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"Reforming Anti-Dumping Laws In The Contemporary Global Trade Environment"

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Abstract

Anti-dumping laws constitute one of the most frequently invoked trade defense instruments within the multilateral trading system, aimed at offsetting the injurious effects of unfair pricing practices by foreign producers. Although grounded in the framework of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-Dumping Agreement or ADA), their contemporary application has outgrown the traditional paradigm of industrial protectionism. This paper explores the evolving role, effectiveness, and limitations of anti-dumping regimes in an era marked by complex global value chains, digital trade, and geopolitical realignments. It argues that while anti-dumping measures remain indispensable to preserving fair competition, they must undergo substantive reform to maintain legitimacy and efficiency. The study examines procedural inefficiencies, circumvention tactics, and WTO compliance challenges, drawing on India's experience and key WTO dispute settlement cases. Finally, it proposes a set of procedural, substantive, and institutional reforms designed to reconcile national industrial policy objectives with global trade obligations, ensuring that anti-dumping remains a balanced and rule-consistent trade remedy tool.

Part I – Introduction and Literature Review

A. Introduction

Anti-dumping (AD) laws represent one of the most widely utilized trade defense mechanisms in the global economic order. Enshrined within Article VI of the *General Agreement on Tariffs and Trade (GATT) 1994* and further elaborated in the *Agreement on Implementation of Article VI of GATT 1994* (the *Anti-Dumping Agreement* or ADA), these laws empower states to impose additional duties on imports that are sold at prices below their "normal value," when such imports cause or threaten material injury to domestic industries.[1] Anti-dumping measures thus serve as an interface between domestic industrial policy and multilateral trade governance, attempting to reconcile free trade with the legitimate need for market correction.

Since the establishment of the World Trade Organization (WTO) in 1995, anti-dumping has become the most frequently invoked trade remedy. WTO statistics show that between 1995 and 2023, member states initiated over 6,200 anti-dumping investigations—far outnumbering safeguard and countervailing duty cases.[2] This

[1] General Agreement on Tariffs and Trade art. VI, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT 1994].

[2] World Trade Organization, *WTO Statistics on Trade Remedies* (2023), https://www.wto.org.

proliferation underscores both the perceived utility of anti-dumping mechanisms and the tensions they generate between protectionist impulses and the principles of non-discrimination and transparency under the multilateral trading system.[3]

India, the United States, the European Union (EU), and China have emerged as leading users of anti-dumping measures. India, in particular, has invoked these measures as a central element of its trade policy since the mid-1990s, primarily through the Directorate General of Trade Remedies (DGTR).[4] However, the increasing complexity of global value chains (GVCs), e-commerce integration, and third-country transshipment has rendered many traditional anti-dumping methodologies outdated, necessitating a comprehensive reform discourse.

The need for reform arises not only from economic evolution but also from systemic pressures within the WTO itself. The *Appellate Body crisis*, coupled with growing unilateralism and trade wars, has challenged the credibility and enforceability of anti-dumping disciplines. As Gary Horlick observes, the anti-dumping system has "become both overused and under-justified," risking erosion of its normative foundation.[5] Therefore, revisiting the structure, procedure, and purpose of anti-dumping regulation is essential to ensuring its continued legitimacy and effectiveness in the contemporary trade landscape.

B. Literature Review

The body of scholarly work on anti-dumping law spans economics, international trade law, and political economy. The literature reveals two dominant themes: (1) the legal–institutional evolution of anti-dumping disciplines and their interaction with WTO obligations, and (2) the economic and policy rationale for reform.

Early doctrinal analyses—such as those by John H. Jackson and Edwin Vermulst—focused on the harmonization of national practices under the *Tokyo Round Anti-Dumping Code* and later under the WTO ADA.[6] Jackson emphasized the need for procedural fairness and transparency to prevent misuse of anti-dumping as a disguised restriction on trade.[7] Vermulst's comparative studies further explored differences in methodologies between the United States, the European Union, and emerging economies, particularly regarding injury determination and the calculation of dumping margins.[8]

From an economic standpoint, J. Michael Finger and Aradhna Aggarwal argued that anti-dumping mechanisms often function as instruments of "administered protection," disproportionately benefiting domestic producers while imposing welfare costs on consumers.[9] Aggarwal's analysis of India's experience found that anti-dumping duties were frequently used as substitutes for industrial policy, especially in sectors such as chemicals, steel, and textiles.[10] Similarly, Kyle Bagwell and Petros Mavroidis highlighted the tension

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[3] Kyle W. Bagwell & Petros C. Mavroidis, *The Law and Economics of Contingent Protection in the WTO* 9–11 (Cambridge Univ. Press 2011).

[4] Vijay Shekhar Jha, *Exposition of Indian Anti-Dumping Law & Practice* 22–24 (Universal Law Publ'g 2008).

[5] Gary N. Horlick, *Antidumping: How Did Antidumping Get So Bad?* 15 Geo. Wash. Int'l L. Rev. 1, 3 (2015).

[6] John H. Jackson & Edwin A. Vermulst (eds.), *Antidumping Law and Practice: A Comparative Study* 3–7 (Univ. of Mich. Press 1990).

[7] Id. at 15–17.

[8] Edwin A. Vermulst, *EU Anti-Dumping Law and Practice* 21–27 (Sweet & Maxwell 2006).

