THE WORLD TRADE ORGANISATIONS AND ANTI DUMPING IN DEVELOPING COUNTRIES: IMPACT ANALYSIS

Mohan Kumar N

Christ Academy Institute of Law, Bangalore

ABSTRACT

Developing countries have been frequent users of the WTO-sanctioned antidumping trade policy instrument since the organization's founding in 1995. The pattern of antidumping application in developing economies' industries, on the other hand, is little understood. This paper relates statistics on production in 28 different 3-digit ISIC sectors to data on antidumping investigations, findings, and imports at the 6-digit Harmonized System (HS) product level in nine of the world's major "new user" emerging countries. Using a cross-section of this data, we estimate a two-stage model of the industry's decision to launch an antidumping investigation and the national government's decision on the amount of antidumping import protection to provide. We show that enterprises in developing countries who successfully seek antidumping protection exhibit characteristics that are consistent with endogenous trade policy theory and are susceptible to the changing market conditions described in the WTO Antidumping Agreement.

INTRODUCTION

Over the last two decades, AD policy has been expanded to developing countries, and they are now among the major AD users. We examine the empirical literature on Alzheimer's disease in emerging countries and provide recommendations for further research. We address–without concluding–the often-expressed question of whether AD is a necessary safety valve for further trade liberalization or whether AD is a barrier to free trade in and of itself[1]. Both sides of the safety valve argument have anecdotal evidence to back them up (we distinguish between three different types of safety valves). There is greater empirical evidence of AD's negative trade repercussions in poorer countries. The antidumping policy has just become 100 years old. AD law was first enacted in Canada (1904), New Zealand (1905), and Australia (1906). Nonetheless, it is reasonable to say that the last two decades

[1] Blakley N, 'WTO And Anti DumpingIn Developing Countries' (Academia.edu, 2022) <https://www.academia.edu/4262169/WTO_and_Anti_Dumping_in_Developing_Countries> accessed 27 March 2022

have witnessed some of the most significant developments in the area of Alzheimer's disease. To begin, traditional AD regimes in industrialised countries increased their use of AD as other trade barriers were gradually removed under the GATT and other trade agreements. Second, as the usage of the term grew, so did the number of economics articles on dumping and AD policy, both theoretical and empirical[2]. Finally, and most critically for the purposes of this study, the mix of countries that utilise AD has shifted considerably.

Between 1969 and 1993, the traditional regimes–the United States, the European Union, Canada, and Australia–accounted for about 90% of all Alzheimer's disease cases. Emerging countries' new governments, on the other hand, have conducted more AD research since 1993 than the four traditional consumers combined. Between 1998 and 2001, the proportion of traditional users fell to 37%. 2 According to a number of studies performed since the mid-1980s, South Africa, India, Argentina, Mexico, and Brazil are the top new AD regimes. Around the time they started the process of trade liberalisation, the majority of these countries enacted AD laws or were active AD users. In terms of the new AD regimes, there is a major gap in the empirical research[3]. Despite the fact that the economic issues presented by AD laws impact all GATT/WTO members, almost all research has focused on AD use in the US and EUT, as Blonigen and Prusa (2003) point out in their evaluation of the literature (p. 253). Existing empirical research on the US and the EU has clearly offered useful insight into the procedures, effects, and political–economic components of AD policy, and many of these lessons will be applicable to other AD regimes. Given the new users' distinct characteristics, it is logical to expect that their AD regimes will differ from those in the United States and Europe in terms of tactics, effects, and political economy. Many of the new users come from developing countries, where AD adoption has risen in tandem with an often sudden shift toward trade liberalisation. Furthermore, for decades, poorer countries have been the focus of AD research by traditional users. For these and other reasons, empirical research on AD policy in developing countries is required to get a better understanding of global AD policy as it enters its second century.

[2]"Trade Liberalization And Antidumping: Is There A Substitution Effect?' (Www2.gwu.edu, 2022) <https://www2.gwu.edu/~iiep/assets/docs/moore-zanardi_gwu_ad_conference.pdf> accessed 27 March 2022

[3] Supra note 1.

ANTI-DUMPING, SUBVENTIONS, AND SAFEGUARDS: UNFORESEEN CIRCUMSTANCES, ETC.

