



International Economic Law Practicum

## **EASING THE ANTI-DUMPING AND COUNTERVAILING DUTY INVESTIGATIONS FILING PROCESS FOR MSMEs IN INDIA**

6 November 2022  
New Delhi / Gandhinagar, India

**Submitted by:**

Dyuti Pandya & Krishna Bhattacharya  
(International Trade Law Batch; Spring 2022 GMU Clinic)

**Presented to**

Laghu Udyog Bharati  
1E/11, Swami Ramtirth Nagar, Jhandewalan Extension, New Delhi-110055

*All projects prepared and published by TradeLab law clinics and practica are done on a pro bono basis by students for research purposes only. The projects are pedagogical exercises to train students in the practice of international economic and investment law, and they do not reflect the opinions of TradeLab and/or the academic institutions affiliated to TradeLab. The projects do not in any way constitute legal advice and do not, in any manner, create an attorney-client relationship. The project cannot, in any way, and at any time, bind, or lead to any form of liability or responsibility for the clinic participants, participating academic institutions, or TradeLab.*

## ***TRADELAB***

International rules on cross-border trade and investment are increasingly complex. In addition to the WTO, World Bank, and UNCTAD, there are also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs, COMESA, ASEAN, CAFTA, and TPP. Each of these agreements have their own negotiation, implementation, and dispute settlement system to ensure compliance. While these international commitments provide wide ranging benefits to economic actors, only a few of them have the time and resources to fully utilise these benefits. TradeLab aims to empower countries and smaller stakeholders fully reap the development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials, especially in developing countries, small and medium-sized businesses, and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade, and bilateral investment treaties work for everyone.

More at: <https://www.tradelab.org>

## ***WHAT ARE LEGAL PRACTICA?***

Legal practica are composed of small groups of highly qualified and carefully selected students. Faculty and other professionals with longstanding experience in the field act as Academic Supervisors and Mentors for the Practica and closely supervise the work. Practica are win-win for all involved: beneficiaries get expert work done for free and build capacity; students learn by doing, obtain academic credits and expand their network; faculty and expert mentors share their knowledge on cutting-edge issues and are able to attract or hire top students with proven skills. Practicum projects are selected on the basis of need, available resources and practical relevance. Two to four students are assigned to each project. Students are teamed up with expert mentors from law firms or other organisations and carefully prepped and supervised by Academic Supervisors and Teaching Assistants. Students benefit from skills and expert sessions, do detailed legal research and work on several drafts shared with supervisors, mentors and the beneficiary for comments and feedback. The Practicum culminates in a polished legal memorandum, brief, draft law or treaty text or other output tailored to the project's needs. Practica deliver in three to four months. Work and output can be public or fully confidential, for example, when preparing legislative or treaty proposals or briefs in actual disputes.

## ***CENTRE FOR TRADE AND INVESTMENT LAW (CTIL)***

The Centre for Trade and Investment Law (CTIL) was established by the Ministry of Commerce and Industry, Government of India, in 2016 with a view to enhance the capacity of the Government of India and other allied agencies in relation to international trade and investment law issues. CTIL functions as a think tank and an advisory centre to the Ministry of Commerce and Industry and several other government departments and agencies. CTIL's services include studying domestic regulations and internal policies, inter alia, conducting comprehensive studies, as well as developing, drafting and legal vetting the domestic legislations and policies. Over the years, CTIL has also organised various conferences, stakeholder consultations, seminars, and training programmes. CTIL has a dedicated pool of legal experts providing technical inputs, having vast industry, research, and policy experience.

The CTIL-TradeLab Law Clinic is being conducted at Gujarat Maritime University, Gujarat (GMU), one of the few leading universities which offers specialised courses on international trade law and maritime law.

More at: <https://ctil.org.in> and <https://gmu.edu.in/>

## TABLE OF CONTENTS

<i>LIST OF ABBREVIATIONS</i> .....	5
<i>RESEARCH QUESTION</i> .....	7
<i>EXECUTIVE SUMMARY</i> .....	8
<i>1. INTRODUCTION</i> .....	9
1.1. AN OVERVIEW OF CHALLENGES FACED BY MSMES IN THE INDIAN MARKET	10
1.2. BRIEF ANALYSIS ON THE EFFECTS OF DUMPING AND SUBSIDIES ON MSMES	10
1.3. IMPACT OF COVID-19 ON MSMES: ROAD AHEAD .....	11
<i>2. LAWS AND REGULATIONS REGARDING ANTI-DUMPING DUTY AND COUNTERVAILING DUTY IN WTO AND INDIA</i> .....	13
2.1. LEGAL FRAMEWORK OF ANTI-DUMPING LAWS.....	14
2.1.1. PROCEDURE OF ANTIDUMPING LAWS IN INDIA .....	15
2.1.2. MSMES INVOLVEMENT IN STAGES OF AD INVESTIGATION .....	16
2.2. LEGAL FRAMEWORK OF COUNTERVAILING LAWS .....	17
2.2.1. PROCEDURES OF COUNTERVAILING LAWS IN INDIA.....	18
2.2.2. MSMES INVOLVEMENT IN STAGES OF CV INVESTIGATION .....	19
2.3. ANALYSIS OF CERTAIN KEY AREAS IN THE PROCESS OF TRADE REMEDIAL MEASURES .....	20
2.4. ANALYSIS ON THE REQUIREMENT OF CONSULTANTS DURING AD/CV INVESTIGATION PROCEDURE: HELPFUL FOR MSMES OR NOT?.....	21
2.4.1. RECOMMENDATIONS IN IMPROVING LEGAL CONSULTANTS' SERVICES TO MSMES .....	22
<i>3. ANALYSING THE CHALLENGES MSMES FACE DURING AD/CV INVESTIGATION</i> .....	24
3.1. INITIATIVES TAKEN BY THE WTO TO HELP SMEs/MSMEs.....	25
3.2. INITIATIVES BY THE GOVERNMENT OF INDIA TO HELPS MSMES SECTOR.....	25
<i>4. PRACTICES ADOPTED BY COUNTRIES TO SUPPORT MSMES</i> .....	27
4.1. PRACTICES INITIATED FOR IMPROVING AD/CV LAWS: SIMPLIFYING PROCEDURE FOR SMES/MSMES .....	28
4.2. A BRIEF OVERVIEW OF ADOPTION OF GLOBAL PRACTICES INTO INDIAN MSME SECTOR.....	35
<i>5. RECOMMENDATIONS</i> .....	37
5.1. PROCEDURAL REFORM OVERVIEW .....	37
5.2. PROCEDURAL CHANGES TO THE LAW AND FOR MSMES (A DEEPER REFORM ANALYSIS):.....	37
<i>6. CONCLUSION</i> .....	40
<i>7. BIBLIOGRAPHY</i> .....	42
7.1. BOOKS.....	42
7.2. JOURNAL/ARTICLES/HANDBOOKS.....	42
7.3. DIGITAL WEBSITES .....	47
7.4. ACTS.....	50

## LIST OF ABBREVIATIONS

### ABBREVIATIONS    FULL FORMS

AD	<i>Antidumping</i>
ACE	<i>The Automated Commercial Environment</i>
ADA	<i>Antidumping Agreement</i>
ADD	<i>Antidumping Duty</i>
ARTIS	<i>Applications for Remedies in Trade for Indian Industry and other Stakeholders</i>
CBP	<i>U.S. Customs and Border Protection</i>
CBSA	<i>Canada Border Services Agency</i>
CESTAT	<i>Customs Excise and Service Tax Appellate Tribunal</i>
CHAMPIONS	<i>Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength</i>
CITEM	<i>Center for International Trade Expositions and Missions</i>
COSME	<i>Competitiveness of Enterprises and SMEs</i>
CPTPP	<i>Comprehensive and Progressive Agreement for Trans-Pacific Partnership</i>
CV	<i>Countervailing</i>
CVD	<i>Countervailing Duty</i>
DA	<i>Designated Authority</i>
DBFTA	<i>Doing Business in Free Trade Areas</i>
DG	<i>Directorate General</i>
DGCI&S	<i>The Directorate General of Commercial Intelligence and Statistics</i>
DGTR	<i>Directorate General of Trade Remedies</i>
DI	<i>Domestic Industry</i>
DJBC	<i>Directorate General of Customs and Excise</i>
DTI	<i>Department of Trade and Industry</i>
EBTC	<i>European Business and Technology Centre</i>
EFCS	<i>Export Facilitation Centres</i>
FTA	<i>Free Trading Agreements</i>
GATT	<i>General Agreement on Tariffs and Trade</i>

## **ABBREVIATIONS    FULL FORMS**

GDP	<i>Gross Domestic Product</i>
ICT	<i>Information and Communications Technology</i>
ITAC	<i>International Trade Administration Commission</i>
MCSME	<i>The Ministry of Cooperatives and SMEs</i>
MDIC	<i>Ministry of Development, Industry and Foreign Trade</i>
MOF	<i>Ministry of Finance, India</i>
MSME	<i>Medium, Small and Micro Enterprise</i>
NIP	<i>Non Injurious Price</i>
NV	<i>Normal Value</i>
POI	<i>Period of Investigation</i>
PUC	<i>Product under consideration</i>
RTA	<i>Regional Trade Agreements</i>
SBA	<i>Small Business Administration</i>
SCM	<i>Subsidies and Countervailing Measures</i>
SEZ	<i>Special Economic Zones</i>
SME	<i>Small and Medium Enterprise</i>
SMECGS	<i>Scale Enterprises Guarantee Scheme</i>
SSI	<i>Small Scale Industries</i>
TDI	<i>Trade Defence Instruments</i>
TRM	<i>Trade Remedial Measures</i>
WTO	<i>World Trade Organisation</i>

## RESEARCH QUESTION

### ISSUE

MSME units, manufacturing/producing products, with global standards and quality, are suffering because of cheap imports.

### BACKGROUND

The Indian economy has recently seen an increase in growth and participation of MSMEs, even though MSMEs have been a significant part of India's manufacturing, or processing sectors. The MSMEs share in India's GDP during 2018-19 stood at 30.27%. The Annual Report 2020-21, published by Ministry of MSME highlights that activity-wise 31%, 36%, and 33% of the MSMEs is distributed across to manufacturing, trade, and other services, respectively. On 22 July 2019, then Union Minister noted that "as per the information received from the Central Statistics Office (Ministry of Statistics & Programme Implementation), the share of MSME Gross Value Added (GVA) in total GVA during 2016-17 was 31.8%", and "as per the information received from Directorate General of Commercial Intelligence and Statistics the share of MSME-related products in total export from India during 2018-19 is 48.10%." These figures give an overview of the importance and contribution of MSMEs in the Indian economy. Recently, there has been an increase in awareness programmes, support and inclusion of MSMEs, both nationally and internationally, including at the WTO. The WTO notes that the participation of MSMEs "in international trade has remained limited for numerous reasons. These include lack of relevant skills, lack of knowledge about international markets, non-tariff barriers, cumbersome regulations and border procedures, and limited access to finance, in particular trade finance. The smaller the enterprise, the greater the challenges faced by it in participating in international trade." Over the years, WTO has taken steps to help MSMEs and increase their participation in international trade. Despite international support, the MSMEs growth remains hindered by the competition it faces from cheap and unfair imports. One remedy available to MSMEs is applying to the authorities for trade remedial measures like Anti-Dumping Duties (ADD) and Countervailing Duties (CVD). However, MSMEs have failed to avail benefits of trade remedial measures, and at least 2% of the investigations conducted by India involve MSMEs. Review of the literature in this aspect highlights that this may be due to lack of awareness about the trade remedial legal process, as well as the procedural and substantive challenges faced by MSMEs making trade remedial measures inaccessible to them.

### RESEARCH QUESTIONS

Over the years, various MSMEs have highlighted that the procedural and documentation requirements for registering applications for trade remedy investigations are cumbersome and the cost of engaging external consultants for this process is high, thereby creating a deterrence among the MSMEs to approach the relevant authorities. In this backdrop, the following are the research questions:

1. What are the WTO AD and CV provisions and the corresponding Indian Law?
2. What is the application procedure for filing AD/CV Investigations?
3. What issues are faced by MSMEs in AD/CV investigations?
4. What are the developments and special privileges provided to MSMEs?
5. Which are the best practices adopted by different countries to support MSMEs?
6. What are the effects of Covid-19 on trade remedial measures for MSMEs?

The report also provides recommendations for filing of AD/CV investigation applications by the MSME sector, mechanism/guide for MSMEs to follow from start-to-end in the AD/CV investigations, and suggestions to improve the current legal framework to support successful filing of AD/CV applications by MSMEs, and ways to address the concerns of MSMEs.

## EXECUTIVE SUMMARY

Antidumping (AD) and Countervailing (CV) actions have become the preferred means of imposing restrictions on international trade routes. Although these trade defence measures are established for replacing existing limitations and overcoming economic distraught of organisations, especially MSMEs of the importing country as cheap imports hamper the business. Thus, to prevent loss in business, it is important to simplify the AD/CV procedure so that these organisations can avail the benefits of trade remedial measures. The report attempts to identify the barriers faced by MSMEs especially regarding AD/CV and how to address these concerns.

The report states that there is a need for a renewed dialogue for establishing efforts and promoting the development of MSMEs and giving them the required relief. Some of the primary concerns that MSMEs face from complex AD/CV investigations, includes administrative procedures, investigation costs, and prevailing uncertainties. This report analyses several factors relating to the present regulations and the insufficient protection provided to MSMEs dealing with the influx of trade.

The report further focuses on a deeper analysis of the procedural issues that occur during the investigation phases which place an administrative burden on MSMEs. The report has analysed AD/CV investigations which are currently imbalanced through various reasons including the concerns of rising prices following an investigation. The fears of investigation can hurt the existence of MSMEs in the domestic markets. In addition to this, the report has identified that the present state of AD/CV investigation in India goes beyond the procedural issues, it also includes a regulatory gap between the DGTR and the implementation of laws coupled with the classification of goods and technological barriers that nullify the efforts of protecting MSMEs from unfair trade practices.

To address this gap, the report attempts to suggest reform regarding the AD/CV procedure in India, by considering the practices followed across several countries to tackle informality in providing support to MSMEs. The report has identified several recommendations to provide a comprehensive policy and actionable approach for strengthening procedural law enforcement, administrative enforcement, and improving general business practices by removing the ambiguity for MSMEs in terms of utilising the AD/CV regulatory framework.

This report provides the basis for beneficiary in ways that may assist them in easier and cost-effective filing of AD/CV applications and participation in AD/CV investigations, as well as MSME industries in India.



## 1. INTRODUCTION

In recent years there has been a proliferation of Micro, Small and Medium Enterprises (MSMEs), so much so that they have contributed almost 45% of India's export.<sup>1</sup> It has become important to not only focus on large corporations but also on MSMEs.

There are many problems connected to MSMEs which remains unsolved. *First*, there is no specific definition for MSMEs which can be universally recognised, instead the term is used to refer to a segment businesses and organisations whose numbers fall below certain limits.<sup>2</sup> This variation in the definitions makes it difficult to analyse the problems faced by MSMEs in general and to analyse best practices across the globe. For instance, in the United States, the definition of Small & Medium Enterprises (SMEs) varies by industry, based on the North American Industry Classification System (NAICS)<sup>3</sup>, a system developed by the United States, Canada, and Mexico to standardise and facilitate the collection and analysis of business statistics. In the European Union, a system based on the number of employees with a rider of turnover of the business is used to define SMEs.<sup>4</sup> In the United Kingdom, the definition for SMEs depends upon the turnover and the number of people employed.<sup>5</sup> India introduced 'the Micro, Small and Medium Enterprises Development Act', 2006 to classify<sup>6</sup> enterprises as micro, small or medium enterprises based on the following requirements:

**FIGURE 1: REVISED CLASSIFICATION OF MSMEs**

Revised Classification applicable w.e.f. 1st July 2020			
Classification of Micro, Small and Medium Enterprises (MSME) sector			
Composite Criteria Investment in Plant & Machinery/equipment and Annual Turnover			
Classification	Micro	Small	Medium
Manufacturing and Service Sector Enterprises	Investment in Plant and Machinery or Equipment upto Rs.1 crore and Annual Turnover does not exceed Rs.5 crore	Investment in Plant and Machinery or Equipment upto Rs.10 crore and Annual Turnover does not exceed Rs.50 crore	Investment in Plant and Machinery or Equipment upto Rs.50 crore and Annual Turnover does not exceed Rs.5 crore Investment in Plant and Machinery or Equipment upto Rs.250 crore

Source: SME Chamber of India.