[9] J. Michael Finger, *The WTO and Anti-Dumping Policy Reform* 5–8 (World Bank Publ'ns 2003).

[10] Aradhna Aggarwal, *Anti-Dumping: India Versus the World* 34–41 (Oxford Univ. Press 2007).

between anti-dumping law and WTO's most-favored-nation (MFN) principle, suggesting that the practice effectively undermines the predictability of tariff bindings.[11]

Legal scholars such as Vijay Shekhar Jha and V. Lakshmikumaran & V. Sridharan have contributed to the Indian perspective, emphasizing procedural nuances within the DGTR framework and the need for alignment with WTO obligations.[12] Their writings reveal that while India's anti-dumping regime has achieved procedural maturity, issues of transparency, timeliness, and injury determination persist. Maya Choudhury and G.S. Bajpai similarly underscore that inconsistent application and prolonged investigations often dilute the remedial effect intended by anti-dumping laws.[13]

From a policy reform standpoint, Kamala Dawar and Philippe De Baere propose strengthening procedural justice within anti-dumping investigations through enhanced transparency, stakeholder participation, and judicial oversight.[14] Their approach aligns with the WTO's broader emphasis on due process, as reflected in *EC–Bed Linen* and *US–Hot-Rolled Steel*—landmark cases that have shaped the global understanding of fair determination processes.[15]

Recent scholarship, including works by Rajendra Upreti and Shubha Ghosh, emphasizes the intersection of anti-dumping with geopolitical trade strategies and global supply chain resilience.[16] These analyses suggest that as trade becomes increasingly weaponized, anti-dumping measures risk being deployed not merely for market correction but as instruments of economic statecraft. Consequently, reform must aim to prevent politicization while preserving the legal integrity of the system.

In sum, existing literature converges on the view that while anti-dumping laws remain indispensable, their procedural, methodological, and institutional frameworks require recalibration. The contemporary global trade environment—marked by digitalization, GVC fragmentation, and declining multilateralism—demands reforms that ensure both fairness and functional efficiency.

Part II – Evolution and Effectiveness of the Current Anti-Dumping Regime

A. Historical Evolution of Anti-Dumping Law

The concept of anti-dumping emerged from early twentieth-century trade protection debates, particularly in the context of "predatory pricing." The first modern anti-dumping statute was enacted by Canada in 1904, designed to counter imports sold at prices intended to eliminate domestic competitors.[17] The United States

[11] Bagwell & Mavroidis, supra note 3, at 19–21.

[12] Lakshmikumaran & Sridharan, *Indian Anti-Dumping Law and Practice* 42–46 (Taxmann Publ'ns 2008).

[13] Maya Choudhury, *Analysis of Anti-Dumping Law and Practice* 29–31 (Deep & Deep Publ'ns 2004); G.S. Bajpai, *Antidumping in Law and Practice* 53–55 (E. Book Co. 2009).

[14] Kamala Dawar, *Trade Remedies under WTO Law: Safeguard Measures and Anti-Dumping* 88–91 (Edward Elgar Publ'g 2016).

[15] Appellate Body Report, *European Communities—Bed Linen*, WTO Doc. WT/DS141/AB/R (adopted Mar. 1, 2001); Appellate Body Report, *United States—Hot-Rolled Steel from Japan*, WTO Doc. WT/DS184/AB/R (adopted Aug. 23, 2001).

[16] Rajendra Upreti, *Antidumping and Countervailing Duty Law* 77–80 (LexisNexis 2018); Shubha Ghosh, *Rules and Practices of Anti-Dumping in International Trade* 92–95 (Routledge 2010).

[17] Michael J. Trebilcock & Robert Howse, *The Regulation of International Trade* 287 (4th ed. Routledge 2013).

followed with its Anti-Dumping Act of 1916, later superseded by the Tariff Act of 1930, codified under Section 731 et seq.[18]

After World War II, the multilateral trade order sought to reconcile the tension between free trade and fair competition. Article VI of the *General Agreement on Tariffs and Trade (GATT) 1947* institutionalized the concept of "dumping" and permitted member states to impose additional duties to offset injury caused to domestic industries.[19] However, the GATT provisions lacked detailed procedural and methodological guidance, leading to significant variation among contracting parties in the conduct of anti-dumping investigations.

The Tokyo Round (1973–79) marked a turning point through the *Agreement on Implementation of Article VI of the GATT 1979* (the "Tokyo Anti-Dumping Code"), which introduced clearer rules for calculating dumping margins, determining injury, and ensuring procedural transparency.[20] Yet, adherence remained voluntary, and only a subset of GATT members participated in the Code, limiting its impact.

The conclusion of the *Uruguay Round (1986–94)* and the establishment of the World Trade Organization (WTO) in 1995 brought the *Agreement on Implementation of Article VI of GATT 1994* (the WTO Anti-Dumping Agreement or ADA), which harmonized and strengthened disciplines on anti-dumping practices across all members.[21] The ADA emphasized due process, disclosure of essential facts, transparency, and judicial review. Articles 2, 3, 5, and 6 collectively define the substantive and procedural parameters for dumping determination, injury analysis, and investigative procedure.