Tariffs that are legally binding and apply to all trading partners equally (most-favored-nation treatment, or MFN) are crucial to the smooth flow of goods trade. While the WTO agreements uphold core values, they also allow for exceptions in particular circumstances.

The following are three of these concerns:

• Activities aimed towards preventing dumping (selling at an unfairly low price)

• Subsidies and particular "countervailing" duties to make up for the subsidies

• Import restrictions will be temporarily imposed to "defend" domestic industries.

ANTI-DUMPING ACTIONS

People say a product has been "dumped" if it is sold outside of its home market for less than it would normally charge there[4]. Is this a case of unethical corporate practises? While opinions vary, numerous governments take efforts to protect local businesses from dumping. The accord of the World Trade Organization is not a court of law. It is often referred to as the "Anti-Dumping Agreement" since it focuses on how governments may or may not respond to dumping. (The strategy of the Subsidies and Countervailing Measures Agreement varies from this limited emphasis on countervailing measures in response to dumping.)

While the legal rules are more sophisticated, the WTO agreement generally permits countries to join in dumping proceedings if domestic rivals are suffering substantial ("material") harm. To do so, the government must demonstrate that dumping is occurring, quantify the amount of dumping (how much lower the export price is than the exporter's home market price), and demonstrate that the dumping is damaging or threatening to impair the exporter's home market price.

Article 6 of the GATT empowers nations to take action against dumping. Article 6 of the Anti-Dumping Agreement is clarified and expanded, and the two work together. Anti-dumping action often comprises imposing an extra import charge on a particular product from a certain exporting nation in order to bring its price closer to its "normal value" or to relieve harm to the importing country's domestic sector.

[4] Supra note 1.

There are many methods for determining whether a product was dropped heavily or softly. The agreement reduces the number of possibilities available. There are three approaches for determining a product's "normal value" in it. The major one is determined by the exporter's domestic market price. When this option is not accessible, the only two options are the exporter's price in another country or a computation based on the exporter's manufacturing costs, other expenditures, and usual profit margins. The agreement also specifies how to make a reasonable comparison between the export price and usual pricing.

Calculating a product's degree of dumpedness is insufficient. Anti-dumping actions may only be employed if the dumping is causing damage to the industry of the importing nation. As a result, a thorough investigation must be done first, in accordance with established norms. The inquiry must encompass all significant economic issues affecting the status of the sector under study. If the inquiry reveals that dumping is occurring and that local industry is suffering as a result, the exporting business may agree to increase its price to a pre-determined level in order to avoid paying anti-dumping import charges[5].

The processes for submitting anti-dumping complaints, conducting investigations, and ensuring that all parties involved have the chance to offer evidence are all written out in great detail. Unless an examination indicates that repealing anti-dumping measures will cause harm, anti-dumping measures will expire five years after they are adopted.

Anti-dumping investigations must be halted promptly if authorities establish that the margin of dumping is negligibly narrow (defined as less than 2 percent of the export price of the product). New criteria have also been developed. The investigation must end if the volume of dumped imports is negligible (i.e., if a single country's volume is less than 3% of total imports of that product — although investigations may continue if several countries, each supplying less than 3% of total imports, account for 7% or more of total imports).

According to the agreement, all preliminary and final anti-dumping measures must be disclosed to the Committee on Anti-Dumping Practices in a timely and complete manner. In addition, they must provide a report on all investigations twice a year. Members are urged to

[5]Niels G, and ten Kate A, 'Antidumping Policy In Developing Countries: Safety Valve Or Obstacle To Free Trade?' (2022) <https://www.sciencedirect.com/science/article/abs/pii/S017626800500114X> accessed 27 March 2022

counsel one another when they disagree. They may also use the WTO's (World Trade Organization) dispute resolution procedure.

SUBSIDIES AND COUNTERVAILING MEASURES

This agreement does two things: it limits the use of subsidies and it limits the activities countries can do to lessen the effects of them. In the WTO's dispute resolution process, a country can ask for a subsidy to be taken away or its negative effects to be reduced. Instead, the government could do its own investigation and then impose an extra tariff (called "countervailing duty") on subsidised imports that are found to be bad for local businesses[6].
Subsidy is spelled out in the agreement. The idea of a "specific" subsidy is also introduced. This is a subsidy that only a certain company, industry, group of companies or a certain group of industries in the country (or state, or whatever) that gives it can get. The agreement's rules only apply to certain subsidies. In some cases, subsidies are meant to help people in the area.
The agreement says that there are two types of subsidies: those that aren't allowed and those that can be sued for. In the beginning, there was a third type: non-actionable subsidies. These rules were in place for five years. They didn't get changed, so they didn't stay in place. All agricultural and industrial goods are covered, except when subsidies aren't covered by a "peace clause" that expires at the end of 2003.