*Second*, MSMEs are threatened by a globalised market and are competing with the influx of cheap goods. To save MSMEs in these industries, the use of Anti-Dumping (AD) and Countervailing (CV) trade remedial measures can be a vital tool. However, MSMEs face high-cost and lack of resources to initiate or participate in the AD/CV investigations and in most cases may not even be aware of the ongoing AD/CV investigations. Thus, the objective of this report is to carry out a comprehensive doctrinal legal analysis of the laws, regulations, and policies regarding AD and CV measures in India. The report addresses the challenges faced by the MSMEs regarding filing of the AD or CV claims. The aim of this report is to:

1. analyse the general problems faced by MSMEs which might prevent them from scaling their business and competing in the market;
2. analyse the law on AD/CV and identify the problems faced by MSMEs; and

<sup>1</sup> *Measures to Improve MSME Sector Exports.* (2021, December 10). Press Information Bureau. <https://pib.gov.in/PressReleasePage.aspx?PRID=1780252>.

<sup>2</sup> Harvie, C. (2004). East Asian SME capacity building, competitiveness, and market opportunities in a global economy.

<sup>3</sup> *North American Industry Classification System.* (n.d.). United States Census Bureau. Retrieved February 20, 2022, <https://www.census.gov/naics/>.

<sup>4</sup> European Commission, *User Guide to SME definition*, Retrieved February 20, 2022, [https://ec.europa.eu/regional\\_policy/sources/conferences/state-aid/sme/smedefinitionguide\\_en.pdf](https://ec.europa.eu/regional_policy/sources/conferences/state-aid/sme/smedefinitionguide_en.pdf).

<sup>5</sup> Foreign, Commonwealth & Development Office, Small to Medium Sized Enterprise Action plan, 27<sup>th</sup> Jan 2022, Retrieved on February 20, 2022, <https://www.gov.uk/government/publications/fcd0-small-to-medium-sized-enterprise-sme-action-plan/small-to-medium-sized-enterprise-sme-action-plan#what-is-an-sme>.

<sup>6</sup> *Classification of micro, medium, and small enterprise.* (n.d.). SME Chamber of India. <https://www.smechamberofindia.com/about-msme-in-india.php>.

3. identifying possible solutions to the barriers initiating an AD/CV investigation or participation in AD/CV investigation by MSMEs.

## 1.1. AN OVERVIEW OF CHALLENGES FACED BY MSMEs IN THE INDIAN MARKET

MSMEs play a substantial part in the economic development of India but they face numerous challenges in their path. While Government of India has taken several initiatives to address these challenges through various schemes, yet some challenges remain unresolved. Some of these include:

- **MSMEs in most cases do not have access to resources to avail the benefit of e-commerce platforms:** technological backwardness remains to be the most significant barrier.<sup>7</sup> Due to the lack of resources and capacity, MSMEs are unable to predict the demand and supply of goods and services supplied by them, especially when it concerns trading in international markets. Further, due to technological barriers, MSMEs are unable to utilise the e-commerce market. They are also unaware of the newer strategies being used that other organisations implement. Thus, they are unable to keep pace with the international market. The lack of network and marketing skills further restrains them from being recognised [in internal as well as international] markets.<sup>8</sup>
- **MSMEs lack the guidance to understand the relevant legal rules and regulations:** due to the lack of clear understanding of applicable laws or rules, and the legal uncertainty surrounding various operations, MSMEs are hesitant towards scaling their business or have concerns in entering competitive market. Senior Economist Kavita Chacko said, “*Plethora of rules and regulations faced by large enterprises is one reason for small units to remain small. Because they remain small, they are not able to benefit from the economies of scale while regulations and red-tapism are major drawbacks in scaling up.*”<sup>9</sup> Thus, lack of legal knowledge, expertise and market analysis leads MSMEs to remain small and does not increase or expand their business.
- **Developing countries’ procedures and the lack of transparency:** The complexity and burdensome measure concerning the collection of data, have made MSMEs rely on hired consultants’ for acquiring data and gain clarity.

Although, MSMEs are given substantial importance as seen with Article 6.13 of the Anti-Dumping (AD Agreement) and Article 12.11 of the Agreement on Subsidies and Countervailing Measures (SCM) which reads: “*The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying the information requested, and shall provide any assistance practicable*”<sup>10</sup>. The functioning and implications of AD and SCM Agreement remains unclear, as evident from the frequent reporting. The interpretive effect of AD and SCM Agreement only pertains to procedural matters rather than the actual application of duties. Most Indian start-ups experience lack of legal understanding of rules/provisions in their early phase due to lack of proper guidance with regard to approvals and complex laws. One reason for lack of proper guidance is limited budget of MSMEs who are unable to afford legal consultants or experts.

## 1.2. BRIEF ANALYSIS ON THE EFFECTS OF DUMPING AND SUBSIDIES ON MSMEs

The growing inter-connectivity of trade has resulted in the existence of trade barriers being imposed as protectionist measures for preserving the domestic economy. This is one of the reasons why AD and CV measures have gained popularity as substitutes for trade barriers.

---

<sup>7</sup> Mukherjee, S. Challenges to Indian micro small scale and medium enterprises in the era of globalization. *J Glob Entrep Res* 8, 28 (2018). <https://doi.org/10.1186/s40497-018-0115-5>.

<sup>8</sup> RBI. (2019, June). *Report of the Expert Committee on Micro, Small and Medium Enterprises*. Reserve Bank of India. <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=924#CH5>.

<sup>9</sup> Soni, S. (2021, August 30). *Small Industry Day: What Indian MSMEs believe would help them become big amid myriad challenges*. Financial Express. Retrieved February 3, 2022, from <https://www.financialexpress.com/industry/sme/msme-eodb-small-industry-day-what-indian-msmes-believe-would-help-them-become-big-amid-myriad-challenges/2319156/>.

<sup>10</sup> Loly A, & Gaitán G. (2020, August). *Trade Agreements and the World Trade Organization: Lessons for the Micro, Small, and Medium-Sized Enterprises Joint Statement In*. International Institute for Sustainable Development, <https://www.iisd.org/system/files/2020-09/trade-agreements-wto-en.pdf>.

Dumping and subsidies are anti-competitive measures that is increasingly faced by MSMEs because of the difficulties it endures in matching the competitor's prices in the markets.<sup>11</sup> Developing countries such as India continue to face the adverse effects with dubious and foreign exporters who are said to dump products with the occurrence of an increase in demands globally. For an MSME to counter dumping, the first step is to proceed for an investigation, however, this process has three main challenges:<sup>12</sup>

1. high legal costs;
2. difficulty obtaining domestic and foreign pricing, and production data; and
3. difficulty in demonstrating industry support.

*First*, this report addresses the issues MSMEs faces to establish their business in markets followed by an understanding of the AD/CV investigations. *Secondly*, the report provides an overview of the provisions in the AD Agreement and SCM Agreement for MSMEs, and then focus on the procedures provided in the DGFT Manual. *Thirdly*, the report focuses on the best practices that MSMEs have adopted around the world in regard to the filling of applications and simplifying the procedure for AD/CV investigation.

The purpose of this report is to provide policy solutions for issues MSMEs face during AD/CV investigations. The goal is to prepare a new instrument to respond to the problems small scale businesses and players face, and how these can be addressed to solve the pre-existing inequalities and ambiguities present in the AD/CV framework in India.

### 1.3. IMPACT OF COVID-19 ON MSMEs: ROAD AHEAD

The onset of the Covid-19 pandemic created havoc on the global economy, particularly affecting businesses dependent on domestic markets. The imposition of ADD or CVD do not always aid MSMEs as sometimes downstream industries are dependent on certain imports for their production. The levying of these duty would increase their operating costs. The US, India, and China, doubled their use of anti-dumping measures in the pandemic period (July 2020-June 2021) against the cheap inflow of certain goods, such as steel and chemicals, but in contrast, most nations' demonstrated restraint in the imposition of new trade-restrictive measures related to the pandemic.<sup>13</sup> The continued use of ADD will almost certainly have a detrimental influence on the MSME sector, which is a primary user industry, and is contrary to the government's objective of ensuring MSMEs' systemic survival when competing with large enterprises. It is likely that the impact of COVID-19 may continue to affect MSMEs in India for the next three to five years, so it is inappropriate to burden MSMEs with additional costs.

The pandemic has caused disruption in the proceedings of AD and CV investigations:

- I. **Impact on the collection of data and filing of applications-** The industries are not in a position where they can collect data and provide the information deemed necessary for filling applications. This may bring a procedural overhaul for introducing fresh investigations and is likely to have an adverse impact in terms of sunset reviews as the present procedure of DGTR requires that a review application be filed at least 270 days before the expiry of anti-dumping duty. Further, the DGTR may allow an extension of 30 days, on due cause being shown. However, with all industries being impacted by the lockdown, industry may require further extension of time to file the applications.
- II. **Impact on initiation of investigation-** While the DGTR continues to make efforts to minimise disruption of work, it is impossible to avoid delays which might be due to restriction of movement, concerned people being affected by Covid 19 and other such factors. The impact is likely to be more noticeable in terms of delays in the initiation of investigations. A key issue that may arise from the delay in initiation is the possible need for change in the period of investigation that is, the period for which dumping or subsidy margins are determined. As

---

<sup>11</sup> Obalade, T. A. F. (2014). Analysis of dumping as a major cause of import and export crises. *International Journal of Humanities and Social Science*, 4(5).

<sup>12</sup> *Antidumping and Countervailing Duties: Key Challenges to Small and Medium-Sized Enterprises' Pursuit of the Imposition of Trade Remedies*. (2013, June 25). Government Accountability Office. Retrieved February 25, 2022, <https://www.gao.gov/products/gao-13-575>.

<sup>13</sup> Sen, A. (2021, December 12). *Anti-dumping duties doubled during peak Covid, WTO report shows*. The Hindu Business Line. Retrieved February 13, 2022, <https://www.thehindubusinessline.com/news/anti-dumping-duties-doubled-during-peak-covid-wto-report-shows/article37938187.ece?homepage=true>.

per the timelines mentioned above, this period cannot be more than six months at the time of initiation of the investigation. Therefore, wherever a period of more than 6 months has elapsed since the end of the period of investigation, the DGTR would have to modify the period of investigation at the time of initiation. This may be difficult for the industries that are suffering from a lack of resources and are unable to provide the necessary information due to the lockdown. Further, changes in the period of investigation tend to be difficult for smaller producers that face challenges in compiling data on a quarterly basis.

**III. Impact on future applications-** COVID-19 pandemic is likely to have an adverse impact on future applications. In the present scenario, the demand itself has declined, leading to low imports. It may be more challenging for industries to establish that they have suffered an injury in terms of increased imports. The DGTR may have to consider this period as an abnormal period and exclude it from consideration. This would need to be determined on the facts and circumstances of individual cases.

#### **SUMMARY BOX**

The introduction is a glimpse into the report which has focused on the challenges faced by MSMEs in the domestic markets during the initiation of AD and CV investigations due to influx of imported dumped and subsidised like or competitive goods. Additionally, it has been noted that these practices do not allow MSMEs to grow. Through this, the section briefly touches upon the problem faced by MSMEs in filing and participating in the AD/CV investigation. This section also briefly identifies the regulatory gap in the laws, regulations, and policies with regard to AD and CV measures and introduces the impact of COVID-19 on MSMEs and the road ahead.

## 2. LAWS AND REGULATIONS REGARDING ANTI-DUMPING DUTY AND COUNTERVAILING DUTY IN WTO AND INDIA

Small businesses and local players are affected by the import of dumped or subsidised imports. Under these circumstances, the importing country's authorities may impose Antidumping Duty (ADD) to neutralise or lower the effects of the dumping.<sup>14</sup> ADD is levied to discourage dumping of goods in the importing country. It has been seen that a “1% increase in the ADD decreases the import of the targeted product by about 0.43~0.51%”.<sup>15</sup> AD measures have a direct impact on pricing, which is the most fundamental aspect of corporate strategy.<sup>16</sup>

On the other hand, Countervailing Duty (CVD) is levied by the importing country when the exporting country gives certain exemptions or subsidies to their domestic industry (DI) so that they are able to export goods at a lower price.<sup>17</sup> Article 1 of the SCM Agreement provides an exhaustive list of financial contributions that can be considered as a subsidy, such as a direct transfer of funds, foregoing the collection of taxes, providing goods and services, etc. The government will likely maintain a form of price support that will operate directly or indirectly for increasing the exports and imports into the country and thereby conferring the benefit accordingly. Subsidies are induced for correcting market failures and enhancing economic welfare.<sup>18</sup>

In contrast, they can also distort resource allocation in a country which can lead to the reduction of the welfare of the importing country. The CV practice, is similar to AD and often has an impact on pricing which affects small businesses through the imposition of exemptions and duties. Nevertheless, it is difficult to identify them in practices where they may likely generate a benefit to the economy.<sup>19</sup>

Recently, digital trends have allowed for an **Online Process to File Applications**. This is a welcome step for easing the process of filing, especially when India is moving towards digitisation. Through the new application process, industries would be able to file and track their cases easily. This would encourage the sectors to initiate more AD/CV investigations.<sup>20</sup> Likewise the Government of India has taken the following steps to ensure easier participation for MSMEs:

1. creation and up-gradation of an online portal titled ARTIS (Application for Remedies in Trade for Indian industry and other Stakeholders, <https://164.100.68.187/>), to enhance transparency and ease of business.<sup>21</sup> However, the online process is only for fresh application for AD and sunset review as of now.
2. updated comprehensive questionnaire formats notified for filing response by Exporters, Importers, and Domestic Industry; A Manual of operating practices for Trade Remedy Investigations and a Trade Defence Wing has been published to ensure uniformity and transparency, FAQ's and Brochures on Trade Remedial Measures (TRMs) to enable Industry to appreciate key aspects of TRMs.<sup>22</sup>
3. to ensure continued support to the DI hit by unfair trade practices during the COVID-19 pandemic, online systems have been institutionalised for submission of applications/responses through email, holding of oral hearings, and requisite data verification through DVC.<sup>23</sup>

---

<sup>14</sup> William Kerr and Laura Loppacher, *Anti-dumping in the Doha Negotiations Fairy Tales at the World Trade Organization*, Volume 38 (2), Journal of World Trade, 211, 220-223 (2004).

<sup>15</sup> CHOI Nakgyoon, *Economic Effects of Anti-Dumping Duties: Protectionist Measures or Trade Remedies?*, Korea Institute of International Economic Policy, KIEP Working Paper 16-13,7,33 (2016).

<sup>16</sup> *Ibid.*

<sup>17</sup> (n.d.). Chapter 6 Subsidies And Countervailing Measures. Retrieved February 19, 2022, from <https://www.meti.go.jp/english/report/downloadfiles/gCT0006e.pdf>.

<sup>18</sup> *Fisheries Subsidies and the WTO - 1. introduction* (n.d.). World Trade Organization. Retrieved February 19, 2022, from [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/wtr06-2f\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr06-2f_e.pdf).

<sup>19</sup> Sykes, A. O. (1989). *Countervailing Duty Law: An Economic Perspective*. Chicago Unbound. Retrieved February 15, 2022, from [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13590&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13590&context=journal_articles).

<sup>20</sup> *DGTR launches online filing system for anti-dumping applications for speedy resolution*. (2019, October 1). The Economic Times. Retrieved February 16, 2022, from <https://economictimes.indiatimes.com/news/economy/policy/dgtr-launches-online-filing-system-for-anti-dumping-applications-for-speedy-resolution/articleshow/71393939.cms?from=mdr>.

<sup>21</sup> *Year End Review 2020 - Department of Commerce, Ministry of Commerce & Industry*. (2020, December 30). PIB. Retrieved February 25, 2022, from <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1684674>.

<sup>22</sup> *Trade Remedial Measures*. (n.d.). The Directorate General of Trade Remedies. Retrieved February 20, 2022, <https://www.dgtr.gov.in/>.

<sup>23</sup> Notice for Oral Hearing F. No. 7/26/2020-DGTR, [https://www.dgtr.gov.in/sites/default/files/Oral%20hearing%20Letter\\_DVC\\_FAB\\_SSR%20%281%29.pdf](https://www.dgtr.gov.in/sites/default/files/Oral%20hearing%20Letter_DVC_FAB_SSR%20%281%29.pdf)

4. the Ministry of Commerce's trade investigation arm, DGTR, is also said to be developing a web-based application for allowing the petitioners to make online submissions and any other information related to AD/CV probes (largely defined as Quasi-Judicial Processes). The application's objective is aimed at helping industries participate in these investigations which are important trade remedial measures.<sup>24</sup>

However, whenever a new policy or mechanism is established, it is critical to create a case for reform, demonstrating how this procedure would successfully support MSMEs with services and cost factor allocation. There are still regulatory gaps that the Indian trade remedial system faces which is addressed below. The following section of this report will focus on certain reforms that have been introduced to reduce the challenges faced by the applicants for AD/CV investigations, especially for MSMEs. Further, this section aims to simplify the elaborate and complex Indian AD and CV investigation procedures.

