

**“Anti-Dumping and Countervailing Duties Act No. 2 of 2018;
Future for Sri Lanka’s Economy?”**

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Globalization and international trade have not only treated countries to rewards but also, given rise to the intertwined issues. Whether it has done more good than harm is left for each economy to evaluate based on its own experience. Nevertheless, as a matter of fact, a country’s economy is less likely to grow and serve the best for its stakeholders without being opened up to the global market. With the institutionalization and standardization of international trade by the World Trade Organization (WTO) and the introduction of the free trade system under the General Agreement on Tariffs and Trade¹, international trade reached a novel juncture in the history of globalization. This resulted in the liberalization of tariff constraints, while also posing serious threat to the survival of domestic businesses. Among many mechanisms designed to harmonize international trade into the domestic economy and to strike a balance between the foreign and domestic interests, anti-dumping (AD) measures is one broad

interface aiming at safeguarding economies by combatting unfair trade practices.

Sri Lanka, as a developing country rich in resources, has an abundance of budding domestic firms. Especially in the aftermath of the prolonged war, the economy is witnessing a boost with broadened development opportunities. The economy is growing and changing its course, and in view of that it has become pertinent to encourage domestic businesses, investments and international trade, all at once. Moreover, in facilitation of international trade, Sri Lanka is entering into Free Trade Agreements (FTAs) with countries such as China and Singapore. In such a context, it should not be disregarded that domestic businesses will be in threat due to their inherent weaknesses and inability to withstand the rigorous competition. This is when it becomes appropriate to consider the effects of the practice of dumping that occurs in the context of international trade, negatively affecting the domestic industries and the economy at large.

¹ General Agreement on Tariffs and Trade 1994 (GATT), World Trade Organization, 1947

What is dumping?

Dumping transpires where an exporter sells its products to a foreign market at a price lower than the price offered in the home market. This is not unusual in international trade and there is nothing inherently immoral or illegal about this practice.² Article VI of the GATT defines dumping to be a sale of products by one country to another country at a less than normal value of the products, causing threat of material injury to domestic industries of the importing market.

Economists have identified few variances of dumping to occur in international trade in which *Sporadic dumping* is unintentional, unforeseen and occasional, which does not necessitate the imposition of AD measures. Next is *intermittent dumping*, which involves developing trade connections and predatory pricing to later create a monopoly situation. This is also referred to as predatory dumping as it intends to drive out the rivals out of business.³ The third form of dumping is *long run or strategic*

dumping where the exporter continues to have a higher price in his domestic market while selling the remaining output at a lower price in a foreign market. These theories on dumping have been followed by many and criticized at the same time. Yet, it should not be disregarded that the existing anti-dumping policy is predominantly founded upon these identified types of anti-dumping.

Proliferation of the use of anti-dumping

The history of anti-dumping runs to the early 1900s when Canada enacted the first ever anti-dumping legislation in 1904 in order to protect its domestic steel industry from US predatory pricing. It was then followed by many like New Zealand, Australia and United States and others, all of them putting across the concern of protecting their domestic enterprises from predatory pricing and price discrimination by foreign exporters. In 1947, with the introduction of GATT which essentially followed the national law of US, the world economy witnessed an increase of the number of countries who adopted anti-dumping legislation. Not only has the adoption of law increased, but also the use of such law has increased. During the period of 1980 to 1984, the anti-dumping cases were less in number and the records also suggest that 97% of such cases are filed by the four traditional users of anti-dumping measures; United State, Australia, European Union and Canada. Comparing

² Bandula Dissanayake, 'Anti-dumping and Countervailing measures vital for Sri Lanka' *The Island* (23 September 2014) <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=110789> accessed on 3 August 2019

³ Jacob Viner, 'Dumping: A problem in International Trade' (reprinted in 1991, Chicago University Press, 1923) <<http://web.a.ebscohost.com.ezproxy.uw.l.ac.uk/ehost/pdfviewer/pdfviewer?vid=1&sid=66ec892b-fdd0-45fe-b88d-94d2dc0d700e%40sessionmgr4006>> accessed on 30 July 2019

that with the more recent trends, in the new millennium, it appeared that 38 countries have filed AD cases whereby the traditional users were merely accounting for 40% of such cases filed.⁴ Needless to say that, among many other economic and political reasons, these new users were predominantly encouraged and given approval of the use of AD by GATT.