Subsidies that aren't allowed include those that make recipients meet export goals or buy local goods instead of imported ones. They aren't allowed because they are made to mess with international trade, which could hurt other countries' trade. They could be challenged in the WTO's dispute resolution system, which runs quickly. If a dispute resolution system rules that the subsidy is illegal, it must be quickly removed from the system. Otherwise, the countries that were hurt might fight back. If domestic producers are hurt by low-priced imports, countervailing duties may be used[7].

Subsidies that can be taken to court: in this category, the complaining countries must show that the subsidy has a negative effect on their own interests. Otherwise, they can be given. The agreement says that they can cause three different types of harm to each other. Subsidies from one country may hurt a local business in the country that imports them. When two countries compete in third markets, they might hurt exporters from the other country. In

[6] Supra note 4.
[7] Ibid.

addition, domestic subsidies in one country could hurt exporters who want to compete in that country's own market. In this case, the Dispute Resolution Body must decide that the subsidy has an unfavorable effect. Either the subsidy must be removed or the negative effect must be eliminated. Again, if domestic businesses are hurt by low-priced imports, countervailing duties may be put in place to protect them.

The Anti-Dumping Agreement has a lot of things that are similar to the things in some disciplines. The anti-dumping equivalent, countervailing duty, can only be imposed after the country that imports the goods does a thorough investigation like that required for anti-dumping proceedings. There are very specific rules for determining whether a product is subsidized, which isn't always easy. There are also rules about how to start and finish investigations, how long countervailing measures can last, and how they work. In addition, the subsidized exporter may agree to raise the prices of its exports in exchange for not having to pay a countervailing duty on its exports[8].

Subsidies may be important in developing countries and when countries move from centrally planned to market economies. Least-developed countries and developing countries with a GDP per capita of less than $1,000 aren't subject to export subsidy rules. Other countries in the developing world have been told by 2003 that they must stop giving money to exports. By 2003, the least developed countries must stop giving subsidies to boost local production and cut back on imports. The deadline for other developing countries was 2000. As a result, developing countries get better treatment if their exports are being looked into for countervailing duties. By 2002, illegal subsidies were to be phased out for countries that were in the process of becoming more stable.

SAFEGUARDS: IMMEDIATE PROTECTION AGAINST IMPORTS

When a member of the World Trade Organization sees that its own industry is being hurt or is at risk of being hurt by an increase in imports, the member can put in place "safeguard" measures. Damage in this case should be very bad. Under the GATT, there were always ways to protect yourself (Article 19). Some governments didn't use them very often because they were more interested in protecting their own industries with "grey area" measures, like getting exporting countries to limit their exports "voluntarily" or agree to other forms of

[8]Aggarwal A, 'Macro Economic Determinants Of Antidumping: A Comparative Analysis Of Developed And Developing Countries' (2022) <https://doi.org/10.1016/j.worlddev.2004.01.003> accessed 27 March 2022

market sharing through bilateral talks outside of the GATT's rules. These agreements have been used for a wide range of things, including cars, steel, and semiconductors[9].

The WTO agreement set new rules. It restricts "grey area" measures and puts a time limit on any safety activities that need to be done quickly (a "sunset clause"). As part of an agreement, members can't try to set their own voluntary export limits or set up orderly marketing agreements, or do anything else that would be similar on either the export or import side. It was at the end of 1998 that bilateral measures that were not changed to match the agreement were phased out. Countries could keep one of these measures in place for an extra year (through the end of 1999), but only the European Union took advantage of this option. It used this option to limit the imports of Japanese cars.

A "surge" in imports that needs to be protected from could be either a real rise in imports (an absolute rise) or an increase in the share of a shrinking market, even though the import amount has stayed the same (relative increase). Governments may put rules in place for certain industries or businesses. The WTO agreement sets rules for how national agencies should conduct safeguard inquiries. The focus is on being open and adhering to established rules and procedures – not using arbitrary methods, which aren't good. People who want to give evidence to an investigation must know when hearings will be held and what other ways, they can do it. Arguments about whether a policy is good for the public should be in the proof.