## 2.1. LEGAL FRAMEWORK OF ANTI-DUMPING LAWS

Article VI of GATT 1994 and the AD Agreement provides the basic framework for countries to adopt and develop their domestic legal framework for Antidumping investigations.

AD provisions under the WTO Agreement:

- **Based on Article VI of GATT 1994:** Although this article recognises the activity of dumping, the WTO has not prohibited dumping in its agreement. It gives the members the right to levy duty provided **material injury** can be shown. This Article serves as the foundation of the AD Agreement.
- **Anti-Dumping Agreement (Implementation of Article VI of the GATT):** The ADA is divided into three parts and two annexes.<sup>25</sup> Part I (Articles 1 to 15) covers the definitions and procedural provisions which the investigating authorities of the Contracting Parties need to comply with for imposition of the AD measures. Part II (Articles 16 and 17) establish the WTO Committee on Anti-Dumping Practices (ADP) and special rules for WTO dispute settlement relating to AD matters. Part III (Article 18) consists of the final provisions. Further, Annex I provide procedures for conducting on-the-spot investigations, while Annex II lays the imposition of constraints on the usage of best information available in cases where interested parties may cooperate insufficiently during investigations.

AD under Indian law:

- **Customs Tariff Act, 1975 - Section 9A, 9B, and 9C (as amended in 1995):** Section 9A of the said Act gives the power to the Central Government to levy ADD in cases where dumping occurs. The antidumping duty cannot exceed the margin, which is the difference between the export price and normal value. Section 9B gives the power to the central government to not levy ADD in special cases and section 9C enumerates the provision of appeal to the tribunal, i.e., CESTAT. The AD order by the investigation authority is purely recommendatory.
- **Anti-Dumping Rules [Custom Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and or Determination of Injury) Rules, 1995:** These Rules specify the procedural aspect of levying ADD along with timelines.
- **Investigation and Recommendation by Designated Authority (DA):** The investigation is carried out by the Director General for Trade Remedies (DGTR), which is the Designated Authority (DA). DGTR investigates and provides its final findings such as the method of investigation, time period, final findings, etc.
- **Imposition and collection of duty by Ministry of Finance:** The decision on whether to impose the ADD or not is with the Department of Revenue, Ministry of Finance, which based upon the recommendations provided by the DGTR.

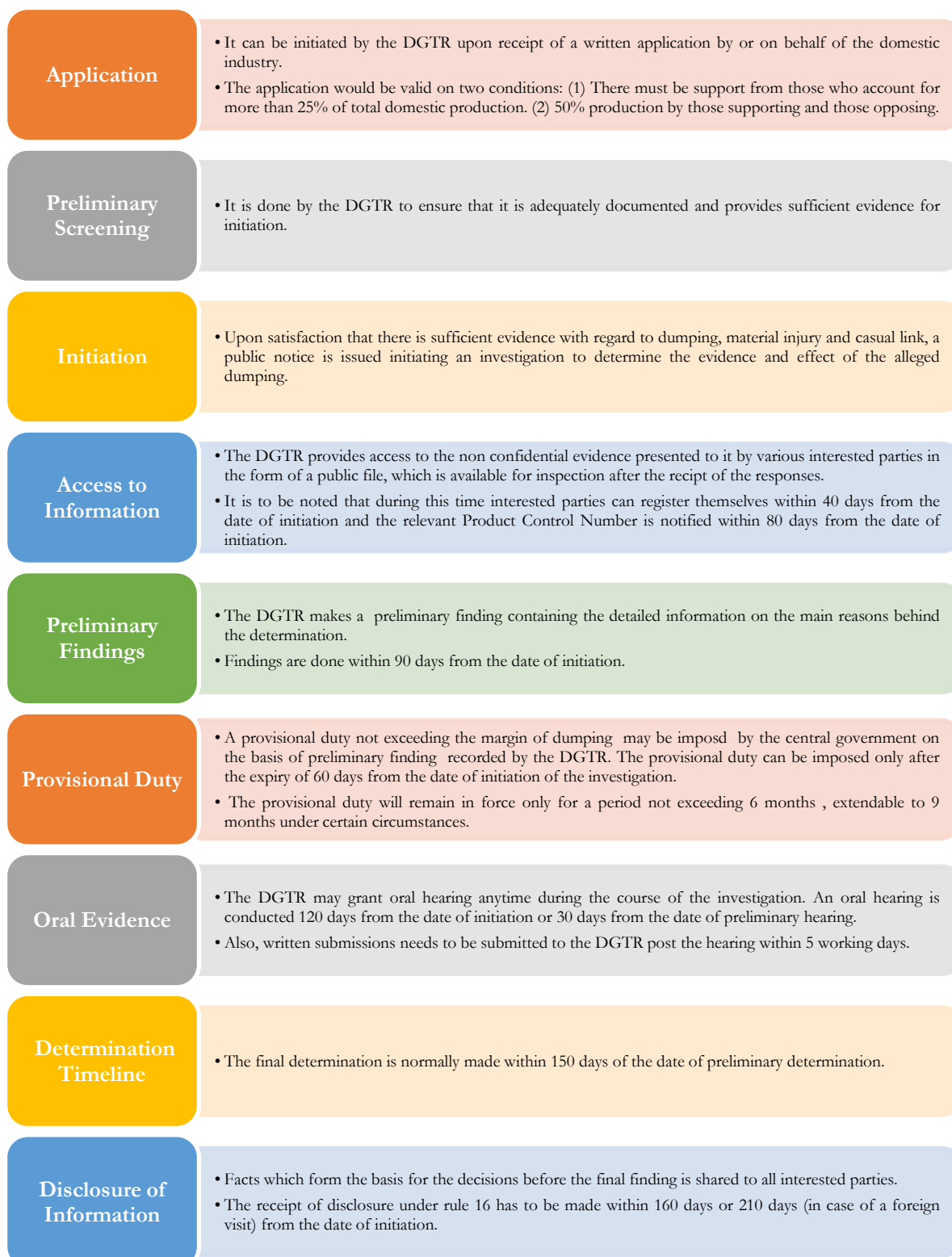
---

<sup>24</sup> DGTR developing web app for submission of info about anti-dumping probes: Survey. (2019, July 4). The Economic Times. Retrieved February 16, 2022, <https://economictimes.indiatimes.com/news/economy/policy/dgtr-developing-web-app-for-submission-of-info-about-anti-dumping-probes-survey/articleshow/70074840.cms?from=mdr>.

<sup>25</sup> WTO, Agreement on Anti-Dumping, 1994, [https://www.wto.org/english/docs\\_e/legal\\_e/19-adp.pdf](https://www.wto.org/english/docs_e/legal_e/19-adp.pdf).

## 2.1.1. PROCEDURE OF ANTIDUMPING LAWS IN INDIA

FIGURE 2: FLOWCHART EXPLAINING THE PROCESS OF LEVYING AN ANTI-DUMPING DUTY



<b>Time limit for Investigation process</b>	<ul style="list-style-type: none"> <li>• One year from the date of initiation of the investigation. The above period may be extended by the central government by 6 months..</li> </ul>
<b>Final Notification</b>	<ul style="list-style-type: none"> <li>• A final notification is released and an opportunity is given to the stakeholders to send in their comments before the final report.</li> <li>• The notification should be given within 180 days or 240 days (in case of a foreign visit) from the date of initiation.</li> </ul>
<b>Final Determination</b>	<ul style="list-style-type: none"> <li>• The interested parties submit their response to the disclosure statement issued by the DGTR. The DGTR examines these final submissions of the parties and comes out with final findings.</li> <li>• The final determination is normally made within 12 months from the date of initiation which may be extended by 6 months under special circumstances.</li> </ul>
<b>Duty Notification</b>	<ul style="list-style-type: none"> <li>• A copy of the initial findings is sent to the tax research unit in the department of revenue which, in turn, notifies the duty within a period of 90 days from the date of final finding after obtaining approval of the competent authority.</li> </ul>
<b>Appeal</b>	<ul style="list-style-type: none"> <li>• An appeal can be made to CESTAT within 90 days from the date of imposition of the duty.</li> </ul>

**Note: Any change which is to be made in the application has to be done within 3 months of initiation. After the expiry of this timeline no further change would be accepted by the DGTR**

Source: Prepared by the Authors of the report

### 2.1.2. MSME INVOLVEMENT IN STAGES OF AD INVESTIGATION

STAGE	ACTION
At the time of Application	<p>The applicant needs to provide detailed information regarding (i) information on the imported product; (ii) information on the domestic industry and the domestic market; (iii) evidence of dumping; (iv) evidence of injury; and (v) evidence of a causal link, (vi) any other confidential information which should be properly marked. If the application is filed by a supporter industry (company) on behalf of the applicant, then the CEO of the Company has to issue a certificate in that regard.</p> <p>At this stage, MSMEs would need the help of accounting consultants and industry experts for that particular product for the compilation of cost details. <b>Legal consultants' help is also required for understanding antidumping laws and their implications.</b> Although appointing legal consultants is not mandatory, usually they are consulted to understand technicalities.</p>
At the time of Scrutiny of Applications	<p>During scrutiny, the DA may ask the applicant to furnish additional information or to fill up some documents which may be partially filled. During this time also the MSME may still require the <b>guidance of accounting and legal consultants.</b> This is a crucial stage as based upon this the initiation of the investigation will proceed.</p>
At the time of issuing the notice	<p>If the application is accepted, a public notice is sent based upon which interested parties can also file applications. The MSME should prepare a list on their own as to who could possibly be the interested parties. After the issuance of a notice, the applicant can informally approach the interested parties and ask them to get</p>



STAGE	ACTION
	registered. This would make the applicant's case stronger. <b>During this phase, the guidance of industry experts is of importance. At this stage, questionnaires are also circulated to exporters, importers wherein a declaration of a legal representative is required.</b>
At the time of investigation	The DGTR may ask for further information if required from the MSMEs. Once the application is successful, the applicant is of the view that the process will be taken up by DGTR. However, providing support during the investigation is crucial as the fate of the application depends on the investigation. At this stage, the applicant must be prepared to provide any help if asked and keep a track of the developments. At this stage, continuous <b>support of experts is not required but occasional consultation may be required.</b>
At the stage of the oral hearing	The DGTR has the discretionary power to hold an oral hearing. This gives the applicant and the interested parties a chance to explain their case. If the parties wish to furnish additional information, they can do so but a copy of the same has to be provided to all, similar to a court proceeding. <b>At this stage legal consultants usually take care of the documentation as the stakes are high for the particular applicant and domestic users.</b> Based upon this, disclosure statements would be given by the DGTR.
After oral hearing	Designated Authority grants time for filing written submissions by indicating a specific date. All the participants are instructed to reproduce their oral submissions in writing. Another date is also indicated for filing rejoinder written submissions by all the interested parties. At this stage also the <b>involvement of applicants and legal consultants is crucial.</b>

## 2.2. LEGAL FRAMEWORK OF COUNTERVAILING LAWS

Legal Framework as per WTO:

- **Based on Article VI(3) of GATT, 1994:** The article states that the term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.
- **Agreement on Subsidies and Countervailing Measure:** This agreement lists down the procedure for CV measures and investigations. SCM Agreement has 11 parts, where part I applies only to subsidies that are allocated or provided to an industry or a group of industries specifically; part II and III define the aspects of specific subsidies that are divided into prohibited and actionable subsidies and their respective rules and procedures. Part V is established to necessitate the fulfilment of the substantive and procedural requirements and part X deals with the dispute resolution mechanism.

Legal framework under the Indian law:

- **Section 9 of the Customs Tariff Act, 1975:** The section contains the requisite provisions for the imposition of countervailing duties in India and their respective rules and procedures. The Act imposes a customs duty on goods imported in India and is levied as per the rates specified in the Customs Act under Schedule 1 and 2.
- **Customs Tariff (Identification, Assessment, and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995:** Sections 9, 9B, and 9C of the above Act together with the rules contain the provisions governing Countervailing Duty in India.
- **Investigation and Recommendation by Designated Authority (DA):** The investigation is

carried out by the DA under the aegis of DGTR. The DA prepares an entire report stating the method of investigation, time period taken, final findings, etc.

- **Imposition and collection of duty by Ministry of Finance:** Lastly, upon the facts of the report prepared by DA, the Ministry of Finance takes the final call as to whether a duty should be imposed or not.

## 2.2.1. PROCEDURES OF COUNTERVAILING LAWS IN INDIA

**FIGURE 3: FLOWCHART EXPLAINING THE PROCESS OF LEVYING A COUNTERVAILING MEASURE**



## 2.2.2. MSMES INVOLVEMENT IN STAGES OF CV INVESTIGATION

This section covers various stages where MSMEs involvement is required at an industry level during CV investigations. As the process differs from AD Investigations, it is important to understand these concepts as well. On several occasions, information from different producers is sought in understanding the support received by them from the Government or its agencies, opposition and confirmation contentions for the production and sales, etc. This helps in determining whether the particular MSME is an will constitute a Domestic Industry or not.

STAGE	ACTION
<p><b>At the time of Application</b></p>	<p>The applicant needs to provide detailed information regarding (i) information on the imported product; (ii) information on the domestic industry and the domestic market; (iii) evidence of subsidies on products; (iv) evidence of injury; and (v) evidence of a causal link between subsidised imports and injury, (vi) any other confidential information (properly marked).</p> <p>If the application is filed by a supporter industry (company) on behalf of the applicant, then the CEO of the Company has to issue a certificate confirming the same.</p> <p>This stage involves auditing of financial statements and costs of audited reports, which means that the MSMEs will likely need the help of accounting consultants and industry experts for that particular product for compilation of these details.</p> <p><b>(Note - For CV procedure, expertise from a legal consultant at this stage is likely not necessary but is advisable, that they may be involved).</b></p>
<p><b>At the time of Scrutiny of Applications/post-initiation of application</b></p>	<p>During scrutiny, the DA may ask the applicant to furnish additional information or to fill up certain incomplete documents. MSMEs will be required to furnish further details about their sales, consumption, and performance parameters.</p> <p>In addition to this, <b>MSMEs will also be required to furnish a declaration by their legal representative.</b> This stage requires a lawyer's help not only to understand the technicality of processes but also to get an overview of countervailing duties and their implications, and to fulfil the necessary formalities.</p> <p><b>(This is a crucial stage as this determines whether an investigation is initiated)</b></p>
<p><b>Validation</b></p>	<p>The Authority may also validate the information by conducting a verification of the domestic industry or other respondent(s). MSMEs will be required to notify the exporter(s)/subject country(ies) in advance. If an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the findings may be finalised based on the best available facts pursuant to Rule 7(8) of the CV Rules.</p>
<p><b>Other stages of the process such as at the time of issuing of notice investigation, oral hearing and post oral hearing.</b></p>	<p>Depending on the nature of the requirement or action, the assistance of legal consultants or experts would be required for other stages involved in the countervailing investigation process.</p>

### 2.3. ANALYSIS OF CERTAIN KEY AREAS IN THE PROCESS OF TRADE REMEDIAL MEASURES

After a brief discussion pursuant to AD and CV regime in India and the possible stages where legal assistance may be required by MSMEs, we move to next section, analysing certain areas of the AD/CV law which creates difficulty for the industries especially MSMEs along with possible solutions or best practices that may be adopted.

- **Non-Injurious Price (NIP)**

Imports made at a certain price that would not harm the industry allows the domestic sector to charge a price for recouping expenses and earning a respectable return on investment. But the question remains as to what constitutes a respectable return on the capital utilised for the product for recovery of interest as per Annexure III of the Customs Tariff (Identification, Assessment, and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995. However, there is no precise rate of return that must be addressed in the legislation or the rules. Authorities regard a rate of return on capital employed of 22% to be acceptable.<sup>26</sup> The issue with calculating the return on capital employed is that it does not account for the intangible assets used by the domestic industry. In the case of a technology-oriented product, the cost of an intangible asset such as royalties or technical know-how, for example, could be exceedingly high. However, intangible assets are not considered in the calculation of capital employed for granting a 22% return, and the amount invested by the industry in technology is completely ignored, according to the current DGTR practice.

NIP determination in other countries:

- In Australia, AD commission derives NIP or what is called unsuppressed selling price through using a price that the industry could reasonably achieve in the market in the absence of dumped or subsidised imports is considered. However, where it is not possible, the Commission constructs NIPs on the basis of the DP's cost to make and sell the product, plus a profit. The cost of production considered is the actual cost incurred by the industry. For the purpose of determining a reasonable amount of profit, the weighted average profit rate achieved by the industry in the most recent period unaffected by dumping and through the operation in a similar category of goods is considered.
- The European Union determines the NIP on the basis of cost and after adding profit thereon. While the cost considered are actual costs, profit is the profit earned by the industry under normal conditions of competition, in the absence of dumped/subsidised imports.<sup>27</sup>

It is clear from the approach used by the two authorities applying frequent ADD/CVD, that they do not use a fixed rate of return for the purpose of determining a NIP. The calculations are primarily based on the domestic industry's profit pattern in the past. MSMEs will therefore be required to provide a profit pattern data that can very likely help in assisting the IA (in case of India, DGTR) in determining the NIP during the investigation.