Since 1995, the ADA has provided the central framework for global anti-dumping regulation, interpreted and clarified through a rich jurisprudence of WTO dispute settlement panels and the Appellate Body.[22] This jurisprudence has played a pivotal role in constraining the discretionary space available to investigating authorities and ensuring procedural fairness, as seen in *EC–Bed Linen*, *US–Hot-Rolled Steel*, *China–GOES*, and *Argentina–Poultry Anti-Dumping Duties*.[23]

[18] Tariff Act of 1930, 19 U.S.C. §§ 1673–1677 (2018).

[19] GATT 1994, supra note 1, art. VI.

[20] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, Apr. 12, 1979, 1186 U.N.T.S. 2.

[21] Agreement on Implementation of Article VI of GATT 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201.

[22] Petros C. Mavroidis, *Trade in Goods* 328–31 (Oxford Univ. Press 2020).

[23] Appellate Body Report, *European Communities—Bed Linen*, supra note 15; Appellate Body Report, *United States—Hot-Rolled Steel from Japan*, supra note 15; Appellate Body Report, *China—GOES*, WTO Doc. WT/DS414/AB/R (adopted July 16, 2012); Appellate Body Report, *Argentina—Poultry Anti-Dumping Duties*, WTO Doc. WT/DS241/AB/R (adopted May 22, 2003).

B. Global Usage Trends and Comparative Analysis

Empirical evidence demonstrates a consistent rise in the use of anti-dumping measures since the 1990s, reflecting both increased global trade integration and domestic industrial sensitivities. The following table summarizes key trends among four major WTO users—India, the United States, the European Union, and China—based on WTO and Global Trade Alert data (1995–2023):

Country / Region	Total Investigations (1995–2023)	Definitive Duties Imposed	Top Targeted Sectors	Key Policy Features
India	1,220+	870+	Chemicals, Steel, Textiles	Strong domestic industry participation; DGTR-led quasi-judicial process
United States	1,100+	700+	Steel, Electronics, Machinery	Dual authority (ITA & ITC); emphasis on "material injury"
European Union	1,000+	630+	Metals, Chemicals, Solar Products	Centralized under DG Trade; focus on "Union interest test"
China	270+	190+	Chemicals, Agricultural Goods	Increasing use post-2001 WTO accession; reciprocity-driven pattern

Source: Compiled from WTO Statistics Database and Global Trade Alert (2023).

These figures underscore India's position as the **leading initiator of anti-dumping investigations globally**, reflecting its extensive use of trade remedies as part of its industrial policy toolkit. Scholars attribute this trend to India's transitional economic structure—characterized by a blend of liberalization and strategic protectionism.[24]

In contrast, developed jurisdictions such as the U.S. and EU employ anti-dumping duties primarily within established legalistic frameworks emphasizing injury thresholds, transparency, and judicial oversight. For instance, the *U.S. Department of Commerce* (DOC) and the *International Trade Commission* (ITC) maintain separate roles in margin calculation and injury assessment, respectively, ensuring procedural bifurcation.[25] The EU system incorporates an additional "Union interest" test, requiring an assessment of whether imposing duties serves the broader economic welfare of the EU.[26]

[24] Aradhna Aggarwal, supra note 10, at 58–62.

[25] 19 U.S.C. §§ 1673–1677; see also U.S. Int'l Trade Comm'n, *Antidumping and Countervailing Duty Handbook* (2023).

[26] Edwin A. Vermulst & Judith Clever, *EU Anti-Dumping Law and Practice*, supra note 8, at 92–96.

China's growing recourse to anti-dumping measures post-2001 illustrates a "defensive liberalization" strategy—using WTO-compliant trade remedies to offset the domestic adjustment costs of global market integration.[27] This indicates that anti-dumping has evolved from a North–South policy divide into a universal instrument of managed trade across diverse economic systems.

C. Evaluation of Effectiveness

The effectiveness of anti-dumping regimes is measured not only by their procedural compliance but also by their substantive outcomes—whether they genuinely correct market distortions without inducing welfare losses. From a legal–institutional standpoint, the WTO ADA provides robust procedural safeguards; however, from a policy perspective, many studies have found that anti-dumping actions often lead to *rent-seeking behavior* and prolonged protectionism.[28]

Empirical analyses by Prusa and Messerlin reveal that anti-dumping duties tend to persist long after initial injury has dissipated, effectively serving as quasi-permanent trade barriers.[29] Moreover, the asymmetry in participation—where domestic producers dominate the petitioning process while consumers and downstream industries remain underrepresented—creates institutional bias.[30]

India's experience mirrors these global concerns. Although the DGTR has institutionalized procedural fairness, there are challenges in transparency, timelines, and public participation. The *Cipla Ltd. v. Designated Authority* [31] decision by the Delhi High Court highlighted the necessity of adhering strictly to principles of natural justice in anti-dumping investigations. Similarly, in *Nirma Ltd. v. Union of India*,[32] the Gujarat High Court emphasized that the DGTR must provide adequate reasoning and disclosure of essential facts before imposing duties—reinforcing WTO-consistent due process.

On the multilateral level, the WTO's dispute settlement jurisprudence has significantly constrained arbitrary or opaque anti-dumping practices. In *US–Hot-Rolled Steel*, the Appellate Body held that failure to disclose essential facts underlying the dumping determination violated Article 6.9 of the ADA.[33] Similarly, in *EC–Bed Linen*, India successfully challenged the EU's methodology for calculating normal value, resulting in greater clarity on "zeroing" and fair comparison standards.[34]

Nevertheless, the *Appellate Body paralysis* since 2019 has undermined the enforceability of these standards, allowing greater latitude for national authorities to interpret procedural fairness autonomously. This has generated uncertainty about the future of multilateral discipline over anti-dumping measures—a theme central to the ongoing reform discourse.