Although there is no empirical data to suggest how successful these AD disputes are, they invariably suggest that states are relying heavily on the use of these measures to curb unfair trade practices arising from international trade. One reason behind the proliferation of the usage of AD is the rapid growth of international trade.⁵ On another note, the discretion involved in AD policy is another major reason behind its widespread use of it, unequivocally suggesting that the usage of AD is politically motivated rather than economically.

Adoption of AD law in Sri Lanka

Adoption of AD law in Sri Lanka was preceded by a great number of debates and deliberations over a decade and after two years of proposing its adoption, Sri Lanka finally managed to enact its anti-dumping law, namely; Anti-Dumping and

Countervailing Duties Act⁶ in the beginning of 2018. As the Minister of Trade and Commerce pointed out this law was enacted to give effect to and implement the relevant provisions of Article VI of GATT 1994.⁷

Although the Sri Lankan legislation is more or less a blind following of the GATT standards, few provisions of the Sri Lankan legislation demand admiration. Where the provisions are made to initiate an AD investigation on application by a local industry, it mandates that the producers in support or in opposition of the said application to account for at least 50% of the total production, while those in support should account for 25% of the total production.⁸ Additionally, it is suggested that the complaining industry should be placed with an increased burden of the application made. Together, the two provisions would serve to limit the number of unmeritorious claims against foreign firms. Yet again, it is noteworthy that the Act stipulates the investigation to be concluded within 12 months of the commencement of the investigation and within 18 months for any special cases.⁹ All

⁴ Thomas J. Prusa, 'Anti-dumping: A growing problem in International Trade' (2005) Rutgers University, Blackwell Publishing 683,

⁵ *Ibid.*, p. 692

⁶ Anti-dumping and Countervailing Duties Act of Sri Lanka, No. 2 of 2018

⁷ 'After 17 years in the works Sri Lanka enacts anti-dumping laws' *Colombo Page News Desk* (Colombo, 9 March 2018) <http://www.colombopage.com/archive_18A/Mar09_1520580514CH.php> accessed on 8 August 2019

⁸ Anti-Dumping and Countervailing Duties Act of Sri Lanka 2018, s. 14

⁹ *Ibid.*, s. 23

in all, the Act is a replica of the GATT standards as practiced by many states in the world. Thus, its implementation would not have any peculiar consequences other than due to the characteristics of the present Sri Lankan economy.

The Minister of Development Strategies and Trade asserted that the Act is not seeking to provide absolute protection to the local firms but rather to guard them from unfair market practices and unforeseen surge of imports. He further stated that in light of the fact that, Sri Lanka is in the process of rationalization and liberalization of taxes to attract investments and to facilitate the FTAs with Singapore and the rest to come, it is vital to have a piece of legislation which would effectively deal with unfair trade practices to avoid unhealthy consequences to the domestic budding industries¹⁰ and provide them with remedial measures.¹¹

With the adoption of AD law in Sri Lanka and proliferation of the use of it over the world as explained, it is pertinent to

¹⁰ 'New anti-dumping laws to guard domestic industry from unfair trade: Malik' *Daily Mirror* (Colombo, 12 March 2018) <<http://www.dailymirror.lk/article/New-anti-dumping-laws-to-guard-domestic-industry-from-unfair-trade-Malik-147123.html>> accessed on 2 August 2019

¹¹ 'New anti-dumping laws enacted to guard local industry from unfair trade practices' *Daily FT* (12 March 2018) <<http://www.ft.lk/opinion/New-anti-dumping-laws-enacted-to-guard-local-industry-from-unfair-trade-practices/14-651025>> accessed on 2 August 2019

comprehend why and what objectives the states endeavour to achieve by such adoption and use of AD. As repeatedly stated before, AD legislation seeks to restrain unfair competition caused by price discrimination strategies used by exporters whereby such would materially injure the domestic industry. Although many domestic legislators cite that they strive to protect the domestic firms from predatory pricing many scholars and economists believe otherwise.

In light of such, the following discussion would be dedicated to analyse the impact of anti-dumping law on different actors of an economy of a state with special reference to Sri Lanka.