- **Suspension Proceeding**

Duties once imposed, are in effect for a period of five years, unless they are reviewed. WTO members may use a temporary revocation of tariffs in the event of a significant change in the market condition following the application of duties. India has suspended duties in a variety of situations, such as changes in market conditions, supply shortages, exorbitant pricing by domestic producers, public interest, force majeure, and so on. **Although India has included a clause that allows the involved authorities to suspend duties, it does not however include a method for doing so.**

India can adopt the process of suspension proceedings as followed in other countries. For instance, suspension provisions are detailed and structured in the legislations of countries such as Argentina, Brazil, Turkey, and the European Union, among others. The European Commission permits the suspension of AD measures, where there is a temporary change in market conditions that makes the continued imposition

---

<sup>26</sup> Directorate General of Trade Remedies. (2018, December). *Manual Of Operating Practices For Trade Remedy Investigations* (No. 1). Dolphin Printo-Graphics.

<sup>27</sup> *A legal guide to EU anti-dumping*, (2019, April 29), Herbert Smith Freehills, <https://www.herbertsmithfreehills.com/latest-thinking/a-legal-guide-to-eu-anti-dumping>.

of such measures temporarily inappropriate. However, the European Commission may recommend suspension only when the injury is unlikely to resume during the suspension.<sup>28</sup>

Similarly, in Brazil, duties may be suspended for a year, with the possibility of an extension for another year if market conditions change temporarily. However, this is contingent on the possibility of no other injury occurring during the suspension period, as well as consultation with the domestic industry.

In India currently, the suspension of duties is guided by the proviso inserted to the recently amended Section 9(6) and 9A (5) which reads as follows: “*Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.*” The orders issued by the Ministry of Finance, suspending duties for steel imports were silent on the reasons or need for such revocation or the ‘change in the market condition’.

In the annual budget for Financial Year 2021-22, the Government of India announced that such suspension of duties arose owing to a spike in global and domestic prices which has affected the MSMEs and other user industries. The suspended duties on the steel imports were expected to be back in force by September 2021 but are further extended until January 2022. Thereafter, the import duty for steel industry has been waived off in May 2022.<sup>29</sup> The current regime for suspension of duties in India looks bleak, given the lack of codified rules. The interested parties are not provided an opportunity to represent or defend their interest. While the duties are imposed following a detailed investigation, the duties were suspended without examining the recurrence of dumping/injury consequent to the suspension.

#### 2.4 ANALYSIS ON THE REQUIREMENT OF CONSULTANTS DURING AD/CV INVESTIGATION PROCEDURE: HELPFUL FOR MSMEs OR NOT?

The legislative process for trade remedial measures is linked with the prospect of protecting economic competition regarding national or foreign economic activities and customs legislations. According to AD and CV law, there is no requirement for a legal consultant’s assistance to file the application or during the proceedings. However, in our view a legal consultants’ help is advisable, at least during the time of application of the AD or CV investigations. The entire practice of filing written submissions, procedures making oral submissions, following oral hearings, and the requirement of the signature of a legal representative for the post-initiation/questionnaire part are indicators that a lawyer’s involvement is required. **The process of completing an investigation takes about a year and it is assumed that a year-long practice for appointing a legal consultant is an expensive affair for MSMEs.** In 2020, there were discussions surrounding to set up a legal platform for helping MSMEs with the documentation process in regards to filing a petition, process details, and others. The Director-General, Federation of Indian Export Organisations stated: “*The main problem is that MSMEs take time to realize that dumping or import surge has happened and they are not prepared. This is a good move as trade remedial actions are costly, especially for small players who are not organised*”<sup>30</sup>

An interested party may seek assistance of trade lawyers who have the ability to understand and apply the internationally recognised trade remedies investigation jurisprudence along with knowledge of domestic procedures and previous findings of the DGTR and courts, as well as may be familiar with the procedure of trade remedial investigation. The trade lawyers can also provide assistance regarding the submission of mandatory documents for the investigation process, and for preparing requests for evidentiary addition in the process, etc. An interested party may also seek assistance once the investigation is completed in cases where the interested parties may want to challenge or appeal the final finding of the DGTR before the domestic appellate courts.<sup>31</sup>

It is unlikely that any national MSMEs is familiar with the procedural and substantive aspects of the trade remedial investigations, such as AD and CV, domestic or foreign. Additionally, MSMEs may not be aware

---

<sup>28</sup> *ibid.*

<sup>29</sup> The Indian Express, Government waives Import Duty for steel Industry, export duty on iron ore hiked upto 50 per cent, 21<sup>st</sup> May, 2022, <https://www.newindianexpress.com/business/2022/may/21/government-waives-import-duty-for-steel-industry-export-duty-on-iron-ore-hiked-up-to-50-per-cent-2456376.html> ( Last accessed on 5<sup>th</sup> Nov, 2022).

<sup>30</sup> Suneja, K. (2020, January 13). Legal platform to counter cheap imports. *Economic Times*. <https://economictimes.indiatimes.com/news/economy/foreign-trade/legal-platform-to-counter-cheap-imports/articleshow/73220520.cms>.

<sup>31</sup> Козьяков, С. Ю., & Гладштейн, А. А. (2012). Legal practitioner in contemporary international law: new opportunities. *Актуальні проблеми міжнародних відносин*, (111 (1)), 189-193.

regarding the verification process and site visit conducted by the Investigating Authority (IA) as part of the investigation. Therefore, lawyers can help the client familiarise with these processes and advise them on various aspects of the investigation, such as what constitute less than fair value sales; inform them of the responding company's sales practices; and help develop the relevant facts necessary for defending their client's interest.

One of the key roles of a legal consultant is to help their clients in realising the procedural rights available to them and how to use these rights to their client's advantage. At times, when specific legal issues involve bringing the attention of respective national authorities, it is pertinent to note that the right lawyers and legal counsel will be able to defend and guide exporters/importers accordingly. As mentioned above, a legal consultant is considered vital, and replacing them will not likely be considered a suitable option. **However, associating with think tanks and educating people regarding the process would be helpful in bringing down the dependence on legal consultants.** Lastly, on whether MSMEs need a lawyer for AD or CVD investigations, it depends on the kind of assistance required and whether the MSMEs have the resources to engage a legal consultant, even though legal consultants most likely be required for understanding the complexities of the AD/CV regulations. The authors have attempted to simplify for MSMEs the range of AD or CVD investigation complexities, however, due to the slow reformatory mechanism of India, the authors of this report do not see it likely that MSMEs will be able to effectively ease their difficulties without the engagement of lawyers or consultants.

#### **2.4.1. RECOMMENDATIONS IN IMPROVING LEGAL CONSULTANTS' SERVICES TO MSMEs**

An overview of the recommendations that India can adopt for assisting MSMEs in filing of trade remedial investigations are:

1. The Government of India may build a platform of consultants for MSMEs, specifically for assisting them with the trade remedial measures. Though this was under discussion, the same has not been implemented. The authors would like to reiterate the importance of such a platform, and on how this platform can serve as a one-stop solution to all the concerns the MSMEs can have from - collecting information, looking for information, supporting their cases and rights in the Supreme Court (in times of the government challenging them). Additionally, it is necessary to include a "pre-decided fee" for the legal consultants, and this fee needs to be formulated on the basis that MSMEs can afford and at the same time should not discourage the legal consultant's efforts (balance of interests).
2. The Government officials and retired industrial experts who have experience in AD/CV investigations, domestically and before the WTO, can conduct various workshops and seminars for spreading awareness of the trade remedial measures, which in likelihood will significantly help in reducing the dependence of MSMEs on legal consultants. Another aspect here would be to engage law students to assist such legal consultants and experts for research, where they can assist with newsletters, reports and research papers regularly on issues that MSMEs face and provide possible recommendations, both on the policy front that exists and the ones that can be adopted with a cross-over, including research and best-practices from other jurisdictions.

The report contends that the need for lawyers or consultants in effectively easing the procedural gap of AD/CV investigations for MSMEs is still needed. Unless the Government of India procures the benefits of establishing platforms and allowing for pro-bono services for easing the difficulties, it seems unlikely that the existence of regulatory and procedural gap will allow the MSME sector to overcome difficulties without the help of a lawyer or a consultant.

#### **SUMMARY BOX**

This section briefly explains the law of AD/CV, at the WTO and national level. For the benefit of the beneficiary, the complex procedure of AD/CV has been simplified in this section. This is followed by an analysis of the complexities in the law and possible solutions to it. The chapter also elaborates upon the role of the legal consultants in the AD/CV procedure and at what stages the MSME is required to be more vigilant for the success of their case. The section concludes with a set of recommendations vital for easing the difficulties faced by the MSME sector while hiring the legal team for advice, filing of claims or

representing their interests in the investigations. Lastly, the section highlights the need for legal consultants is crucial, especially when significant challenges are faced by the MSME sector, as explained in next section.

### 3. ANALYSING THE CHALLENGES MSMEs FACE DURING AD/CV INVESTIGATION

India has initiated at least 652 trade remedy investigations since 1992 consisting of 600 AD cases, 9 Countervailing investigations and 43 safeguard investigations.<sup>32</sup> Although India has been a frequent user of trade remedies, there are still difficulties in the trade remedy process. The commencement of these investigations and the subsequent time can have an immediate influence on trade flows. When no duties are imposed, the commencement of the investigation is a tremendous cost for the respondents, and it is possible that such measures will threaten MSMEs that are uninformed of the investigations' outcomes.<sup>33</sup> Due to data discrepancies, system difficulties, and the cost of cooperation in the investigation, MSME have difficulty defending their interests. Particular difficulties are faced by industries in remote locations with no access to internet or technology.

While the duties are imposed, another challenge that arises when they approach their expiry term: whether the duty's expiry will likely result in the continuation or re-emergence of the injury. This leads to the initiation of a sunset review; however, developing countries appear to receive little consideration because AD measures under the law can very likely be extended for successive new terms on the basis that the authority determines the expiry will result in the recurrence. Evidence also suggests that governments favour larger industries over MSMEs, and that the administrative expenditures of investigations have an impact on MSMEs' existence. The ADA, Article 6.13, and the SCM Agreement, Article 12.11, both provide for parties' support, stating that "[t]he authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying the information requested, and shall provide any assistance practicable," but this has not been enough to alleviate the burden on MSMEs in participating in the proceedings.

Some of the problems faced by the MSME are explained below in detail:

- **Complexities in the collection of data:** In India, as a practice, the producers accounting for at least 25% of the total production can file the application. In the MSME sector, there may be hundreds of small-scale producers of a product, making it difficult to estimate the number of producers or the total production of MSMEs in the country. Thus, it can become difficult for the MSME sector to collect data of producers accounting for 25% of the total production. To ease the challenge being faced, there is a need for adopting a more flexible approach **towards the meaning of "a major proportion" which has been adopted by DGTR in Trade Notice No. 11/2021.** This particular trade notice eases the process of filing for fragmented industry where the applicant does not have to show exactly 25% but can show "major proportion".

Further, data required for pricing and production during the investigation phases are difficult to obtain in India for the MSMEs, and this places an administrative burden when one needs to review the detailed pricing and production data. The lack of employees and expertise for tasks such as data collection, garnering sufficient support from producers for demonstrating and meeting the statutory requirements of industry support with insufficient evidence makes it difficult for the MSMEs to prove their case. To allow respite to the MSME sector, the DGTR should accept data in shorter formats which will ease the complexities for MSME producers. Macro parameters such as production and sales can be taken from producers expressing support and for microanalysis, DGTR should consider a sampling approach.

- **Issues in the computation of non-injurious price:** A proper determination of the NIP requires significant information and documents to be provided, not only at the product level but also for each product type. Further, the DGTR considers the best utilisation of capacity, raw materials, and utilities over the injury period in the computation of non-injurious price, treating any deterioration in utilisation as "*inefficiency*" of the domestic small-scale industry. Often it is found that the NIP calculated is lower than the cost of sales of the industry, due to the inability of the producer to provide complete information regarding changes in product mix, plant cycles, fixed and variable expenses, etc. MSME producers, however, find it more difficult to provide the necessary information in this regard, as the records maintained may not be sufficiently detailed. Thus, there

<sup>32</sup> Directorate General Of Trade Remedies Annual Report 2018–19 *Shaping International Trade*. (2019). Directorate General Of Trade Remedies. <https://www.dgtr.gov.in/sites/default/files/Annual%20Report%202018-19.pdf>.

<sup>33</sup> United Nations Conference on Trade and Development. (2000, October 24). UNCTAD. Retrieved February 16, 2022, from <https://unctad.org/system/files/official-document/c1em14d2.en.pdf>.



is a need for a more liberal approach in cases dealing with the MSME sector. For this, the DGTR can use its discretion, allowed under the law, and consider that any fluctuations in the utilisation of raw materials, utilities, and capacities are not inefficiencies on the part of the producer, and therefore, no adjustment or reduction in cost should be done on that account.

- **Issue regarding the certainty of AD Investigations:** There is a heavy cost involved in the AD procedure which is conducted by the DGTR. However, the final report prepared by the DGTR is not mandatory but is in the form of recommendation as per Rule 17(1) of AD Rules. This report is forwarded to the MOF who may levy the duty as per Rule 18(1) of the AD Rules. This discretionary power of the MOF may discourage MSMEs from filing AD investigations. There have been a few instances in the recent past where the MOF has refused to levy ADD after the final report, such as in the case of Acetone imported from China, Taipei, and Saudi Arabia<sup>34</sup>, Acrylic fiber from Thailand<sup>35</sup>, and many more.
- **Requirements for a valid application:** Valid application for initiating trade remedial measures requires immense information and guidance from some experts which is not readily available with the MSMEs. Even replying to questionnaires for successful applications is a tedious task as some of the questions extend to hundreds of pages, and constitute a major burden, particularly for MSMEs from developing countries (especially India). Exporters find the questionnaire to be time-consuming and complicated. It has been observed that questionnaires have become more complicated over time.<sup>36</sup>

### 3.1. INITIATIVES TAKEN BY THE WTO TO HELP SMEs/MSMEs

Some of the initiatives undertaken by the WTO to assist the SMEs/MSMEs include:

1. The Informal Working Group on Micro, Small, and Medium-sized Enterprises (MSMEs) on 2 December launched the [Trade4MSMEs](#) platform, a tool aimed at helping small companies find trade-related information that improves their ability to trade internationally. The platform will also help policymakers design measures tailored to the needs of small companies.
2. In 2021, the Informal Working Group launched a [Digital Champions for Small Business initiative](#) in partnership with the International Chamber of Commerce and the International Trade Center to help small businesses go digital and increase their participation in international trade.
3. The [Global Trade Helpdesk](#) is an online platform that simplifies market research for companies, especially MSMEs, by integrating trade and business information into a single online portal.

### 3.2. INITIATIVES BY THE GOVERNMENT OF INDIA TO HELPS MSMEs SECTOR

Some of the initiatives undertaken by Government of India to assist the MSMEs include:

1. No fee is prescribed for filing or processing of any trade remedial measures petition with DGTR regardless of the position of the Applicant (Ref: 23 September 2019, [Trade Notice 02/2019](#)).
2. DGTR has adopted the sampling method for fragmented industries and allowed associations/bodies to file on behalf of the MSMEs. However, on whose behalf it is being filed such domestic producers must have at least 50% share in total eligible domestic production of 'like article' as per Rule 5(3)(a) AD Rules and Rule 6(3)(a) of CVD Rules.
3. Risk Management Division of the Central Board of Indirect Taxes & Customs, analyses import data and offense cases and puts targets & interventions in the Risk Management System to intercept suspect consignments (Ref: Public Notice No 68 /2006). This system is used for tracking the cases of imports under misclassification, evasion of Antidumping Duty, Safeguard Duty, or taking of undue benefit under a particular exemption notification.
4. The DGTR has constituted a [help desk](#) and facilitation center, especially for MSMEs for filing

<sup>34</sup> Government of India, Ministry of Finance, F.No. 354/10/2008/-TRU (PT-II), 19 Nov, 2020.

<sup>35</sup> Government of India, Ministry of Finance, Notification No. 36/2020- Customs ADD, 11 Nov, 2020.

<sup>36</sup> Aggarwal, A. (2007). *The Anti-Dumping Agreement and Developing Countries: An Introduction*. Oxford University Press.

trade remedial petitions.