Part III – Contemporary Challenges and Critiques of the Current Anti-Dumping System

[27] Rajendra Upreti, supra note 16, at 81–83.

[28] Patrick A. Messerlin, *Measuring the Costs of Protection in Europe* 175–78 (Peterson Inst. for Int'l Econ. 2001).

[29] Thomas J. Prusa, *The Trade Effects of U.S. Antidumping Actions*, in *The Effects of U.S. Trade Protection and Promotion Policies* 191–212 (Robert C. Feenstra ed., Univ. of Chicago Press 1997).

[30] Finger, supra note 9, at 12–14.

[31] *Cipla Ltd. v. Designated Authority*, (2006) 1 Comp. L.R. 161 (Del. HC).

[32] *Nirma Ltd. v. Union of India*, (2012) 283 E.L.T. 321 (Guj. HC).

[33] Appellate Body Report, *United States—Hot-Rolled Steel from Japan*, supra note 15.

[34] Appellate Body Report, *European Communities—Bed Linen*, supra note 15.

A. Procedural Complexities and Delays

Despite the comprehensive procedural framework laid down in the WTO Anti-Dumping Agreement (ADA), the implementation of anti-dumping investigations remains riddled with procedural inefficiencies. Investigations frequently suffer from prolonged timelines, inconsistent evidentiary standards, and administrative opacity, undermining the protective intent of the law.

In India, for instance, while Rule 17 of the *Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995* mandates completion of investigations within twelve months (extendable to eighteen), delays are common due to heavy caseloads, inter-agency coordination challenges, and late submission of data by interested parties.[35] The Delhi High Court in *Jindal Poly Films Ltd. v. Designated Authority*[36] noted that excessive delay not only prejudices the domestic industry but also contravenes the spirit of fairness embedded in the WTO ADA's Article 5.10.

Similarly, in the European Union and the United States, investigations often extend beyond statutory limits because of voluminous data collection and verification processes. In *United States—Hot-Rolled Steel from Japan*, the WTO Appellate Body criticized the U.S. Department of Commerce for failing to disclose essential facts "in time for the parties to defend their interests," thus violating Article 6.9 of the ADA.[37] The case underscores the delicate balance between administrative thoroughness and timely adjudication—a recurrent theme in anti-dumping jurisprudence.

Delays in investigations diminish the remedial value of anti-dumping measures. By the time duties are imposed, domestic industries may have already suffered irreparable injury, leading to calls for stricter statutory enforcement of timelines and enhanced digitalization of procedural workflows to expedite investigations.[38]

B. Circumvention and Evasion through Global Value Chains

The proliferation of global value chains (GVCs) has rendered traditional anti-dumping enforcement increasingly complex. Dumped products are often transshipped through third countries or undergo minimal processing to circumvent duties. The phenomenon of "country-hopping" or "duty evasion" has become a significant enforcement challenge, particularly in sectors like steel, electronics, and chemicals.[39]

The WTO ADA does not explicitly address circumvention, leaving member states to adopt national rules. India's **Anti-Circumvention Rules, 1995** permit the extension of duties to third-country exporters when evidence of circumvention exists.[40] However, detection often requires substantial investigative resources and international cooperation.

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[35] Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, r. 17.

[36] *Jindal Poly Films Ltd. v. Designated Authority*, (2018) 362 E.L.T. 3 (Del. HC).

[37] Appellate Body Report, *United States—Hot-Rolled Steel from Japan*, WTO Doc. WT/DS184/AB/R (adopted Aug. 23, 2001).

[38] Vijay Shekhar Jha, *Exposition of Indian Anti-Dumping Law & Practice* 221–23 (2d ed. Universal 2020).

[39] Biswajit Dhar, *Trade Remedies in a Globalized World* 133–37 (Routledge India 2021).

[40] Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Circumvention of Anti-Dumping Duty) Rules, 1995.

Globally, the EU has led the way in strengthening anti-circumvention mechanisms. Article 13 of the EU's *Basic Anti-Dumping Regulation (2016/1036)* allows the Commission to extend duties automatically if circumvention through minor assembly or routing is proven.[41] The United States also relies on "scope rulings" and "anti-circumvention inquiries" under 19 C.F.R. § 351.225 to close loopholes.[42]

Yet, as scholars note, excessive vigilance against circumvention can blur the line between legitimate trade adjustment and protectionism.[43] An overly expansive interpretation risks penalizing genuine multinational production and discouraging supply chain diversification. Hence, the challenge lies in crafting enforcement strategies that distinguish between evasion and legitimate trade restructuring.