Impact on international trade

It is acceded that anti-dumping only has effects to the detriment of international trade. The empirical evidence strongly suggests that initiating investigations and the actual levying of the AD duty has a drastic impact on the imports of the AD imposing country.¹² AD reduces the volume of the products coming into the domestic market due to the increased cost. In the longer run, the product might cease to be imported altogether. More categorically, anti-dumping has the effect of trade destruction, trade diversion and trade

¹² Hylk Vandenbussche, Mario Zanardi, 'The chilling trade effects of antidumping proliferation' (2010) 54 *European Economic Review* 760, 761

deflection, at the product level.¹³ As much as imposition of anti-dumping duty could have the effect of reducing the number of imports in the relevant product, studies suggest that the effect of anti-dumping measures extend further to a more aggregate level of bilateral trade flows from all trade partners in all goods. This is known as “chilling effect” which refers to the spill over effect it has, not limited to the product directly affected by the AD measure.¹⁴ Accordingly, it is proposed that this extended chilling effect is a result of commencing anti-dumping investigations followed by levying of a duty, provided that it is frequently used.¹⁵

At the outset, restrictions on international trade appear to be a welcome position for Sri Lanka due to its economic situation. However, it has to be viewed in light of the characteristics of Sri Lankan imports. The majority of the Sri Lankan imports are intermediate goods which are used in the manufacturing of the goods that Sri Lanka will ultimately export. Imposing duties on such intermediate goods will have the effect of eventually raising the price of Sri

¹³ Chad Bown, Meredith Crowley, ‘Trade Deflection and Trade Depression’ (2007) 72 *Journal of International Economics* 176; Trade destruction refers to the destruction of the very specific product target by the AD measure; Trade diversion is the effect which results in the increase of the product level imports from other partner countries who are not subjected to AD; Trade deflection is the importer choosing different markets to import their products

¹⁴ Hylk Vandenbussche, Mario Zanardi, (n 12) 761

¹⁵ *ibid*

Lankan exports.¹⁶ On another level, production of the material by the local industry might not be adequate in volume or rather would not be of the same quality as imported. Both these will have the effect of making the Sri Lankan products less competitive in the world market, in turn having an impact on the balance on payments due to a decrease in export income.

Anti-dumping also has a retaliatory effect in that, the writer suggests that Sri Lanka could employ anti-dumping as a shield against those countries who would use it against the Sri Lankan exports unfoundedly. However, the success of it also depends on the export market, the product and the volume of the products being exported by Sri Lanka. Nevertheless, it should be emphasized that AD should not be employed unnecessarily, for this arbitrary and discretionary use could seriously undermine the need to sustain good international relationships. For a country like Sri Lanka that is striving to survive and develop, healthy international relationships are essential. Therefore, while acknowledging the ability to reduce imports to Sri Lanka and its ability to use as retaliatory tool, the rest of the negative effects should also not be forgotten in employing anti-dumping measures.

¹⁶ *Ibid.*, 764

In addition, the related research is also suggestive that anti-dumping has the effect of increasing the FDIs coming into an economy.¹⁷ This indeed of interest to Sri Lanka due to the advantages it entails. FDIs mean development of infrastructure, creation of jobs and infusion of updated technology and inevitably, the growth of the economy. Even though it also means repatriation of profits to the investor's home country, FDI invariably is beneficial for all the reasons cited. Thus, anti-dumping if strategically used could open the door to much needed FDIs..

Impact on the domestic industry

Owing to lack of expertise, financial capacities and technological drawbacks, domestic enterprises of different volumes would be less capable of absorbing the economic effects caused by dumping. Moreover, dumping could negatively affect domestic firms in various ways. It could result in domestic firms representing lower sales volume to experience higher losses, loss of market shares, that in turn effecting lower production and the usage of incomplete of resources and down turning of their business. This certainly calls for the protection of domestic industries and anti-dumping laws are primarily designed for the same. When a law of this nature is imposed, it amends and alters the market

¹⁷ Rene Belderbos, Hylk Vandenbussche, R. Veugelers, 'Price-takings and anti-dumping jumping FDI in the European union' (2004) 48 European Economic Review 429

equilibrium¹⁸ by artificially altering the prices of the imports in a way beneficial to the local businesses. Since domestic firms gain from the control of their market rivals by such imposition of law, it gives them sufficient motivation to continue in business while lobbying for more laws and measures of such nature. The fact that these measures could be invoked at an individual enterprise level, the local industries could be motivated to use these with collusive agreements, strategically to drive out the much needed competition within the market just to have a free-ride of the system.