The *function* of the helpdesk is to disseminate information to DI regarding various Trade Remedies, Hand-hold DI, especially MSMEs, in filing trade remedial petitions, guide MSMEs to remove 'data gaps' while filing applications, guide the Indian exporters facing Trade Remedial Investigations in other countries, provide information regarding available Non-Tariff Measures to DI and advise them to avail the same with the support of concerned Administrative Ministry/Department and provide information regarding estimated timelines for completion of various procedures and for disposal of cases.

5. DGTR has dedicated [cells for Outreach and Knowledge and Training for trade remedial measures](#). (Ref: For assistance the Regional Officers could be contact, details are given here: [https://www.dgtr.gov.in/sites/default/files/List\\_RA\\_Nodal\\_Officer.pdf](https://www.dgtr.gov.in/sites/default/files/List_RA_Nodal_Officer.pdf)).
6. [Scheme for Market Development Assistance for MSME Exporters](#) (MSME - MDA) - Assistance for initiating/contesting anti-dumping cases will therefore be made available to MSME associations. Such assistance would be limited to 50% of total costs involved or Rs. 1 lakh whichever is lower.
7. Establishment of 52 [Export Facilitation Centres](#) (EFCs) across the country with an aim to provide requisite mentoring and handholding support to MSMEs in exporting their products and services to the foreign market. (Link: <https://www.msmedithrissur.gov.in/page/export-facilitation-centre>)
8. The Union Ministry of MSME India has also launched the [CHAMPIONS portal](#) as an initiative of the informal working group of WTO, the platform is a technology-driven ITC platform helping the Indian MSMEs to drive into the big league of industries.
9. Although this system has not been revised since 2006, the [Credit Linked Capital Subsidy Scheme for Technology](#) Up-gradation was previously established for offering a 15% upfront capital subsidy on the institutional finance availed by the small-scale industries unit.
10. Last year, on December 21, DGTR issued a proposal for introducing a comprehensive questionnaire response for assessing the [public interest test](#) in trade remedy investigations, and the format is said to cover the public interest level where it will invite stakeholders for providing detailed evidence to substantiate their public interest concerns.<sup>37</sup>
11. The Indian Ministry of MSME regularly conducts workshops on various aspects of WTO, Anti-dumping seminars, IPR, etc. to sensitise the Medium and Small Enterprise (MSEs) entrepreneurs and other stakeholders about the likely impact of liberalization and globalisation. (Link: <https://www.dgtr.gov.in/archive-events>)<sup>38</sup>.

### SUMMARY BOX

This section analyses the problems faced by the MSMEs for utilising the procedure of AD/CV. Some of the main concerns include complexity in data collection and high legal cost. The section also enumerates the initiatives taken by the WTO as well as by the Government of India to help MSMEs with their AD/CV applications. The section culminates into the need for efficient practices for furthering the MSME sector and easing the gaps identified during the AD/CV investigation.

<sup>37</sup> *Stakeholder Consultation-Proposal for Public Interest Questionnaire*, available at: <https://www.dgtr.gov.in/sites/default/files/Public%20Interest%20QR%2021%20DEC%2021%20%281%29.pdf>.

<sup>38</sup> Mukherjee, S. Challenges to Indian micro small scale and medium enterprises in the era of globalization. *J Glob Entrepr Res* 8, 28 (2018). <https://doi.org/10.1186/s40497-018-0115-5>.

#### 4. PRACTICES ADOPTED BY COUNTRIES TO SUPPORT MSMEs

The governments of various countries have implemented different policies to support MSMEs. Some of the notable policies in this regard are from Brazil, China, European Union, New-Zealand, Nigeria, South Africa and USA. This section would first analyse the best practices for the growth of MSMEs followed by best practices especially curated for the AD/CV process to help MSMEs.

In general practices various policies and programmes have been analyzed to suggest how with the help of these programmes the AD/CV process can be made smoother and easily accessible. It is pertinent to note that the various policies might not be for AD/CV specifically but could be incorporated in AD/CV process.

COUNTRIES	GENERAL PRACTICES
<b>Brazil</b>	SEBRAE's effort has enabled the introduction of a local innovation agent's programme that aims to stimulate innovation in small businesses through the use of specialist local agents. <sup>39</sup> SEBRAE's followed the practice of comparing the achieved results with the set objective, thus enabling the development of specific targeted projects for sectors/regions wherein MSME competitiveness could be improved. <sup>40</sup> This initiative can be implemented by India for the purpose of creating agencies in remote states to provide support during AD/CV proceedings that include the use of technology. Another option for India is the REDESIM (Rede Nacional para a Simplificação do Registro e da Legalização de Em presas e Negócios) that is overseen by the Ministry of Development, Industry and Foreign Trade (MDIC) and can likely assist in streamlining and integrating a system for all registration and formalised procedures related to the AD/CV proceedings that would take a significant amount of time. <sup>41</sup>
<b>China</b>	India can embrace the policy imposed by the Chinese Ministry of Science and Technology and the Ministry of Finance for MSMEs innovation and technology advancement. The R&D developed by this policy could be incorporated in various aspects of policies to make it tech friendly. Similarly, India by investing into similar kind of policies can bring in technology to ease the process of online applications such as that of AD/CV. This will be a crucial step in making the AD/CV application process more tech friendly. <sup>42</sup> Additionally, to help MSMEs expand, India should adopt the China Development Bank (CDB) mission for lending financial support by the government. Instead of long-term loans to venture capital firms, the government could provide financial support during the AD/CV procedure. <sup>43</sup>
<b>European Union</b>	The SME Trade Defence Helpdesk support SME in EU to both protect and enforce their rights against dumping and subsidy by non-EU countries. <sup>44</sup> India could create something akin to the European Commission's new Single Market Program (SMP) <sup>45</sup> slated to launch in 2021 for addressing the impediments that MSMEs encounter. As part of the Competitiveness of Enterprises and Small and Medium-Sized Enterprises (COSME) and Small and Medium-Sized Enterprises Executive Agency (EISMEA) initiatives, India is likely to adopt a similar "European IP Helpdesk" but for AD/CV

<sup>39</sup> Marengo, L. L.; Soares, A. N.; Romão, H. R. da; Araújo, D. L. A de; Zilber, S. N. (2022). A evolução da metodologia do programa agentes locais de inovação (ALI) e sua contribuição para a gestão da inovação na empresa Medicatriz dermocosméticos. *Revista de Empreendedorismo e Gestão de Pequenas Empresas*, 11(2), Artigo e2078. <https://doi.org/10.14211/ibjesb.e2078>.

<sup>40</sup> SME Promotion Agencies: Is there a best set-up? A quest for good practices, [https://ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/--ifp\\_seed/documents/publication/wcms\\_532833.pdf](https://ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/--ifp_seed/documents/publication/wcms_532833.pdf) (last visited Oct 19, 2022).

<sup>41</sup> World Bank Group. (n.d.). *Doing Business 2020, Brazil*. World Bank. Retrieved February 22, 2022, <https://www.doingbusiness.org/content/dam/doingBusiness/country/b/brazil/BRA.pdf>.

<sup>42</sup> Li, J., Liu, C., & Gentile, E. (n.d.). *The Effects of the Innofund Program on Technology-Based SMEs' Performance: Evidence from Zhongguancun National Innovation Demo*. Asian Development Bank. Retrieved February 21, 2022, <https://www.adb.org/sites/default/files/institutional-document/575671/ado2020bp-innofund-program-tech-based-smes.pdf>.

<sup>43</sup> *China- China Development bank (CDB)*. (n.d.). Global Infrastructure Hub. Retrieved February 21, 2022, <https://cdn.gihub.org/umbraco/media/2617/china-case-study.pdf>.

<sup>44</sup> Help for SMEs, [https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/help-smes\\_en](https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence/help-smes_en) (last visited Oct 19, 2022).

<sup>45</sup> *The Single Market Programme (SMP)*. (n.d.). European Commission. Retrieved February 21, 2022, [https://ec.europa.eu/competition-policy/single-market-programme-smp\\_en](https://ec.europa.eu/competition-policy/single-market-programme-smp_en).

COUNTRIES	GENERAL PRACTICES
	procedures that can entail procedures taken in different countries for better clarity for MSMEs during the instigation of cross-border business proceedings. <sup>46</sup>
<b>New Zealand</b>	The New Zealand Business Numbers (NZBN) was introduced as a globally unique number for every business in New Zealand, this is something India can likely approach for linking information needed during the AD/CV proceedings and ensuring that the information is not repeated every time during the initiation of proceedings, thus reducing the total workload. <sup>47</sup> Even though for initiation of AD/CV procedure reliance on confidential information such as that of transactions is relied on, but at least non confidential information which may be crucial can be collated to ease the process of information collection. Additionally, India can also incorporate something similar to the New Zealand Trade and Enterprise (NZTE) for providing customised services and support to MSMEs who want to internationalise themselves, and this can be used for providing information, resources, and connections on how to go about the AD/CV proceedings in India. <sup>48</sup>
<b>South Africa</b>	Practice whose objectives were laid down in the Integrated Small Business Development Strategy for 2005 to 2014, which were tabled in 2020 for another 5 years can aid India with strengthening its own policies for lessening the regulatory constraints in the MSME sector. <sup>49</sup>
<b>USA</b>	India should establish an autonomous agency comparable to the Small Business Administration (SBA) to support and protect the rights of MSMEs, as well as foster an environment for small businesses to reduce the unfair business regulation battle during AD/CV processes. <sup>50</sup>

#### 4.1. PRACTICES INITIATED FOR IMPROVING AD/CV LAWS: SIMPLIFYING PROCEDURE FOR SMES/MSMES

Countries	Practices specific to AD/CVD	Practices India can adopt
<b>Argentina</b>	<ol style="list-style-type: none"> <li>1. The Ministry of Productive Development is responsible for carrying out the investigative process and for determining whether to apply countervailing measures provisionally, during the course of the investigation or definitively upon its conclusion.<sup>51</sup></li> <li>2. The Commission and the Undersecretariat may assist complainants in obtaining product information from foreign domestic markets relevant to an investigation or the formal requirements of a claim.</li> <li>3. The SME Help Center is a consultation space that provides personalised assistance to MSMEs entrepreneurs from all over the country about the</li> </ol>	DGTR can adopt the practice of providing personalised assistance to MSMEs.

<sup>46</sup> *Internationalization of SMEs*. (n.d.). Interreg Europe. Retrieved February 13, 2022, [https://www.interregeurope.eu/fileadmin/user\\_upload/2021-08-01\\_Policy\\_brief\\_on\\_SME\\_internationalisation\\_TO3.pdf](https://www.interregeurope.eu/fileadmin/user_upload/2021-08-01_Policy_brief_on_SME_internationalisation_TO3.pdf).

<sup>47</sup> *The New Zealand Small Business Strategy*. (n.d.). Ministry of Business, Innovation & Employment. Retrieved February 21, 2022, from <https://www.mbie.govt.nz/assets/the-new-zealand-small-business-strategy.pdf>.

<sup>48</sup> (n.d.). NZTE helps New Zealand businesses grow in international markets. Retrieved February 21, 2022, from <https://www.nzte.govt.nz/>.

<sup>49</sup> Oosterwyk, S. (2020, March 4). *2020-2025 STRATEGIC PLAN*. | Department of Small Business Development. Retrieved February 21, 2022, from <http://www.dsbd.gov.za/sites/default/files/documents/strategic-plan2020-25.pdf>.

<sup>50</sup> OECD. (n.d.). *SMALL BUSINESS*. UNIDO. Retrieved February 21, 2022, [https://www.unido.org/sites/default/files/2009-04/Effective\\_policies\\_for\\_small\\_business\\_0.pdf](https://www.unido.org/sites/default/files/2009-04/Effective_policies_for_small_business_0.pdf).

<sup>51</sup> Paratz, Soto, A. W. (2021, September 29). *The International Trade Law Review: Argentina*. The Law Reviews. Retrieved February 23, 2022, from <https://thelawreviews.co.uk/title/the-international-trade-law-review/argentina>.

Countries	Practices specific to AD/CVD	Practices India can adopt
	promotion programs, training, tools, and financing lines offered by the Ministry of Productive Development.	
<b>Australia</b>	<ol style="list-style-type: none"> <li>1. The Anti-Dumping Commission helps the Australian industry by managing Australia's anti-dumping and countervailing system.<sup>52</sup></li> <li>2. Within 110 days of the start of the investigation, a Statement of Essential Facts is released. These lay out the facts on which the ADC intends to base its recommendations on the Minister for Industry, Energy and Emissions Reduction avoiding commercially sensitive information, and giving interested parties the opportunity to submit comments before a final decision is reached. Parties have 20 days to submit their comments.</li> <li>3. SMEs seeking access to Australia's anti-dumping system can turn to the International Trade Remedies Advisory (ITRA). The ITRA Service assists SMEs by aiding manufacturers and producers with the preparation of applications for anti-dumping and countervailing investigations, continuation inquiries, circumvention investigations, and reviews, assisting importers with duty assessments, exemptions, and reviews assisting with submissions to the Commission for ongoing cases ensuring that applications for industries with multiple players have the appropriate level of industry support raising awareness of how the anti-dumping system works informing on general anti-dumping and countervailing matters. The ITRA Service is available for free to any Australian registered SME.</li> </ol>	India can adopt a similar system as IRTA for assisting MSMEs.
<b>Brazil</b>	<ol style="list-style-type: none"> <li>1. The Secretariat of Trade Defence and Public Interest (SDCOM), under the Ministry of Economy, conducts anti-dumping investigations, countervailing investigations, and public interest analysis. The Executive Committee of the Foreign Trade Chamber (GECEX) is responsible for imposing trade remedies.<sup>53</sup></li> <li>2. Brazil has implemented a public interest clause that allows for the suspension or reduction of trade remedy measures.<sup>54</sup></li> <li>3. SDCOM issues an annual report on the activities of trade remedial measures, indicating, for example, the number of proceedings initiated and concluded, as well as the number of measures applied, suspended, or</li> </ol>	India can decide whether a public interest clause should be inserted and should also compile and publish annual reports (last report was in 2018-2019).

<sup>52</sup> *Anti-dumping and countervailing system.* (n.d.). Australian Government, Department of Industry, Science, Energy and Resources. Retrieved February 23, 2022, <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system>.

<sup>53</sup> World Bank. (202–02-28). *Brazil's reforms show how to use fair-trade dumping laws without dumping competition.* World Bank Blogs. Retrieved February 22, 2022, from <https://blogs.worldbank.org/psd/brazils-reforms-show-how-use-fair-trade-dumping-laws-without-dumping-competition>.

<sup>54</sup> Moraes, Dias, O. J. D. (2021, May 1). *International Trade in Goods and Services in Brazil: Overview.* Thomson Reuters, Practical Law. Retrieved February 22, 2022, from [https://uk.practicallaw.thomsonreuters.com/w-011-0773?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a231281](https://uk.practicallaw.thomsonreuters.com/w-011-0773?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a231281).

Countries	Practices specific to AD/CVD	Practices India can adopt
	<p>extended.</p> <p>4. In order to increase transparency while drafting the report, a one-page summary provides the rationale behind the decisions, for easy understanding.<sup>55</sup></p>	
<b>Canada</b>	<p>1. The Special Import Measures Act (SIMA) protects Canadian manufacturers who are injured as a result of dumping or subsidy of goods imported into the country. The ADCV Program established a "virtual" SME Unit that may be reached via the CBSA website. The website lists the phone numbers of six-unit members who can answer questions and offer advice on how to prepare and file SIMA complaints.<sup>56</sup></p> <p>2. Multiple federal institutions, including the Canada Border Services Agency (CBSA), the Canadian International Trade Tribunal (CITT), the Administrative Tribunal Support Service of Canada (ATSSC), the Department of Finance Canada (FIN), the Canada Revenue Agency (CRA), and the Global Affairs Canada, are involved in the coordination and administration of Canada's anti-dumping and countervailing (ADCV) system (GAC).</p> <p>The goal of Canada's ADCV system is to provide a domestic redress mechanism against foreign corporations' unfair trade practices.<sup>57</sup></p> <p>3. CBSA website also maintains the database of AD/CV investigations along with a list of re-investigation cases. It also has guidebooks, handbooks, and a facility for online filing.</p> <p>4. Even if nationwide margins or subsidy amounts were not de minimis, Canada passed rules empowering the CBSA to end dumping and countervailing investigations against individual exporters.<sup>58</sup></p>	DGTR can adopt the virtual SME unit. It can also collaborate with various agencies to support the virtual SME unit.
<b>China</b>	An AD/CVD application is started by submitting it to the Ministry of Commerce (MOFCOM) website, which provides developed AD/CVD laws as well as manuals and handbooks for convenience. <sup>59</sup>	India can upload small booklets on DGTR with simplified procedures for AD/CVD for MSMEs.
<b>Columbia</b>	1. The Ministry of Trade, Industry, and Tourism, as well as the International Trade Office, are in charge of Columbia's anti-dumping authority, which provides final rulings on whether or not there is adequate proof	DGTR can engage interns or others to make small videos regarding AD/CVD procedures for simple explanations of the

<sup>55</sup> Berenholz, Guilherme, M. R. (2021, September 29). *The International Trade Law Review: Brazil*. The Law Reviews. Retrieved February 22, 2022, from <https://thelawreviews.co.uk/title/the-international-trade-law-review/brazil>.