C. The "Zeroing" Controversy and Methodological Divergence

One of the most persistent and contentious methodological issues in anti-dumping law is the practice of "zeroing," wherein investigating authorities disregard negative dumping margins when calculating the overall margin of dumping. While the practice artificially inflates dumping margins, the United States continued to apply it in various forms despite successive WTO rulings condemning it as inconsistent with the ADA.[44]

In *EC–Bed Linen*, India's successful challenge against the European Commission's use of a similar practice set an important precedent, establishing that fair comparison under Article 2.4.2 requires a symmetrical calculation that accounts for all transaction results.[45] The Appellate Body reaffirmed this in *US–Zeroing (EC)*, holding that zeroing violates the obligation of a "fair comparison."[46]

Although the U.S. has modified its methodology in response to these rulings, remnants of zeroing persist in targeted dumping and administrative reviews. The controversy reflects a deeper structural issue—the tension between national administrative discretion and multilateral legal uniformity. As the WTO dispute settlement system remains paralyzed since 2019, the lack of appellate oversight has emboldened certain members to reintroduce practices previously ruled inconsistent, eroding the predictability of global anti-dumping jurisprudence.[47]

D. Balancing Domestic Protection and Global Trade Obligations

A fundamental challenge of anti-dumping law lies in reconciling domestic protection with international commitments to free and fair trade. While anti-dumping duties are designed to offset unfair pricing, they often have protectionist spillovers. Empirical evidence indicates that anti-dumping duties lead to price increases for domestic consumers and downstream industries, effectively functioning as a tax on competitiveness.[48]

In India, anti-dumping measures have been applied extensively in sectors such as chemicals, steel, and solar products. However, the *Directorate General of Trade Remedies (DGTR)* has increasingly sought to apply the

[41] Council Regulation 2016/1036, art. 13, 2016 O.J. (L 176) 21 (EU).

[42] 19 C.F.R. § 351.225 (2023).

[43] Edwin A. Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* 412–14 (Oxford Univ. Press 2005).

[44] Appellate Body Report, *United States—Zeroing (EC)*, WTO Doc. WT/DS294/AB/R (adopted Apr. 18, 2006).

[45] Appellate Body Report, *European Communities—Bed Linen*, WTO Doc. WT/DS141/AB/R (adopted Mar. 1, 2001).

[46] *Id.*

[47] Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* 658–61 (5th ed. Cambridge Univ. Press 2021).

[48] Patrick Messerlin, supra note 28, at 182–84.

"public interest" principle—assessing the broader economic impact of duties before final imposition.[49] This shift reflects the evolving philosophy of trade remedy administration, aligning India more closely with the EU's "Union interest test."

Nonetheless, the asymmetry of participation in anti-dumping proceedings persists. Domestic producers are typically well-represented, whereas consumer groups and import-dependent industries lack effective institutional representation.[50] Scholars argue that this imbalance undermines procedural legitimacy and perpetuates producer bias.[51]

Furthermore, the growing use of anti-dumping by developing countries—including India, Brazil, and China—has complicated the traditional narrative of North–South trade conflict. As developing economies become both initiators and targets of anti-dumping actions, the instrument increasingly operates as a tool of *competitive protectionism*, rather than a defense against unfair trade alone.[52]

E. Crisis of Multilateral Oversight and Appellate Paralysis

Perhaps the most serious contemporary challenge to the anti-dumping regime is the paralysis of the WTO Appellate Body since December 2019, following the United States' blockage of judicial appointments. Without a functioning appellate mechanism, the legal coherence of anti-dumping disciplines is under severe strain.[53]

The absence of appellate review has led to fragmented interpretations of the ADA. Some members have resorted to interim arrangements, such as the **Multi-Party Interim Appeal Arbitration Arrangement (MPIA)** established under Article 25 of the WTO Dispute Settlement Understanding, but participation remains limited.[54] Consequently, the deterrent effect of WTO jurisprudence against procedural abuse and arbitrary methodologies has weakened.

This vacuum threatens to reverse decades of progress in embedding due process, transparency, and predictability in the multilateral anti-dumping system. For reform, restoring a functioning and credible dispute settlement mechanism is thus indispensable to maintaining the rule-based integrity of trade remedies globally.[55]

Part IV – Reform Imperatives: Procedural, Substantive, and Institutional Dimensions

A. Procedural Reforms: Streamlining and Transparency

The procedural architecture of anti-dumping law forms the backbone of its credibility and legitimacy. The *Agreement on Implementation of Article VI of GATT 1994* (Anti-Dumping Agreement or ADA) mandates transparency, timely investigations, and due process safeguards. However, practical implementation across

[49] Directorate General of Trade Remedies (DGTR), *Manual on Trade Remedy Investigations* 97–100 (2022).

[50] Aradhna Aggarwal, *Anti-Dumping in Developing Countries: Determinants and Impact* 14–17 (Oxford Univ. Press 2007).

[51] Jagdish Bhagwati, *Protectionism* 48–50 (MIT Press 1988).

[52] Rajesh Chadha & Reena Marwah, *Trade Remedies in Emerging Economies* 51–55 (Springer 2022).

[53] Henrik Horn & Petros Mavroidis, *The WTO Appellate Body Crisis: A Rule of Law Perspective*, 18 *World Trade Rev.* 593, 596–601 (2020).

[54] WTO, *Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU* (Apr. 2020).