The agreement sets rules for determining whether "severe harm" has happened or is likely to happen, as well as the factors that must be taken into account when evaluating the impact of imports on local businesses. When safeguard measures are put in place, they should only be used to the extent necessary to avoid or repair major damage and help the affected industry adapt[10]. As a general rule, quantitative restrictions (quotas) should not lower import volumes below the average for the three most recent representative years for which statistics are available. This is unless a strong case can be made that a different level is needed to avoid or correct serious harm.

In theory, safeguards can't be used to stop certain countries from getting certain goods. A clause in the agreement does, however, say that certain countries may have to share quotas with other countries when their imports rise at an unusually high rate. A safety measure can't

[9] Supra note 7.
[10] Supra note 4.

last more than four years, but it can be extended up to eight years if the measure is needed and there is evidence that the industry has changed. There must be a gradual change in rules that have been in place for more than a year.

To protect its own businesses, a government might ban imports. In theory this means that the government has to make up for the loss. According to the agreement, the exporting country (or countries exporting) can ask for compensation through talks. If a deal can't be made, the exporting country may take the same action, like raising export taxes on goods from the country that is taking a protective measure. In some cases, the exporting country must wait three years after the safeguard measure was put in place before retaliating in this way[11]. That is, if the safeguard measure is in line with the agreement's provisions and is taken in response to an increase in the volume of imports from the exporting country, then the exporting country can do this. Exports from countries that aren't very wealthy are partly protected from safeguards. People in importing countries can take steps to protect their goods from people in developing countries only when they make up more than 3% of the total imports from that country, or when developing country members make up more than 9% of all the total imports from that country.

The WTO's Safeguards Committee is in charge of making sure the agreement is being carried out and that members are meeting their obligations. Each part of a safety investigation and the decisions that follow must be reported to the committee, which reviews these reports.

CONCLUSION

Antidumping measures are being used more often by developing countries, raising fears that many of the trade liberalization commitments made during the Uruguay Round debates may be successfully matched by further protection. This paper looks at antidumping efforts by businesses in developing countries from 1995 to 2003 and shows that they meet the standards set by the World Trade Organization and the theory of endogenous trade policy. The industries that are able to get new protection against imports through antidumping have the following characteristics: they are bigger, more concentrated, spend more money on capital, and face a lot of import competition and rapidly dropping prices of competing imports.

[11] 'Antidumping As A Development Issue' (2022) <https://www.researchgate.net/publication/227378475_Antidumping_as_a_Development_Issue> accessed 27 March 2022

Understanding why developing countries use antidumping measures is important for a lot of different reasons.

To start with, more and more of these countries are agreeing to WTO rules that limit their ability to take more trade-restrictive actions. Antidumping import protection, as a result, may become more and more important as a sign of how these countries protect their industrial imports. However, some researchers say that the antidumping measures taken by these countries may have a good reason. A few of the Latin American countries Finger and Nogués (2005) studied used antidumping as a "escape valve" to keep the rest of the world's trade open. Antidumping may help make the total liberalization commitment more long-term sustainable and/or make a country more willing to make more broad liberalization commitments than it would have been willing to make without antidumping.

However, even if antidumping helps a country move toward more open trade, it's important to look at the long-term economic effects of this help. Finally, we point out some of the costs that antidumping users in countries where the programme has been around for a long time have had to deal with. There's no surprise that governments find it hard to get rid of antidumping policies after they've been put in place and an industry has benefited from them. Article 11 of the WTO Antidumping Agreement says that each imposed measure must be reviewed every five years. Data from the US shows that this requirement has little effect on the removal of previously imposed measures (Moore, 2006; Liebman, 2004). As a result, there is no precedent in the history of the WTO for a country that has used antidumping a lot to suddenly stop. These data show that antidumping measures can have a big impact on an economy over time, even if each individual antidumping investigation only looks at a few items and doesn't seem to have a big impact on the whole economy. In fact, Gallaway, Blonigen, and Flynn (1999) found that the US-imposed import protection under antidumping law was the second most costly trade policy programme in terms of lost US economic welfare in 1993, trailing only the Multi-Fibre Arrangement, which was the most costly trade policy programme for the US.