



Indian Competition regulator to look into anti-dumping duty hindering competition

- Anti-dumping duty used extensively by India to protect domestic manufacturers
- Political ploy to appease domestic industry
- Anti-dumping law initially complementary to competition law

There is a need to look into anti-dumping duty being conducive or non-conducive to competition, said Ajay Kumar Chauhan, the director general (DG) of the Competition Commission of India (CCI).

Citing the ongoing investigation by the office of the director general against the man-made fibre manufacturers in Surat, Mumbai and other centres across India for alleged anti-competitive practices as a case in point, Chauhan noted that the manufacturers are manoeuvring the selling prices against the landed cost of imports.

The competition regulator issued a notice to the Federation of the Indian Art Silk Weaving Industry seeking information on whether there are anti-competitive practices by the man-made fibre manufacturers and spinners, including controlling the supply of yarn and fixing the prices, which would violate the Competition Act, 2002. These manufacturers allegedly have ensured that the government imposed an anti-dumping duty on imported yarn from China, which resulted in a considerable increase in prices, media reports stated.

The extensive use of anti-dumping duty by India to protect the domestic industry against cheaper imports poses a unique challenge for the competition regulator using the Competition Act, 2002 to promote and sustain competition in the market, pointed out two antitrust lawyers.

Anti-dumping duty is a political ploy used to appease the domestic industry, and one that cannot easily be done away with, noted one of the antitrust lawyers.

It will require the CCI to sit down with the Directorate General of Anti-dumping and Allied Duties (DGAD) and iron out the differences to further competition, said Avaantika Kakkar, counsel with Khaitan & Co. DGAD is an investigation agency under the Commerce Ministry that decides on the imposition of duty, Section 21 and 21A of the Competition Act, 2002 states that CCI and other Statutory Authorities can reference each other for matters related to competition.

It could be argued that the two regulatory authorities are mutually exclusive but there is an overlap, noted Kakkar. Though both competition law and anti-dumping laws aim to ensure competition in the domestic market, they have evolved into two extremes.

While the government uses anti-dumping to protect domestic manufacturers against cheaper imports through competition law, the government chooses to protect the interests of the consumer by encouraging free competition.

Anti-dumping rules may allow practices such as price commitments and quantitative restrictions on trade to fall foul of competition law, depending on the jurisdiction, said Suzanne Rab, partner at King & Spalding.

From an economic perspective, it is argued that the two bodies of law pursue different principal objectives, as anti-dumping is a trade remedy, while competition law is based largely on promoting consumer welfare and productive efficiency, she added.

In June 2012, the Ministry of Customs imposed a reference price against the dumping of Chinese-made digital offset printing plates in India following TechNova Imaging Systems' petition seeking the imposition of an anti-dumping duty as cheap imports from China were affecting its sales and margins, as previously reported by PaRR.

Remedies in the form of an anti-dumping duty to ensure a level playing field and protect the sole domestic player, Technova, were opposed by some domestic end users, who feared abuse of dominance by Technova, which could increase the price of digital offset printing plates without the risk of "imported" competition from Chinese manufacturers.

"Import competition" can play a role in the domestic market, promoted by actual and potential competition from an overseas player, said Rab. However, there can be circumstances where dumping of products at below cost can restrict competition if it leads to elimination or restriction of efficient competition in the domestic market where the supplier is dominant, she pointed out.

CCI is also looking into possible abuse of dominance by multinational companies, as previously reported by PaRR, quoting Chauhan.

He pointed out that multinational companies operating in or supplying to India have a transnational base, and hence have access to raw material from different sources. Hence, if anti-dumping duty is imposed on the import of a product from a particular country, such multinationals have the power to circumvent the imposition of the duty by importing from other regions where the duty has not been imposed, he told PaRR.

In the European Union, the primacy of competition law over anti-dumping and other instruments of trade policy has been achieved through mutually reinforcing and overlapping provisions, Rab said.

"The EU treaty establishes limits on the implementation of any policy whose results are inconsistent with the EU competition law rules on restrictive agreements and abuse of a dominant position," she noted.

As CCI evolves, it is increasingly looking at competition authorities in different jurisdictions, especially in the EU and UK, when it comes to streamlining and amending its own regulations, as previously reported by PaRR.

"The EU law relevant to anti-dumping contains provisions which are aimed to balance the interests of competition," noted Rab. Determining intervention must be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, she added.

It is not possible to get rid of the anti-dumping authority, often seen as a political ploy to appease the domestic market, pointed out antitrust lawyers.

Difference between two laws emerged subsequently

The difference in the objectives of the two laws did not exist when anti-dumping laws were first enacted, the earliest one being the anti-dumping law of 1916 in the USA, which was meant to address competition concerns arising out of the practice of 'transnational price predation, pointed out one of the antitrust lawyers based in New Delhi.

Anti-dumping laws were considered to be an extension of competition law and had common objectives, the lawyer said. Modern anti-dumping practice has, however, facilitated unfair and anti-competitive behaviour contrary to what it was intended to prevent, he added.

In some jurisdictions, anti-dumping laws continue to be aligned with their competition law, as in the case of the European Commission, where the anti-dumping law, though meant to remedy the injury to the Community, does take into account the wider public interest, the lawyer pointed out.

India enacted its framework of anti-dumping laws and rules in 1995 to give effect to India's commitments under the World Trade Organisation (WTO). Since then, India has emerged as one of the most prolific users of anti-dumping measures in the world.

by Freny Patel in Mumbai