[55] Gabrielle Marceau, *Reviving the WTO Dispute Settlement System: Challenges and Proposals*, 24 *J. Int'l Econ. L.* 211, 215–18 (2021).

jurisdictions remains uneven, with frequent procedural delays, data asymmetries, and inconsistent disclosure practices.[56]

A crucial reform imperative lies in **streamlining investigative timelines** and **enhancing procedural predictability**. Many developing country authorities—such as India's Directorate General of Trade Remedies (DGTR)—face challenges related to administrative capacity and overlapping responsibilities.[57] As a result, investigations often exceed the 12-month benchmark set by Rule 17 of India's 1995 Rules. To correct this, scholars advocate for a *"procedural acceleration model"*—a structured timeline that limits discretionary extensions, coupled with digital data portals enabling real-time submissions and verifications.[58]

Transparency is equally vital. The WTO Appellate Body in *US–Hot-Rolled Steel from Japan* emphasized that failure to disclose essential facts to interested parties violates Article 6.9 of the ADA.[59] The EU's "open file" model, where all non-confidential information is shared through online access, offers a model of procedural fairness.[60] Adoption of similar disclosure norms in developing jurisdictions could strengthen both compliance and confidence in anti-dumping administration.

Moreover, integrating **digital investigation systems**—including e-filing of questionnaires, AI-assisted data validation, and blockchain-based verification of export invoices—can substantially reduce administrative errors and enhance traceability. These technological interventions align with the WTO's "Trade Facilitation and Digitalization" agenda, promoting procedural modernization without sacrificing due process.[61]

B. Substantive Reforms: Rethinking Dumping Margins, Injury Analysis, and Sunset Mechanisms

At the substantive level, reforms must address methodological rigidity and enhance economic rationality in the determination of dumping and injury.

First, the persistent use of **outdated cost structures** and **non-market economy (NME) adjustments** distorts fair-value calculations. In *EU–Biodiesel (Argentina)*, the Appellate Body criticized the European Commission for substituting actual costs with "constructed values" based on surrogate data, finding the approach inconsistent with Article 2.2.1.1 of the ADA.[62] This precedent underscores the need for **contextual valuation methodologies** that reflect actual market conditions and avoid punitive inflation of margins.

Second, injury analysis under Article 3 of the ADA often focuses narrowly on domestic producer indicators (output, profitability, and employment), neglecting broader **public interest** considerations. The EU's "Union interest test" and Canada's "public interest clause" allow authorities to evaluate whether duties might harm

[56] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 201 [hereinafter Anti-Dumping Agreement].

[57] V. Lakshmikumaran & V. Sridharan, *Indian Anti-Dumping Law and Practice* 98–101 (Taxmann 2008).

[58] Aradhna Aggarwal, *Anti-Dumping: India Versus the World* 122–24 (Oxford Univ. Press 2007).

[59] Appellate Body Report, *United States—Hot-Rolled Steel from Japan*, WTO Doc. WT/DS184/AB/R (adopted Aug. 23, 2001).

[60] Council Regulation 2016/1036, art. 19, 2016 O.J. (L 176) 21 (EU).

[61] WTO, *World Trade Report 2023: Re-globalization for a Secure, Inclusive, and Sustainable Future* 87–90 (2023).

[62] Appellate Body Report, *European Union—Anti-Dumping Measures on Biodiesel from Argentina*, WTO Doc. WT/DS473/AB/R (adopted Oct. 26, 2016).

downstream industries or consumers.[63]Introducing a similar framework in India would align domestic law with emerging global standards and enhance the legitimacy of anti-dumping measures.[64]

Third, **sunset reviews** and periodic reassessments are essential to prevent the indefinite continuation of duties. Article 11.3 of the ADA prescribes a five-year review, yet many members conduct these reviews pro forma, resulting in de facto permanence.[65] Mandatory, data-driven sunset mechanisms—integrating economic impact assessments—would ensure that duties remain remedial rather than protectionist.

Finally, adopting **economic benefit tests** to evaluate welfare implications could prevent excessive recourse to anti-dumping. As Messerlin observed, "anti-dumping duties, when detached from competition policy, risk becoming industrial policy in disguise."[66] Integrating economic analysis more explicitly within determinations would temper political influences and reinforce objectivity.

C. Institutional Reforms: Strengthening Multilateral Oversight and National Capacities

Institutional reform constitutes the cornerstone of long-term sustainability for the anti-dumping regime. The paralysis of the WTO Appellate Body since 2019 has fragmented global interpretative authority, allowing divergent national practices to proliferate.[67] Restoring a binding and credible dispute settlement system must therefore remain a global priority. As Marceau emphasizes, "without appellate review, the coherence of WTO jurisprudence collapses into regional fragmentation."[68]

In the interim, the **Multi-Party Interim Appeal Arbitration Arrangement (MPIA)** under Article 25 of the DSU provides a temporary appellate mechanism among participating members. However, broader engagement—including from major users of anti-dumping such as India, the United States, and China—is essential to ensure systemic legitimacy.[69]

At the domestic level, **capacity building** and **institutional specialization** are critical. India's DGTR has made strides by integrating technical, economic, and legal expertise within a single authority, replacing the earlier bifurcated structure between the Directorate General of Anti-Dumping (DGAD) and the Directorate General of Safeguards.[70] However, the resource-intensity of complex investigations still necessitates investment in professional training, advanced economic modeling, and inter-agency coordination.

Another institutional priority is **enhanced cooperation among jurisdictions**. Establishing international data-sharing arrangements and standardizing disclosure templates through the WTO could minimize inconsistencies and improve cross-border transparency. Such cooperation is especially vital in detecting **circumvention** and **cross-border subsidization**, which increasingly blur the line between dumping and state-driven industrial policy.

