enough, then in capitals and in Geneva we must get to work and advance on many fronts to provide as much comfort and space as possible to our owners, the governments.

We urgently need a new impetus to broaden the negotiating agenda. America's long boom is drawing to a close, with potentially worrying consequences for the world economy. Further trade negotiations are an insurance policy against pleas for protection when economies turn down. The use of anti-dumping and countervailing duties is soaring, threatening the gains from the past liberalisation. Producer support estimates for agriculture are rising again, according to the OECD. And there is a growing danger that the increase in bilateral and plurilateral trade deals could come to be seen as a substitute for, rather than a complement to, multilateral liberalisation and a non-discriminatory set of rules to govern international trade. A continued absence of multilateral liberalisation will encourage the big players to act unilaterally and carve up markets through preferential trade agreements. The rule of law could gradually give way to the law of the jungle.

To build a strong global community of the future, we urgently need progress on all fronts. This will require India's leadership. The developing world looked to India for leadership in the past. Now the whole world recognises India's unique position economically and politically. We need your advice, leadership and enthusiasm if we are to advance on all fronts and achieve the sort of progress needed in this new year."



Schedule of Meetings at the WTO/Geneva\*  
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