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Book Review

Book Review: World Trade Organization Agreement on Anti-Dumping: A GATT/WTO and Indian Legal Jurisprudence

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K.D. Raju (2008):

**World Trade Organization Agreement on Anti-Dumping:
A GATT/WTO and Indian Legal Jurisprudence**

Kluwer Law International, 520 pages

ISBN 13: 9789041127808; EUR 140.00 / GBP 112.00 / USD 185.00 (hardcover)

The field of anti-dumping has gained major importance in the World Trade Organization. While over Rounds of the General Agreement on Tariffs and Trade negotiations (hereinafter, the GATT) tariffs lost their actuality as a protectionist measure, anti-dumping instruments are still employed as a major defensive tool to restrain imports. The number of anti-dumping investigations initiated annually has increased significantly in comparison with the pre-WTO period. The WTO statistics demonstrate that anti-dumping measures are used far more frequently than other trade remedies, such as safeguards and countervailing duties. Compared to the GATT times, when anti-dumping instruments were primarily used by the four developed contracting parties, that is Australia, Canada, the EC and the US, the list of major users has expanded including such developing countries as India and China. The book "World Trade Organization Agreement on Anti-Dumping" by K.D. RAJU examines in detail the complex world of anti-dumping in today's WTO system. In particular, the book provides several important contributions to the development of this discipline. Firstly, it explains the policy debate over the negotiating history of anti-dumping in the GATT/WTO. Secondly, it reveals the controversial issues in the WTO Agreement on Anti-Dumping (hereinafter, the ADA) and the resulting challenges posed by the forces of protectionism. Thirdly, it provides an up-to-date analysis of the WTO Panels and the Appellate Body reports interpreting the key provisions of the ADA. Finally, it examines in detail the Indian anti-dumping rules and jurisprudence, lending an interesting perspective to the subject. It should be noted that India is a developing country, which has become a major user of anti-dumping measures in the WTO. On the basis of the overall analysis, the book suggests a range of reforms to improve both the WTO and Indian anti-dumping rules.

The book is divided into two main parts. Part I provides a critical analysis of the ADA provisions, as well as the GATT/WTO Panel and the Appellate Body rulings on anti-dumping. Part II analyses Indian rules and jurisprudence pertaining to anti-dumping. Chapter 11 evaluates future directions in anti-dumping in both the WTO and India and provides recommendations, accordingly.

In Part I the author explores the concept and history of anti-dumping. In particular, he examines various arguments and thoughts in favour of and against the philosophy of anti-dumping; different kinds of dumping; and the history of anti-dumping legislation from the end of the 18th century through to modern times. In Chapter 1 the author provides a brief overview of all GATT Rounds' anti-dumping negotiations and their achievements. The author concludes that while initially anti-dumping instruments were used as an anti-trust remedy to counter predatory pricing, currently there is little economic and legal justification for imposing anti-dumping measures. He believes that in modern international trade system countries use anti-dumping rules primarily as a political tool to protect domestic industries from overseas competition.

In the following chapters the author explains the nuts and bolts of the ADA and discusses in detail the key elements of the Agreement. In particular, he introduces the reader to the methodologies and requirements for the determination of the dumping margin; clarifies the concepts of injury, threat of material injury, and causal link; looks at procedural issues in

anti-dumping cases, such as 'domestic industry support' and 'de minimis threshold'. The author points out frequent misuses of anti-dumping rules, which in his view occur mainly due to the absence of specific guidelines in the ADA on the appropriate application of such procedural provisions of the Agreement, as those dealing, inter alia, with the determination of dumping, the calculation of injury, and the quality/quantity of evidence needed to initiate investigation. Consequently, according to the author, the lack of clear rules often results in protectionism.

In Chapter 6 the author examines the standard of review under the ADA; further, he addresses the use of 'facts available' provision in anti-dumping cases and special and differential treatment in the ADA. While analysing the effectiveness of the current WTO dispute settlement mechanism for anti-dumping disputes, the author arrives at the conclusion that it needs to be improved. Although the WTO dispute settlement system introduced a far more effective mechanism for challenging anti-dumping measures than that used in the GATT, the author reveals such weak features of this system as the problem of non-compliance with the Panel and the Appellate Body reports, and some conflicts between standards of review in the WTO Dispute Settlement Understanding and the ADA. The problem of possible misuse of the 'facts available' provision in the ADA is addressed in Chapter 7, and found that developed countries often use it for extracting trade data from developing countries. In Chapter 8 the author discusses such a longstanding and yet unresolved issue in the GATT/WTO, as a special and differential treatment for developing countries in the ADA.

A central part of the book is Part II, which deals with the Indian anti-dumping rules and jurisprudence and adds the practical significance to the study. The author analyses Indian anti-dumping legislation and compares it with the ADA. He concludes that since 1995 (that is when India adopted fully-fledged anti-dumping legislation) not only has India complied with the ADA obligations, but it also has included a double judicial review in its system (that is initially before the Tribunal, and further under the Supreme Court of India). Nevertheless, the author believes that some provisions in Indian anti-dumping laws need to be clarified and strengthened (pp. 215-216, 228-229, and 237-239). K.D. RAJU focuses on Indian anti-dumping jurisprudence, which emerged since its first investigation in 1992. On the basis of his analysis the author finds that, in many cases, the Indian Designated Authority (that is the investigating agency) has not abided by the procedures set out in Indian law. It has used all the loopholes in anti-dumping rules in the same fashion as the investigating agencies in developed countries for the sake of domestic industry protectionism. However, the author notes that in the course of judicial review the Tribunal has often made adverse comments on such irregularities, as well as on political interference in the investigating process (pp. 243, 254, 258, and 261).

K.D. RAJU concludes his study by re-affirming the principle conclusions made throughout his book and laying down specific recommendations to improve the anti-dumping regimes in both the WTO and India. For easy and convenient reference the book includes the statutory instruments related to anti-dumping in the GATT/WTO and India, as well as other useful attachments and tables.

In conclusion, this is a highly recommendable book for practitioners, policymakers, scholars and students. It is well structured and clear. It could obviously benefit from the inclusion of concepts pertinent to developing countries, such as input dumping. However, as the author points out in the introduction, the book does not claim to be an all-inclusive

work on so vast a subject, but rather constitutes an honest attempt to present to the reader an accurate and concise treatise on anti-dumping. The book ultimately exceeds the above-stated goal and provides an up-to-date commentary on the GATT/WTO and Indian anti-dumping regimes with an analysis of all the necessary interpretative instruments and policy recommendations.

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