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[63] Council Regulation 2016/1036, art. 21, 2016 O.J. (L 176) 21 (EU).

[64] Directorate General of Trade Remedies (DGTR), *Manual on Trade Remedy Investigations* 141–44 (2022).

[65] Anti-Dumping Agreement, supra note 56, art. 11.3.

[66] Patrick A. Messerlin, *Measuring the Costs of Protection in Europe* 118–20 (Inst. for Int'l Econ. 2001).

[67] Henrik Horn & Petros C. Mavroidis, *The WTO Appellate Body Crisis: A Rule of Law Perspective*, 18 *World Trade Rev.* 593, 598–601 (2020).

[68] Gabrielle Marceau, *Reviving the WTO Dispute Settlement System: Challenges and Proposals*, 24 *J. Int'l Econ. L.* 211, 214 (2021).

[69] WTO, *Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU* (Apr. 2020).

[70] Ministry of Commerce and Industry, Government of India, *Notification: Creation of the Directorate General of Trade Remedies* (May 2018).

Finally, anti-dumping reform must be framed within the larger context of **trade and development**. Developing countries continue to rely on anti-dumping as a defensive policy instrument against subsidized imports, yet excessive use risks reinforcing dependency on protectionist mechanisms. [71] Building long-term competitiveness through industrial upgrading and export diversification remains a more sustainable alternative to reliance on anti-dumping protection.

D. Towards a Balanced Reform Model

Reform of anti-dumping law must balance three interdependent objectives: (1) preserving **trade fairness**, (2) ensuring **administrative efficiency**, and (3) promoting **multilateral coherence**.

At the WTO level, incremental reforms—such as clarifying "like product" standards, establishing uniform disclosure norms, and introducing interpretative guidance on circumvention—could enhance predictability without requiring full renegotiation of the ADA.[72]

At the national level, integrating **public interest tests**, **economic efficiency metrics**, and **transparent review procedures** would modernize anti-dumping practice and reduce its misuse for protectionist ends. The DGTR's evolving emphasis on economic impact assessments is a promising development in this regard.[73]

Ultimately, reforming anti-dumping law is not merely a technical or procedural task; it is a **normative project** aimed at reconciling the legitimacy of trade defense with the imperatives of global economic interdependence. As global trade becomes increasingly politicized, a rules-based and transparent anti-dumping framework remains indispensable to preserving both domestic equity and international stability.[74]

V. India's Experience and the Way Forward

India's engagement with anti-dumping law over the past three decades offers a rich illustration of how developing economies have adapted trade remedies to balance domestic industrial protection with multilateral obligations. Since adopting its first anti-dumping framework in the early 1980s and harmonizing it with the **WTO Anti-Dumping Agreement (ADA)** in 1995, India has emerged as one of the most frequent users of anti-dumping measures globally.[75] This active enforcement reflects both structural economic vulnerabilities and a strategic policy approach to shield domestic industries from market distortions caused by dumping, particularly from large exporting economies such as China.

A. Institutional and Procedural Evolution

The administration of India's anti-dumping regime has evolved significantly since the establishment of the **Directorate General of Anti-Dumping and Allied Duties (DGAD)** under the Ministry of Commerce.[76] Following institutional reforms in 2018, the **Directorate General of Trade Remedies (DGTR)** was created, consolidating anti-dumping, countervailing, and safeguard functions under a single authority. [77] This

[71] Rajesh Chadha & Reena Marwah, *Trade Remedies in Emerging Economies* 133–37 (Springer 2022).

[72] Philippe De Baere et al., *The WTO Anti-Dumping Agreement: A Detailed Commentary* 622–26 (Oxford Univ. Press 2017).

[73] DGTR, *Annual Report 2022–23*, at 58–61 (2023).

[74] Shubha Ghosh, *Rules and Practices of Anti-Dumping in International Trade* 271–74 (Routledge 2018).

[75] *WTO Secretariat*, **World Trade Report 2020**, at 45 (2020).

[76] *Customs Tariff Act*, No. 51 of 1975, India Code (1995).

[77] Ministry of Commerce & Industry, Notification No. 11/2018, *DGTR Establishment Order* (May 7, 2018).

structural unification aimed to reduce fragmentation, ensure procedural coherence, and enhance analytical rigor in investigations.

Procedurally, India's anti-dumping investigations adhere to the principles laid out in the **Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995**, which mirror the WTO ADA.[78] The DGTR's process involves preliminary screening, evidence-based determination of normal value, export price, and injury margin, followed by stakeholder consultation.[79] However, despite these formal procedural safeguards, investigations often face criticism for **prolonged timelines**, **opaque methodologies**, and **limited transparency in injury assessments**.[80] Judicial scrutiny—particularly by the **Customs, Excise and Service Tax Appellate Tribunal (CESTAT)** and the **Delhi High Court**—has sought to refine these procedural lapses by emphasizing natural justice and reasoned orders.[81]

B. Jurisprudential Development

Indian courts have played a crucial role in shaping the contours of anti-dumping practice through their interpretation of procedural fairness, evidentiary standards, and adherence to WTO principles. In **Reliance Industries Ltd. v. Designated Authority**,[82] the Delhi High Court underscored the requirement of reasoned decision-making and proportionality in the imposition of duties. Similarly, in **Rishiroop Polymers Pvt. Ltd. v. Designated Authority**,[83] the Supreme Court clarified that anti-dumping duties must not function as instruments of protectionism but as corrective mechanisms ensuring fair competition.