<sup>56</sup> Government of Canada. (n.d.). *Canadian Border Service Agency*. Canadian Border Service Agency. Retrieved February 22, 2022, from <https://www.cbsa-asfc.gc.ca/sima-lmsi/ct-boa-eng.html>.

<sup>57</sup> McLroy, J. (2012). Judicial Review of Anti-dumping Determinations in Canada. *Global Trade and Customs Journal*, 7(5).

<sup>58</sup> Jarsoz, Scheitterlien, P. C. (2021, September 29). *The International Trade Law Review: Canada*. The Law Review. Retrieved February 22, 2022, <https://thelawreviews.co.uk/title/the-international-trade-law-review/canada>.

<sup>59</sup> *Ministry of Commerce, People Republic of China*. (n.d.). Ministry of Commerce, People Republic of China. Retrieved February 22, 2022, from <http://english.mofcom.gov.cn/>.

Countries	Practices specific to AD/CVD	Practices India can adopt
	<p>of dumping.<sup>60</sup></p> <ol style="list-style-type: none"> <li>The website of the Ministry of Trade has a YouTube video to explain to the users the process of AD/CV. These Small videos explain various stages of AD/CV which helps the applicants to know how to proceed.</li> <li>The Website also has user guides for the benefit of the applicants.</li> </ol>	<p>concepts to MSMEs.</p>
<b>European Union</b>	<ol style="list-style-type: none"> <li>The European Commission is responsible for the investigation of AD/CVD investigations.<sup>61</sup></li> <li>The EU legislation includes two such higher standards: the lesser duty rule and the Union interest test while investigating.</li> <li>The Hearing Officer in DG Trade acts as an independent mediator and supervises the rights of the defence in Trade Defence Investigations (TDI) proceedings. The Hearing Officer's annual report also includes a section related to smaller businesses.<sup>62</sup></li> <li>For the purpose of investigation, the EU adopts the sampling procedure to represent the industry.</li> <li>The Commission has committed to making it easy for SMEs to access trade defence instruments through a dedicated SME helpdesk, providing information about the procedures, and the deadlines applicable in the legislation.<sup>63</sup></li> </ol>	<p>India can have a debate regarding the public interest clause and can have mediation before the investigations. Sampling procedure could also be adopted given the vast unorganised sector of India.</p>
<b>Indonesia</b>	<ol style="list-style-type: none"> <li>The Directorate of Trade Defence (DPP) of the Directorate General of Foreign Trade, Ministry of Trade, is responsible for defending Indonesian exporters against trade remedy charges made by foreign nations in order to ensure market access for Indonesian exports. KADI (Indonesian Anti-Dumping Committee), on the other hand, is responsible for examining unfair trade when imported goods have a lower price than the domestic price (suspected of dumping and subsidies) and cause harm to the domestic sector.</li> </ol> <p>Meanwhile, the KPPI (Indonesian Trade Safeguard Committee) is tasked with looking into the sudden spike in imports that is causing considerable harm to</p>	<p>DGTR can adopt the practice of providing legal assistance and consultation.</p>

<sup>60</sup> *Trade Defense*. (n.d.). The Ministry of Trade, Industry, and Tourism. Retrieved February 22, 2022, from [https://www.mincit-gov-co.translate.google.com/mincomercioexterior/defensa-comercial?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=wapp](https://www.mincit-gov-co.translate.google.com/mincomercioexterior/defensa-comercial?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp).

<sup>61</sup> *EU trade legislation*. (n.d.). European Council. Retrieved February 22, 2022, <https://www.consilium.europa.eu/en/policies/trade-policy/eu-trade-legislation/#:~:text=On%20the%2017%2C%20the,trade%20practices%20entered%20into%20force.&text=The%20update%20EU%20anti%20dumping,lowered%20due%20to%20state%20intervention>.

<sup>62</sup> Malmström, C. (n.d.). *Anti dumping and anti subsidy - SME guide*. Trade - European Commission. Retrieved February 13, 2022, from [https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156892.pdf](https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156892.pdf).

<sup>63</sup> *Help for SMEs*. (n.d.). European Commission. Retrieved February 22, 2022, <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/help-for-smes/>.

Countries	Practices specific to AD/CVD	Practices India can adopt
	<p>the indigenous industry.<sup>64</sup></p> <p>2. KADI has the task of handling problems related to efforts to overcome the dumping of goods and goods containing subsidies. In carrying out its duties, KADI carries out the following functions<sup>65</sup>:</p> <ol style="list-style-type: none"> <li>a. proof of the existence of dumped goods or goods containing subsidies, domestic industry losses, and the existence of a causal relationship between dumped goods or goods containing subsidies and domestic industry losses;</li> <li>b. collection, research, and processing of evidence and information related to the investigation of dumping goods and goods containing subsidies;</li> <li>c. making recommendations for the Imposition of ADD and Compulsory Duties to the Minister;</li> <li>d. implementation of advocacy, consultation, dissemination of information, as well as the socialisation of the provisions and implementation of AD and Subsidies;</li> <li>e. carrying out other tasks assigned by the Minister.</li> </ol>	
<b>Malaysia</b>	<ol style="list-style-type: none"> <li>1. Countervailing and Anti-Dumping Duties Act 1993 (CADDA) is the primary law that provides for trade remedies in Malaysia. The application is submitted to the Ministry of International Trade and Industry.<sup>66</sup></li> <li>2. The website of the ministry maintains the AD/CV database, has compiled trade performance reports. The Ministry also organises continuous webinars, booklets, etc - to create awareness regarding trade remedial procedures.</li> </ol>	DGTR can prepare trade performance reports.
<b>New Zealand</b>	<ol style="list-style-type: none"> <li>1. A written application is filed for the Ministry of Business, Innovation, and Employment for the start of AD/CV measures. The trade remedies team assists with the application process. The study is finished in less time, namely 180 days.<sup>67</sup></li> <li>2. The Ministry provides user guides for the application of AD/CV along with a language assistance program for those who are unfamiliar with English. It also maintains a database of all the investigations.</li> </ol>	India can adopt the language assistance programs due to the diversified range of languages available in India that otherwise likely causes a gap in understanding the process.

<sup>64</sup> *Defending Indonesian Exporters*. (2021, November 25). ARISE+ Indonesia. Retrieved February 22, 2022, <https://ariseplus-indonesia.org/en/events/trade-remedies-workshop-series.html>.

<sup>65</sup> *KADI CASE*. (n.d.). KADI. Retrieved February 22, 2022, [https://kadi-kemendag-go-id.translate.google/about?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=wapp](https://kadi-kemendag-go-id.translate.google/about?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp).

<sup>66</sup> *Trade Remedies*. (n.d.-b). Official Portal of the Ministry Of International Trade and Industry. Retrieved February 23, 2022, from <https://www.miti.gov.my/index.php/pages/view/7678?mid=1205>.

<sup>67</sup> *Ministry of Business, Innovation, and Employment*. (n.d.). Ministry of Business, Innovation, and Employment. Retrieved February 23, 2022, <https://www.mbie.govt.nz/>.



Countries	Practices specific to AD/CVD	Practices India can adopt
<b>Philippines</b>	<ol style="list-style-type: none"> <li>1. The AD/CV applications are submitted to the Department of Trade and Industry.<sup>68</sup></li> <li>2. Within three days, the Secretary of Trade and Industry in the case of non-agricultural product or with the Secretary of Agriculture in the case of agricultural product transmits the preliminary conclusion along with the case documents, to the Tariff Commission for a prompt official investigation.<sup>69</sup></li> <li>3. The Website of the Ministry of the Department of Trade and Industry also has guides and questionnaires for the convenience of the applicant.</li> </ol>	India can reduce the timelines for quick action.
<b>Singapore</b>	<ol style="list-style-type: none"> <li>1. AD/CV is governed by the Countervailing and Anti-Dumping Duties Act 1996.<sup>70</sup> The Ministry of Trade and Industry conducts the AD/CV investigation.</li> <li>2. The legislation relating to AD/CV has a public interest clause for better working of AD/CV investigations.<sup>71</sup></li> </ol>	India can adopt a public interest clause in its legislation.
<b>South Africa</b>	<ol style="list-style-type: none"> <li>1. The International Trade Administration Commission (ITAC) is responsible for trade remedies. It is also responsible for AD/CV performance reports and impact assessment reports are regularly filed.<sup>72</sup></li> <li>2. The ITAC regularly makes Economic Impact assessments and has also made detailed Dumping Margins Calculations for anti-dumping.</li> </ol>	DGTR can comply and publish an impact assessment and performance report.
<b>United Kingdom</b>	<ol style="list-style-type: none"> <li>1. The Trade Remedies Authority (TRA) was established by the Trade Act of 2021, a technocratic organisation charged with conducting ADD and CVD investigations as defined by the Taxation Act and related legislations.<sup>73</sup></li> <li>2. The TRA makes final remedy recommendations to the Secretary of State for International Trade (the Secretary of State); otherwise, the Secretary of State may only reject the recommendations for political reasons rather than economic ones. The goal of this strategy is to increase transparency.<sup>74</sup></li> </ol>	India can adopt the practice where the MOF's discretionary power is curtailed and decide according to economic rather than political factors.

<sup>68</sup> *Trade Remedies*. (n.d.-c). Department of Trade and Industry. Retrieved February 23, 2022, <https://www.dti.gov.ph/negosyo/imports/trade-remedies/>.

<sup>69</sup> Republic Act No. 8752 The Anti-Dumping Act of 1999, Republic of the Philippines Congress of the Philippines Metro Manila; [https://dtiwebfiles.s3-ap-southeast1.amazonaws.com/Negosyo/Imports/Trade+Remedies/DTI+Orders%2CNotices%2CInitiation+and+Preliminary+Reports/Legal+Framework/Anti-Dumping/RA+8752+\(Anti-Dumping\).pdf](https://dtiwebfiles.s3-ap-southeast1.amazonaws.com/Negosyo/Imports/Trade+Remedies/DTI+Orders%2CNotices%2CInitiation+and+Preliminary+Reports/Legal+Framework/Anti-Dumping/RA+8752+(Anti-Dumping).pdf).

<sup>70</sup> *Countervailing and Anti-Dumping Duties Act 1996*. (n.d.). Singapore Statutes Online. Retrieved February 23, 2022, <https://sso.agc.gov.sg/Act/CADDA1996?ProvlDs=P12-#pr3->.

<sup>71</sup> Hsu, L. (1998). New Singapore Law on Antidumping and Countervailing Duties, *The J. World Trade*, 32, 121.

<sup>72</sup> *Trade Remedies*. (n.d.). International Trade Administration Commission. Retrieved February 22, 2022, <http://www.itac.org.za/pages/services/trade-remedies>.

<sup>73</sup> Weiniger, Fawke, M. A. (2021, September 30). *The International Trade Law Review: UK Customs and Trade*. *The Law Review*. Retrieved February 23, 2022, <https://thelawreviews.co.uk/title/the-international-trade-law-review/uk-customs-and-trade>.

<sup>74</sup> *ibid*.

Countries	Practices specific to AD/CVD	Practices India can adopt
	<p>3. Additionally, the website of TRA maintains a database of AD/CV, live cases, and reviews, enables online filing, and has user guides.</p>	
<p><b>United States of America</b></p>	<ol style="list-style-type: none"> <li>1. Filing of AD/CV applications is done electronically via Electronic Documentation Information System.<sup>75</sup></li> <li>2. The website of CBP (U.S. custom and Border Protection)<sup>76</sup> has the following features: <ol style="list-style-type: none"> <li>a. ACE- system of record for AD/CV investigation, AD/CV case management and monthly updates.</li> <li>b. CBP has a section for AD/CV search if ACE access is unavailable.</li> <li>c. CBP provides training materials, guidelines, handbooks, videos, and other resources, as well as a support desk, to help people comprehend AD/CV procedures.</li> <li>d. There is also an e-allegation portal where individuals can register complaints anonymously. Usually, the complaints are regarding cases of duty evasion of AD/CV, importation of counterfeit, etc.</li> </ol> </li> <li>3. If someone doesn't have access to ACE, then a database of AD/CV, guides, etc can be found on ACCESS.<sup>77</sup></li> <li>4. The Trade Commission gathers extensive company-specific business proprietary information ("BPI") from U.S. producers, importers, and purchasers and from foreign producers, principally through questionnaires during investigations. In order to protect confidentiality, the commission releases BPI to certain eligible persons under an Administrative Protective Order ("APO") which is designed to protect the confidentiality of such information. Those persons eligible to apply for access to BPI under an APO ("authorised applicants") include the following persons who are representatives of an "interested party" which is a "party" to the investigation: (1) an attorney, (2) a consultant or expert under the direction and control of such an attorney, (3) a consultant or expert who appears regularly before the Commission, and (4) a representative of an interested party which is a party to the investigation if such interested party is not represented by counsel.<sup>78</sup></li> <li>5. Commerce has issued a temporary final rule, effective 24 March 2020 that temporarily modifies certain service</li> </ol>	<p>India can adopt the system of ACE and the system for confidentiality. This will help the help small businesses and other people in general to be more aware about the AD/CV process.</p>

<sup>75</sup> *Electronic Document Information System (EDIS) Support*. (n.d.). United States International Trade Commission. Retrieved February 22, 2022, from [https://www.usitc.gov/press\\_room/edisupport.htm](https://www.usitc.gov/press_room/edisupport.htm).

<sup>76</sup> *U.S. Customs and Border Protection*. (n.d.). U.S. Customs and Border Protection. Retrieved February 10, 2022, <https://www.cbp.gov/>.

<sup>77</sup> Note - ACCESS is the repository for all documents filed in an AD/CVD proceeding conducted by the U.S. Department of Commerce, Enforcement and Compliance.

<sup>78</sup> United States International Trade Commission. (2015, June). *Anti Dumping and Countervailing Duty Handbook* (No. 4). Office of Investigations, U.S. International Trade Commission. [https://www.usitc.gov/trade\\_remedy/documents/handbook.pdf](https://www.usitc.gov/trade_remedy/documents/handbook.pdf)

Countries	Practices specific to AD/CVD	Practices India can adopt
	requirements in Enforcement & Compliance (E&C) AD/CV cases- by which authorised parties will receive notification of BPI filings via email through the BPI Release Digest and the “Get BPI Releases” link in ACCESS. BPI documents deemed to have been served electronically through ACCESS which will be available for 14 days to all APO- authorised lead attorneys and their proxies and can be downloaded following the same procedures used to download Commerce BPI releases through ACCESS. <sup>79</sup>	
<b>Vietnam</b>	<ol style="list-style-type: none"> <li>1. The Office of the Department of Receipt, under the Department of Trade Remedies, receives applications for AD/CV, which gets recorded in the register and sent to the Director (or assigned Deputy Director). After receiving the Director’s (or assigned Deputy Director’s) approval, the Office of the Department of Receipt of Dossiers is passed to the Office of Investigation, which deals with anti-dumping, anti-subsidy, and safeguard cases.<sup>80</sup></li> <li>2. In accordance with the Vietnam Competition Authority (VCA) Decree<sup>81</sup>, the primary function of the VCA is to assist and counsel the trade minister in: <ol style="list-style-type: none"> <li>a. Performing State management and implementation of anti-dumping, anti-subsidy, and safeguard measures against imports into Vietnam pursuant to the Anti-Dumping Ordinance, Ordinance on Anti-Subsidy and Ordinance on Safeguards;</li> <li>b. Supporting domestic industries with early warning systems and in defending international trade remedy cases against Vietnam’s export.</li> </ol> </li> </ol>	In India, the DGTR could take the assistance of other departments to collect data on imports to recognise early signs of dumping or countervailing practices.

#### 4.2. A BRIEF OVERVIEW OF ADOPTION OF GLOBAL PRACTICES INTO INDIAN MSME SECTOR

The following are the practices which are arranged in high to low priority which India can adopt:

High	Medium	Low
Can adopt the IRTA system for assisting MSMEs.	DGTR can facilitate making of small videos regarding AD/CV procedures for simple understanding.	Can adopt the Language assistance programs as India has diverse languages.
Can reduce the timelines for quick action.	DGTR could adopt the practice of providing personalised assistance to MSMEs.	DGTR could comply and publish an impact assessment as well as performance reports.