However, having understood the possible abuse of the AD, the need to give assurance to the domestic industries in Sri Lanka, that there is a mechanism to protect them from any potential harm was heightened in light of the current development plans Sri Lanka has in terms of FTAs signed as mentioned above.¹⁹ Adoption of the law does not mean that AD measures would be implemented right away without any reservations. The discretion is deposited with the authority, which affords the opportunity to consider all related issues before imposing a duty.

¹⁸ Smith Anderson, et al., 'Who benefits from antidumping Legislation?' (1995) 38 Journal of International Economics 321

¹⁹ 'New anti-dumping laws to guard domestic industry from unfair trade: Malik' *Daily Mirror* (Colombo, 12 March 2018) <<http://www.dailymirror.lk/article/New-anti-dumping-laws-to-guard-domestic-industry-from-unfair-trade-Malik-147123.html>> accessed on 2 August 2019

The strategic usage of the law is what is needed for the economy in deed.

Impact on consumer and national welfare

Fair competition promotes efficiency and innovation which in turn allow the consumers to enjoy raised living standards. When governments intervene by imposing AD measures foreign firms agree to voluntary export restraints and price undertakings which inevitably disturb the market equilibrium. This simply increases the welfare cost since the consumers have to pay high prices thus limiting the opportunity the consumers have to consume technologically advanced, better quality products at a lesser comparable price. AD laws are often being condemned for protecting competitors rather than the competition, thereby bringing benefits to the enterprises at the expense of the consumers²⁰ involving re-distribution of wealth contrary to the traditional way; from have-not to the haves.²¹ Rather than the alleged offenders of market distortions paying the price for it, it is the consumers who pay for it.

The writer submits that, in light of the growth needs of Sri Lanka, the control on the balance on payments, to service the

trade deficit is much more significant than any other consideration. The other considerations taken as paramount by the other developed countries such as variety of options available to consumers, , become secondary. The writer believes it is more vital to stabilize the economy since an unstable economy affects the national interests to the grass-root level and revival from a breakdown of economy is far challenging.

Conclusion

Withstanding the realization that anti-dumping law could have mixed impacts on the Sri Lankan economy, (although slightly weighing more to the negative) it is proposed that Sri Lanka should use the local competition laws to effectively protect the market and its industries from anti-competitive dumping. Unlike anti-dumping laws, competition laws take into account the impact of those laws in terms of the industry, consumer and national welfare at a more aggregate level. The only reason why this would not be that appealing is the inability of competition laws to differentiate foreign firms from domestic ones.²² Nevertheless, competition law could prove to be a success in its intended purposes.²³ In addition, if the protection of

²⁰ Nora I. Nuefeld, 'Anti-Dumping and Countervailing Procedures – Use Or Abuse? Implications for Developing Countries' (UNCTAD, New York, 2001) 15

²¹ Robert W. McGee, 'Case to Repeal the Antidumping Laws', (1993) 13 Nw. J. Int'l L. & Bus. 491, 556

²² M. Finger, 'Should Developing Countries Introduce Antidumping?' (World Bank, Washington, DC, 2000) <<https://openknowledge.worldbank.org/handle/10986/25941>> accessed on 20 August 2019

²³ A. O. Sykes, 'Antidumping and Antitrust: What Problems Does Each Address?', (R. Z.

domestic firms is the concern at hand, safeguard measures could also be used with a strict adherence to an overall evaluation of the industry, market and the economy, under the recently enacted Safeguard Measures Act²⁴ which would have less grave consequences than the anti-dumping law.²⁵

In conclusion, it is believed that, the Anti-Dumping Act of 2018 in Sri Lanka would do more evil than good to its future economy if it is not strategically and thoughtfully implemented in assistance with other laws.

Lawrence (ed.) *Brookings Trade Forum*, Washington, DC: Brookings Institution, 1998)

²⁴ Safeguards Measures Act No. 3 of 2018

²⁵ Claude Barfield, 'Anti-dumping Reform: time to go back to basics' (2005) 28 *The World Economy* 719, 731