The judiciary has consistently balanced administrative discretion with the need for procedural accountability. In **Nirma Ltd. v. Union of India**,[84] the Gujarat High Court reaffirmed that the DGTR must provide adequate opportunity for interested parties to respond and that confidentiality claims must not compromise transparency. Such rulings collectively reflect the courts' alignment with Article 6 of the WTO ADA, which mandates due process and transparency in anti-dumping investigations.[85] These interpretations underscore India's commitment to maintaining procedural integrity even within a politically sensitive area of trade policy.

C. India's Position within the Global Anti-Dumping Framework

India's frequent resort to anti-dumping measures has drawn both support and criticism at the international level. On one hand, its active use of such measures is viewed as a legitimate defense of nascent industries in a developing economy facing asymmetric competition.[86] On the other, critics argue that India's reliance on anti-dumping duties sometimes reflects **industrial lobbying** and **protectionist pressures**, rather than strictly evidence-based determinations of injury.[87] The WTO's **Trade Policy Reviews** have periodically noted the

[78] *Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty) Rules*, 1995.

[79] Vijay Shekhar Jha, **Exposition of Indian Anti-Dumping Law & Practice** 56–58 (Bharat Law Publ'ns 2014).

[80] Aradhna Aggarwal, **Anti-Dumping: India Versus the World** 139 (OUP 2007).

[81] *Reliance Indus. Ltd. v. Designated Auth.*, 2006 (202) E.L.T. 23 (Del.).

[82] *Rishiroop Polymers Pvt. Ltd. v. Designated Auth.*, (2006) 4 SCC 303.

[83] *Nirma Ltd. v. Union of India*, 2012 (282) E.L.T. 321 (Guj.).

[84] *India – Anti-Dumping Measures on Certain Products from China*, WTO Doc. WT/DS430/R (2016).

[85] G.S. Bajpai, **Antidumping in Law and Practice** 212–18 (EBC 2012).

[86] Kamala Dawar, **Trade Remedies under WTO Law: Safeguard Measures and Anti-Dumping** 75 (Edward Elgar 2016).

[87] *DGTR Annual Report* (2023–24), Ministry of Commerce & Industry, Govt. of India.

need for India to enhance the transparency of its investigations and align its methodologies with the evolving jurisprudence of the **WTO Dispute Settlement Body (DSB)**.

Nevertheless, India's record of compliance with WTO rulings has been largely positive. In the **WTO dispute India – Anti-Dumping Measures on Certain Products from China**, the DSB found procedural inconsistencies, particularly in the calculation of injury margins, prompting India to revise its domestic procedures. Such episodes reflect the country's willingness to adapt and strengthen its regulatory practice in line with multilateral disciplines, reinforcing its role as a rule-abiding yet assertive trade actor.

D. Emerging Challenges in Enforcement

Despite institutional and procedural reforms, several challenges persist in India's anti-dumping enforcement landscape. First, the **complexity of global supply chains** and the practice of **circumvention through third-country exports** complicate the identification of dumping sources and the attribution of injury. Second, the **timeliness of investigations** remains a concern—extended investigation periods often dilute the remedial effect of duties and weaken the deterrence against unfair trade practices. Third, the **economic impact on downstream industries and consumers** is frequently overlooked in injury assessments, leading to broader welfare costs. Finally, the DGTR's limited data-sharing capabilities and reliance on industry-supplied information risk undermining objectivity and public trust.

E. The Way Forward: Reform and Policy Recommendations

To enhance the legitimacy and effectiveness of its anti-dumping framework, India must pursue a calibrated reform agenda focusing on **procedural efficiency, institutional transparency, and WTO-consistent methodology**. Key policy measures include:

1. **Digitization and Data Integration:** Establishing a centralized digital portal for submission, verification, and monitoring of evidence would reduce delays and enhance transparency.
2. **Economic Impact Assessments:** Introducing mandatory cost-benefit analyses before duty imposition to evaluate effects on consumer welfare and input-dependent sectors.
3. **Periodic Sunset Reviews:** Ensuring strict adherence to five-year review cycles to prevent perpetuation of outdated duties inconsistent with Article 11.3 of the WTO ADA.
4. **Capacity Building and International Cooperation:** Strengthening analytical capabilities within DGTR and fostering technical collaboration with WTO and regional partners for harmonization of methodologies.
5. **Enhanced Judicial Oversight:** Encouraging specialized benches or expert panels within appellate bodies to ensure consistent and timely review of anti-dumping determinations.

These measures, collectively, would reinforce the credibility of India's anti-dumping regime as both a **defensive mechanism and a developmental tool**, enabling it to address market distortions while maintaining fidelity to multilateral trade principles.

F. Conclusion

India's anti-dumping regime stands at a critical juncture, facing the twin imperatives of **domestic industrial protection** and **international rule compliance**. As global trade becomes increasingly complex and politically charged, India must continue refining its legal and institutional frameworks to ensure that anti-dumping measures remain transparent, proportionate, and WTO-consistent. The ongoing reforms within DGTR, coupled with active judicial engagement and policy modernization, position India to evolve from a reactive to a **strategically adaptive trade regulator**—one that protects domestic interests while reinforcing its commitment to the global trading order.