<sup>79</sup> USTR, ACCESS, <https://access.trade.gov/login.aspx>

<sup>80</sup> Pham, K. (2021, July 16). *Vietnam: Notes To The Process Of Anti-dumping Investigation In Vietnam*. Mondaq. Retrieved February 22, 2022, <https://www.mondaq.com/international-trade-investment/1092370/notes-to-the-process-of-anti-dumping-investigation-in-vietnam>.

<sup>81</sup> *2017 Investment Climate Statements: Vietnam*. (n.d.). US Department of State. Retrieved February 22, 2022, [https://www.state.gov/reports/2017-investment-climate-statements/\\_\\_\\_trashed/](https://www.state.gov/reports/2017-investment-climate-statements/___trashed/).

High	Medium	Low
Can adopt the practice where MOF does not use its discretionary power to a larger extent and decide according to economic factors rather than political.	DGTR can adopt the practice of providing legal assistance and consultation.	
Can adopt public interest clauses in its legislation and can have mediation before the investigations.	India could adopt the system of ACE and also the system for confidentiality.	
The DGTR could take assistance from other departments to collect data of imports to recognise early signs of dumping or countervailing practices.	DGTR can adopt the virtual SME unit. It can also collaborate with various agencies to support the virtual SME unit.	

#### **SUMMARY BOX**

This section enumerates the practices adopted by other developed and developing countries to promote the growth of MSMEs. The section also enumerates best practices that are specifically related to AD/CV procedures. Further, the practices which can be adopted by India for better functioning are also listed in a detailed manner according to high to low priority.

## 5. RECOMMENDATIONS

It is widely construed that mere economic justification for an AD action is not sufficient. The AD and CV system like others, do not particularly stand out as trade protection instruments, hence a reform in the systemic structure - both domestically and the WTO - for governing protection to all small-scale industries is crucial. After analysing the WTO framework, the Indian framework, and the challenges faced by small scale industries in regards to the investigation process, it is pertinent to address the shortcomings of this system. Therefore, this report proposes changes for the same. The section is divided into two aspects - the general reforms that can be done (through the periphery of SMEs) and the Indian reforms.

### 5.1. PROCEDURAL REFORM OVERVIEW

<b>In investigations, there is a need to balance various Indian interests</b>	1. This would entail pursuing community interests (domestic industries, MSMEs, manufacturers, importers/exporters, and non-governmental organisations).
<b>Conduct of trade defence investigations - launching and determinations</b>	<ol style="list-style-type: none"> <li>1. The possibility of early consultations prior to the start of the AD investigation.</li> <li>2. Gaining a better understanding of the state of the market economy during anti-subsidy investigations (especially in times of covid)</li> <li>3. The requirement for a de-minimis threshold and an appropriate dumping margin calculation must be permanent.</li> <li>4. The requirement for a review of exporter prices based on a cross-country comparison</li> <li>5. As the economy worsens, a restructuring plan for AD/CV investigation is required.</li> <li>6. Considering the potential consequences of the probes on India's MSMEs.</li> </ol>
<b>Procedural aspects of the trade defence measure</b>	<ol style="list-style-type: none"> <li>1. Need for reforming the timing of provisional measures</li> <li>2. Need for more flexible measures in AD, especially for the MSMEs</li> <li>3. Higher thresholds for expiry reviews</li> </ol>
<b>Need for more transparency during the investigations</b>	<ol style="list-style-type: none"> <li>1. The need to introduce a public hearing for market economy decisions</li> <li>2. Availability of information and creating better accessibility for non-confidential files for small-scale industries, especially in India</li> </ol>

### 5.2. PROCEDURAL CHANGES TO THE LAW AND FOR MSMES (A DEEPER REFORM ANALYSIS):

1. While determining ADD, it is important that the assessment is made on the transactions that are actually being dumped. For the grievances that industries face when a duty is imposed, for this, the initiation of the lesser duty rule can likely be made mandatory. Here the allowance of comparison in prices for domestic producers with the foreign prices of export markets can be taken into consideration. And when all the resorts are extinguished, the usage of target prices can be undertaken for the prevention of discrepancies in prices when the available prices will not be available.
2. Another approach that could be adopted will be the expedited review requirements for dealing with the new or non-investigated exporters that are being subjected to the residual duty during the original investigation, and moreover through this, an agreement between the parties should be reached on setting up of a level of the weighted average of the duties imposed on the producers (residual duties).

3. In the AD and CV laws, a competition defence can be incorporated for preventing the manipulation by the complaining industry of the territorial scope of the investigation and to not impose duties when such duties are known to not cause injury to the domestic industry.
4. In order to reduce the antidumping investigations, the practice of culmination will need to be prohibited, and thus changing the probability of affirmative injury findings will likely be more injurious to the developing countries that tend to have smaller import market shares.
5. India can adopt the creation of a general rebuttable presumption through which it can inform the MSMEs sector about a subsidy that is not notified or counter-notified, it would be presumed to be a subsidy or a subsidy causing serious prejudice
6. Additionally, the introduction of financial impediments can be something that India can consider for reducing the frequency of AD/CV investigations.
  - a. Petitioners if they belong to the developed countries can be required to bear the defendants' legal costs in cases where the petition has turned out to be unjustified.
  - b. An exception can be given to the small producers of both the developed and developing countries' small producers with limited financial resources which can likely prevent a restriction for initiating the investigation.
  - c. Additionally, SMEs from developing countries could be reimbursed for legal costs that would result from unjustified AD/CV investigations that would be imposed against them.
7. The government can become more involved in identifying what the potential countervailable subsidies can be, and thus encourage the DGTR themselves to self-initiate more investigations on behalf of the MSMEs. The government can consider introducing legislations to encourage or require self-initiation. For this, the government can create a task force that can work for identifying the potential countervailable subsidies.
8. The need to introduce a mandatory public interest clause needs to be considered as a country-specific safeguard. As the AD Rules do not expressly warrant the DGTR to consider public interest while making a recommendation, it would be advisable for India to first incorporate the necessary legislative amendments in the AD Rules to empower the DGTR to consider the public interest before deciding on whether to recommend or not to recommend imposition of antidumping measures. Given the subjectivity of the public interest analysis, we need to first provide certainty on the concept of public interest. Accordingly, India may consider defining the broader parameters and framework to assess public interest to add further objectivity to the process before the DGTR. The provisions and factors maintained by the EU and Canada may be considered while making necessary legislative amendments to the AD Rules. This will minimise the ambiguity surrounding the contours of public interest in India and the scope of powers sought to be exercised by the DGTR while assessing public interest before recommending imposition of anti-dumping measures.
9. Alternatively, the DGTR, as a quasi-judicial entity collecting and reviewing information, could be authorised to make a public interest observation as part of its findings without affecting its final conclusion on the imposition of duties. The detailed examination of public interest can continue to be considered by the Ministry of Finance as it currently does – whose powers are broader under Section 9A of the Customs Tariff Act, 1975 and Rule 18 of the AD Rules before issuing the final notification levying the anti-dumping measures.
10. India can consider adopting a comprehensive bill strategy for establishing a link between trade relief laws for MSMEs and the process of appeal for MSMEs.
  - a. This can include easing of procedure by ensuring the ease of process by the DGTR and the CESTAT
  - b. The bill can institute a law where it is deemed compulsory for the government to provide relief to small-scale industries. As of date, only one Trade tribunal exists that can allow for companies to launch appeals in cases of dissatisfaction with the investigation outcome, India can consider setting up tribunals in major cities, therefore the burden from the National tribunal will shift to regional,

and the courts can allow for the setting up of easement in procedural duties as mentioned. The bill can highlight what steps it may take specifically for the MSMEs.

11. In the same bill for providing for trade relief provisions for MSMEs, India can also consider the establishment of a fast-track procedure for MSMEs, specifically for being able to reduce the necessary standards required for the preliminary determination under the antidumping and countervailing investigations.
  - a. The fast-track procedure will allow the MSMEs to undergo a quicker process which will be less costly. Expenses can be reduced because two stages will likely be eliminated and this would prevent the imposition of provisional duty. MSMEs will likely suffer less through this process.
  - b. The petitioner can choose to obtain the fast-track procedure (therefore providing a choice to the parties for the expedited process of trade measures and reliefs) - this would also limit foreign producers from abusing the process and can be provided for both AD/CV.
12. An Unfair Remedies Simplification Act - something which the US had proposed - can be instituted for giving access to an import relief for the MSMEs:
  - a. The same act can also establish a small business trade advocate assistance relief for trade measures that can provide assistance and guidance to small scale business owners about the changing procedures for reducing the costs and for simplifying trade proceedings.
  - b. The trade advocate assistance relief can provide assistance in regional languages by creating agencies in connection with the regional tribunals at the state level.
  - c. Agents can be assigned to businesses in remote parts that do not have access to the technology with how the process works, and this data can be collected and submitted to the Ministry of Commerce which can establish more relief mechanisms for such businesses.
  - d. The Ministry of Commerce may appoint designated agents to intervene on behalf of the petitioners as well, they can likely be lawyers or appropriate investigating authorities who are conversant in regional languages.
  - e. India may possibly explore establishing state-of-the-art Trade Remedy Assistance Offices - to provide informal advice and assistance including legal advice, for intending to make the small business eligible for pursuing trade remedies, and for preparing complaints and petitions. The conjunction of the agency can permit the trade assistant office be under the Ministry of Commerce and Trade and the Ministry of MSMEs.
  - f. It is possible to outsource the agency and the assistant offices to a private body authorised by the Ministries to work under their capacities thus helping build the public-private model for the growth of MSMEs.
  - g. The DGTR can also authorise agents that can provide petition counsel services at a nominal fee or no fee for easing the AD/CV application and investigatory process.
13. Availability of data for the subsidies and import data reformation need to take place, a separate branch for handling the discrepancies in data can be set up where it can work with the DGTR and the Ministry of MSMEs in conjunction with the Ministry of Trade and Commerce and Ministry of Electronics and Technology for examining the options for importing the data and making it available on the website for the industry officials to easily view them and access them.
  - a. In addition to this the requirements for initiating an investigation can be clarified and the information of countervailable subsidies in other countries can be made available to businesses that are considering applying for measures. The reforms can be established for providing *the alternative presentation of statistics that can be more useful to applicants*.
14. There is no provision to carry out an impact assessment of the AD and CV laws imposed by DGTR, because of which it is difficult to analyse whether AD/CV is actually helping the industry or not.
  - a. DGTR could make an impact assessment wing within its department so that this data would help in comprehensive analysis not for the investigating purposes by also the MSMEs who can reach out in cases of unfair trade remedy measures initiation.

15. The AD/CVD rules require an applicant to furnish the most recent data which should not be older than six months before initiation. The need for the industry to provide data on a quarterly basis to ensure that the timelines are met with accuracy and no discrepancy is needed.
  - a. Because MSMEs do not prepare records on such a regular basis, this is often a barrier for them. Further, by the time the investigation is initiated, the period of investigation may have become stale, requiring the producers to compile data again.
  - b. To this end, the DGTR can consider *suo motu* initiation of investigations, if it has provided information that shows the existence of dumping/subsidy and consequent injury to MSMEs even without a domestic producer participating before initiation.
  - c. Advocacy assistance needs to be given to the MSMEs as the laws are often complex and technical. The hiring of law firms is an expensive affair that might not be affordable to MSMEs. The detailed reasons for advocacy assistance are given in para 2.3 of the report.
16. India can consider the use of experts in the DGTR branch of impact assessment, and they can include a team of industry specialists and policy experts in accordance with WTO protocols and government determination that can very likely aid the MSME development.
  - a. The protocol will require the experts to analyse and declare the potential crossroads and the conflicts of interest that are needed for addressing the compliance with due process, evidential conditions, and other relevant WTO obligations that will help assess the effects on MSMEs.
17. India may also consider establishing an International Trade Remedies Forum working group to make recommendations to the government on how to improve the efficiency of India's market situation provisions in order to comply with WTO requirements.
18. While providing legal assistance to MSMEs, this assistance can be done through the private sector service on a pro bono basis which will help in the maximisation of public relations and build trust in the MSME sector.
  - a. In collaboration, the WTO members can also create a body for monitoring the actions of the national government agencies and whether they are instituting actions inconsistent with WTO obligations or not. This can be through a public/private partnership through which NGOs, consumer groups, importers, and exporters of developing countries can bring to light investigation that may be WTO inconsistent.
19. The online filing of trade remedial measures has been implemented only with respect to AD original application and sunset review. The online service should extend to other services as well such as countervailing investigation, mid-term review, safeguard investigation, etc. (Ref: Trade notice: 03/2019).
20. The G20 nations can also work for adopting measures that would work for strengthening the fragile consensus that would help them fight against protectionism specifically for the SMEs-
  - a. By committing to greater transparency by the provision of quarterly reports on new trade restrictions with a mandatory analysis of the trade restriction on employment and SME industries which can very likely allow for the creation of discussion rooms for technical analysis and political discussion within all the member countries.
  - b. Mobilising the public sector actors for encouraging co-financing between the various providers of trade finance. India and other developing countries in conjunction with the G20 nations can work at finding collective short-term solutions, especially through the mobilisation of government-backed export agencies and regional development banks; and developing technical measures that allow for better interaction between private and public sectors.

## 6. CONCLUSION

Dumping and subsidy by the exporter country can hamper the competition in the importing country's market as well as world market. MSMEs are being affected the most by such practices. Laws and rules have been made to tackle these concerns, yet because of the technical nature and complexities of the



investigations and the procedural rules, trade remedial measures have not significantly assisted in creating a level playing field for all sized businesses.

Considering MSMEs contribute significantly to the economy, the WTO at a global level, and the Government of India (with respect to assisting the local MSMEs) have taken several steps for MSMEs including setting up a helpdesk to assist MSMEs in filing trade remedial measures, covering the legal cost of filing applications and other similar initiatives. However, more work must be done which is why the report has enumerated the best practices for AD/CV measures taken by both developed and developing countries.

This report also analyses which practices are suitable for India to adopt. The report has not only recommended changes in the law after a detailed analysis but also administrative changes which would simplify trade remedial measures. The report analyses how the impact of these developments and the measures that can be taken. The report also lists the measures which could be adopted by India for the benefit of MSMEs but further research is needed to broaden the work conducted here by identifying additional measures and extending the applicability of those identified above to specific local situations. We hope that this report will act as a springboard for further research and action within this area.

\*\*\*\*

## 7. BIBLIOGRAPHY

### 7.1. BOOKS

1. Bentley, P., & Silberston, A. (2007). *Anti-dumping and countervailing action: limits imposed by economic and legal theory*. Edward Elgar Publishing.
2. Faghieh, N., & Samadi, A. H. (2021). *An Introduction to: Legal-Economic Institutions, Entrepreneurship, and Management: Perspectives on the Dynamics of Institutional Change from Emerging Markets*. In *Legal-Economic Institutions, Entrepreneurship, and Management* (pp. 1-12). Springer, Cham.
3. Mukherjee, S. (2018). Challenges to Indian micro small scale and medium enterprises in the era of globalization. *Journal of Global Entrepreneurship Research*, 8(1), 1-19.

### 7.2. JOURNAL/ARTICLES/HANDBOOKS

1. Aggarwal, A. (n.d.). *Anti-dumping : India versus the world*. Indian Council for Research on International Economic Relations. <http://www.icrier.org/pdf/antiDump.pdf>
2. *Anti-dumping Disciplines*. World Trade Institute. [https://www.wti.org/media/filer\\_public/82/63/82633863-36ea-42d8-9b8f-9d6a313b77c5/masters\\_thesis\\_viktoriiia\\_kotsiubska.pdf](https://www.wti.org/media/filer_public/82/63/82633863-36ea-42d8-9b8f-9d6a313b77c5/masters_thesis_viktoriiia_kotsiubska.pdf)
3. *Antidumping and Countervailing Duties: Key Challenges to Small and Medium-Sized Enterprises' Pursuit of the Imposition of Trade Remedies*. (2013, June 25). Government Accountability Office. <https://www.gao.gov/products/gao-13-575>
4. *Annual Report (39) on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments*. (2021, August 30). Trade - European Commission. [https://trade.ec.europa.eu/doclib/docs/2021/august/tradoc\\_159782.PDF](https://trade.ec.europa.eu/doclib/docs/2021/august/tradoc_159782.PDF)
5. Bhagwati, J. N. (1993) "Regionalism and multilateralism: An overview." In J. De Melo and A. Panagariya ed. *New Dimensions in Regional Integration*, New York: Cambridge University Press, pp.22-57
6. Bramley, G., & Spires, R. (2000). *Financing Innovation in SMEs: Evaluation of the UK SMART Scheme*. ARPENT: Annual Review of Progress in Entrepreneurship, 1.
7. *Brasil Maior Plan - Relatório Anual 2011*. (n.d.). BNDES. [https://www.bndes.gov.br/SiteBNDES/bndes/bndes\\_en/Hotsites/Annual\\_Report\\_2011/Capitulos/institutional\\_operations/the\\_bndes\\_and\\_public\\_policies/brasil\\_maior\\_plan.html](https://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Hotsites/Annual_Report_2011/Capitulos/institutional_operations/the_bndes_and_public_policies/brasil_maior_plan.html)
8. Caetano, A. (2007). Top Ten Problems in Brazil's Dumping and Injury Margin Calculation Methods, *The Global Trade & Cust. J.*, 2, 15.
9. *Case Study on Green SME Best Practices*. (n.d.). ASSIST Asia. <https://assistasia.org/project/case-study-on-green-sme-best-practices/>
10. *Changes Proposed In Anti-Dumping Rules*. (2018, June 25). Directorate General of Trade Remedies. [https://www.dgtr.gov.in/sites/default/files/Stakeholder%20Consultation\\_0.pdf](https://www.dgtr.gov.in/sites/default/files/Stakeholder%20Consultation_0.pdf)
11. *Chapter 6 subsidies and countervailing measures*. <https://www.meti.go.jp/english/report/downloadfiles/gCT0006e.pdf>
12. Chimni, B.S. (Ed.). (2007). *South Asian Yearbook of Trade and Development*. Centre for Trade and Development New Delhi.
13. *China- China Deceloment bank (CDB)*. (n.d.). Global Infrastructure Hub. Retrieved February 21, 2022, from <https://cdn.gihub.org/umbraco/media/2617/china-case-study.pdf>
14. *CHOI Nakgyoon, Economic Effects of Anti-Dumping Duties: Protectionist Measures or Trade Remedies?*, Korea Institute of International Economic Policy, KIEP Working Paper 16-13,7,33 (2016).

15. DC: Viet Nam: Second Small and Medium-Sized Enterprises Development Program. (n.d.). Asian Development Bank. <https://www.adb.org/sites/default/files/linked-documents/41360-01-vie-dc.pdf>
16. DGTR Government of India Ministry of. (2021, July 30). Directorate General of Trade Remedies. [https://www.dgtr.gov.in/sites/default/files/NCV%20ENGLISH\\_FINAL%20FINDINGS\\_SS\\_R\\_Phenol\\_EU%2CSingapore%20dated%2030th%20July%2C%202021.pdf](https://www.dgtr.gov.in/sites/default/files/NCV%20ENGLISH_FINAL%20FINDINGS_SS_R_Phenol_EU%2CSingapore%20dated%2030th%20July%2C%202021.pdf)
17. Directorate General of Trade Remedies. (2018, December). Manual Of Operating Practices For Trade Remedy Investigations (No. 1). Dolphin Printo-Graphics.
18. Eliminating Anti-Dumping Measures in Regional Trade Agreements. (n.d.). UNCTAD. [https://unctad.org/system/files/non-official-document/ditc\\_ted\\_03042014Kommerskollegium.pdf](https://unctad.org/system/files/non-official-document/ditc_ted_03042014Kommerskollegium.pdf)
19. European Companies In India Reigniting Economic Growth. (n.d.). EICC. [https://www.europeindia.eu/wpcontent/uploads/2016/10/EICC\\_Study\\_report\\_2014.pdf](https://www.europeindia.eu/wpcontent/uploads/2016/10/EICC_Study_report_2014.pdf)
20. Evaluation of the Canada accelerator and incubator program (CAIP) - National Research Council Canada. (2019, March 20). National Research Council Canada. <https://nrc.canada.ca/en/corporate/planning-reporting/evaluation-canada-accelerator-incubator-program-caip>
21. F Subsidies And The WTO - 1. introduction (n.d.). World Trade Organisation. [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/wtr06-2f\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr06-2f_e.pdf)
22. Foreign Trade Barriers. (2021, March 31). USTR. <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>
23. Growing the global economy through SMEs. (n.d.). Edinburgh Group. [http://www.edinburgh-group.org/media/2776/edinburgh\\_group\\_research\\_-\\_growing\\_the\\_global\\_economy\\_through\\_smes.pdf](http://www.edinburgh-group.org/media/2776/edinburgh_group_research_-_growing_the_global_economy_through_smes.pdf)
24. Guarantee Scheme (SMECGS). (n.d.). Central Bank of Nigeria. <https://www.cbn.gov.ng/Out/2010/publications/guidelines/dfd/GUIDELINES%20ON%20N200%20BILLION%20SME%20CREDIT%20GUARANTEE.pdf>
25. Guidelines On The Determination Of The Profit Margin Used In. (n.d.). Trade - European Commission. Retrieved February 13, 2022, from <https://trade.ec.europa.eu/doclib/html/150840.htm>
26. Gupta, K. (2021). Breaking the Barriers for MSME Sector. ADHYATAN, 1, 3–4.
27. Gurría, A. (2018, October 10). Launch of the OECD Review of SME and Entrepreneurship Policy in Indonesia. OECD. <https://www.oecd.org/about/secretary-general/launch-of-oecd-review-of-sme-and-entrepreneurship-policy-in-indonesia-october-2018.htm>
28. Harvie, C. (2004). East Asian SME capacity building, competitiveness, and market opportunities in a global economy.
29. Herbert Smith Freehills. (2016, December). EU ANTI-DUMPING.
30. Hindley, B. and Messerlin, P. (1993) “Guarantees of market access and regionalism.” In Anderson, K. and Blackhurst, R. ed. *Regional Integration and the Global Trading System* (London: Harvester Wheatsheaf), chapter 17, pp.358-384
31. Horlick, G., & Vermulst, E. (2005). 10 Major Problems with the Anti-Dumping Instrument: An Attempt at Synthesis, *The J. World Trade*, 39, 67.
32. Hsu, L. (1998). New Singapore Law on Antidumping and Countervailing Duties, *The J. World Trade*, 32, 121.
33. Innovation Policy and Employment. (n.d.). Argentina.gob.ar. [https://www.argentina.gob.ar/sites/default/files/empleo\\_y\\_politicas\\_de\\_innovacion\\_evidencia\\_desde\\_la\\_evaluacion\\_de\\_impacto\\_en\\_argentina.pdf](https://www.argentina.gob.ar/sites/default/files/empleo_y_politicas_de_innovacion_evidencia_desde_la_evaluacion_de_impacto_en_argentina.pdf)

34. Internationalization of SMEs. (n.d.). Interreg Europe. [https://www.interregeurope.eu/fileadmin/user\\_upload/2021-08-01\\_Policy\\_brief\\_on\\_SME\\_internationalisation\\_TO3.pdf](https://www.interregeurope.eu/fileadmin/user_upload/2021-08-01_Policy_brief_on_SME_internationalisation_TO3.pdf)
35. Jozepa, I. (2021, August 4). EU State Aid Rules and WTO Subsidies Agreement. UK Parliament. <https://researchbriefings.files.parliament.uk/documents/SN06775/SN06775.pdf>
36. Key programme elements and team responsibilities. (n.d.). National Bureau of Statistics. <https://www.nigerianstat.gov.ng/pdfuploads/MSMES.pdf>
37. Li, J., Liu, C., & Gentile, E. (n.d.). The Effects of the Innofund Program on Technology-Based SMEs' Performance: Evidence from Zhongguancun National Innovation Demo. Asian Development Bank. <https://www.adb.org/sites/default/files/institutional-document/575671/ado2020bp-innofund-program-tech-based-smes.pdf>
38. Lin, C. F., & Wu, P. K. (2007, May 17). The EU's Trade Policy in Doha Development Agenda – An Interim Assessment on Rules Negotiations. Archive of European Integration. <http://aei.pitt.edu/8026/1/wu-p-04f.pdf>
39. Loly A, & Gaitán G. (2020, August). Trade Agreements and the World Trade Organisation: Lessons for the Micro, Small, and Medium-Sized Enterprises Joint Statement In. International Institute for Sustainable Development. <https://www.iisd.org/system/files/2020-09/trade-agreements-wto-en.pdf>
40. Loly A., & Gaitán G. (n.d.). Trade Agreements and the World Trade Organisation: Lessons for the Micro, Small, and Medium-Sized Enterprises Joint Statement In. International Institute for Sustainable Development. <https://www.iisd.org/system/files/2020-09/trade-agreements-wto-en.pdf>
41. Malmström, C. (n.d.). Anti dumping and anti subsidy - SME guide. Trade - European Commission. [https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156892.pdf](https://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156892.pdf)
42. McIlroy, J. (2012). Judicial Review of Anti-dumping Determinations in Canada. *Global Trade and Customs Journal*, 7(5).
43. Microfinance Policy Regulatory And Supervisory Framework For Nigeria. (n.d.). Central Bank of Nigeria. <https://www.cbn.gov.ng/Out/2011/publications/dfd/Reviewed%20Microfinance%20Policy%20July%2012%202011.pdf>
44. Mitigating the Impact of Pandemic COVID-19 on Trade & Industry: PHDCCI Representations to Government of India and State Gov. (2020, August 19). PHD Chamber. <https://www.phdcci.in/wp-content/uploads/2020/08/Mitigating-the-Impact-of-Pandemic-COVID-19-on-Trade-Industry-PHDCCI-Representations-to-Government-of-India-and-State-Governments-19th-Aug-2020.pdf>
45. Monteiro, J. A. (2016). Provisions on small and medium-sized enterprises in regional trade agreements.
46. Mukherjee, S. Challenges to Indian micro small scale and medium enterprises in the era of globalization. *J Glob Entrepre Res* 8, 28 (2018). <https://doi.org/10.1186/s40497-018-0115-5>
47. Mukunoki, H. (n.d.). Preferential trade agreements and antidumping actions against members and nonmembers. Institute of Developing Economies. Retrieved February 13, 2022, from <https://www.ide.go.jp/library/English/Publish/Reports/Dp/pdf/611.pdf>
48. Nora, I. (n.d.). Anti-Dumping And Countervailing Procedures – Use Or Abuse? Implications For Developing Countries Inge Nora Neufeld. UNCTAD. [https://unctad.org/system/files/official-document/itcdtab10\\_en.pdf](https://unctad.org/system/files/official-document/itcdtab10_en.pdf)
49. Norton Rose Fulbright. <https://www.nortonrosefulbright.com/en-in/knowledge/publications/0d5b330a/australia-landmark-new-rescue-and-liquidation-processes-for-smes>

50. Obalade, T. A. F. (2014). Analysis of dumping as a major cause of import and export crises. *International Journal of Humanities and Social Science*, 4(5).
51. OECD. (n.d.). SMALL BUSINESS. UNIDO. Retrieved February 21, 2022, from [https://www.unido.org/sites/default/files/2009-04/Effective\\_policies\\_for\\_small\\_business\\_0.pdf](https://www.unido.org/sites/default/files/2009-04/Effective_policies_for_small_business_0.pdf)
52. Oosterwyk, S. (2020, March 4). 2020-2025 STRATEGIC PLAN. | Department of Small Business Development. <http://www.dsbd.gov.za/sites/default/files/documents/strategic-plan2020-25.pdf>
53. Overview of the SME Sector in the APEC Region: Key Issues on Market Access and Internationalization. (2020, April). APEC Policy Support Unit. <https://www.apec.org/docs/default-source/Publications/2020/4/Overview-of-the->
54. Prusa, T.J. and Teh, R. (2010) "Protection reduction and diversion: PTAs and the incidence of antidumping disputes," NBER working paper No. 16276
55. RBI. (2019, June). Report of the Expert Committee on Micro, Small and Medium Enterprises. Reserve Bank of India. <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=924#CH5>
56. Report of the Inter-Ministerial Committee for Boosting Exports from MSME Sector. (n.d.). MSME. <https://msme.gov.in/sites/default/files/imc-EXPORT-sme.pdf>
57. Rudyuk, Y. (2020, April 8). Impact of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations in the EU. Van Bael & Bellis. <https://www.vbb.com/insights/trade-and-customs/impact-of-the-covid-19-outbreak-on-anti-dumping-and-anti-subsidy-investigations-in-the-eu>
58. Salawu, D. O. (2021, June 1). International Trade in Goods and Services in Nigeria: Overview.
59. Submission of Japan on the Amendments to the Anti-Dumping Code, GATT Doc. No.MTN.GNG/NG8/W/48/Add.1 (29 January 1990), p. 3
60. Subsidies and Countervailing Measures. (n.d.) UNCTAD. Retrieved February 15, 2022, from [https://unctad.org/system/files/official-document/edmmisc232add15\\_en.pdf](https://unctad.org/system/files/official-document/edmmisc232add15_en.pdf)
61. SME-Sector-in-the-APEC-Region---Key-Issues-on-Market-Access-and-Internationalization/220\_PSU\_SME-Market-Access-and-Internalization.pdf.
62. Sun, Y., & Whalley, J. (2016). China's Anti-dumping Problems and Mitigation through Regional Trade Agreements. *China & World Economy*, 24(6), 87-107.
63. Supriyo, A., & Prakasa, S. U. W. (2021). Subsidies and Countervailing Measures: Challenges in International Trade Law. *Jurnal Komunikasi Hukum (JKH)*, 7(1), 10-22.
64. Survey on MSME/MSME-Related Provisions in APEC Economies' FTAs/RTAs. (2019, May 18). APEC Meeting Document Database [http://mddb.apec.org/Documents/2019/MM/MRT/19\\_mrt\\_010.pdf](http://mddb.apec.org/Documents/2019/MM/MRT/19_mrt_010.pdf)
65. Sykes, A. O. (1989). *Countervailing Duty Law: An Economic Perspective*. Chicago Unbound. [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13590&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13590&context=journal_articles)
66. Tharakan, P. K. M. (1991). Some Facets of Antidumping Policy: Summary of the Contents of the Volume. *Policy Implications of Antidumping Measures*, 15.
67. Tharakan, P. M. (2000). *The Problem of Anti-Dumping Protection and Developing Country Exports*.
68. The MSME sector is critical in times of Covid-19. (n.d.). IIM Bangalore. [https://www.iimb.ac.in/sites/default/files/202005/MSME\\_sector\\_critical\\_times\\_Covid-19.pdf](https://www.iimb.ac.in/sites/default/files/202005/MSME_sector_critical_times_Covid-19.pdf)

69. Theodorakopoulos, N. (n.d.). About – Innovation Vouchers Website. Innovation Vouchers. <https://www.innovation-vouchers.com/about/>
70. TPM Newsletter. (2021, January 25). TPM Consultants. <http://tpm.in/wp-content/uploads/2021/01/Adhyatan-TPM-Newsletter-Issue-1-of-2021.pdf>
71. Trade Remedies. (n.d.-b). Official Portal of the Ministry Of International Trade and Industry. <https://www.miti.gov.my/index.php/pages/view/7678?mid=1205>
72. United Nations Conference on Trade and Development. (2000, October 24). UNCTAD. <https://unctad.org/system/files/official-document/c1em14d2.en.pdf>
73. United States International Trade Commission. (2015, June). Anti Dumping and Countervailing Duty Handbook (No. 4). Office of Investigations, U.S. International Trade Commission. [https://www.usitc.gov/trade\\_remedy/documents/handbook.pdf](https://www.usitc.gov/trade_remedy/documents/handbook.pdf)
74. Untitled. (n.d.). Enterprise Singapore. [https://www.enterprisesg.gov.sg/-/media/esg/files/resources/publications/annual-reports/spring\\_ar2017\\_18.pdf?la=en](https://www.enterprisesg.gov.sg/-/media/esg/files/resources/publications/annual-reports/spring_ar2017_18.pdf?la=en)
75. Vermulst, E. A. (1989). The anti-dumping systems of Australia, Canada, the EEC and the United States of America: Have anti-dumping laws become a problem in international trade. *Mich. J. Int'l L.*, 10, 765.
76. Vermulst, E., & Sud, J. D. (2020). The European Union's New Move Against China: Countervailing Chinese Outward Foreign Direct Investment. *Global Trade and Customs Journal*, 15(9).
77. Weiniger, Fawke, M. A. (2021, September 30). The International Trade Law Review: UK Customs and Trade. *The Law Review*. <https://thelawreviews.co.uk/title/the-international-trade-law-review/uk-customs-and-trade>
78. Whalley, J. (1998). Why do countries seek regional trade agreements?. *The regionalization of the world economy*, 63-90.
79. William Kerr and Laura Loppacher, Anti-dumping in the Doha Negotiations Fairy Tales at the World Trade Organisation, Volume 38 (2), *Journal of World Trade* , 211, 220-223 (2004).
80. World Bank Group. (2020). Malaysia's Experience with the Small and Medium Sized Enterprises Masterplan: Lessons Learned. World Bank.
81. World Bank Group. (n.d.). Doing Business 2020, Brazil. World Bank. <https://www.doingbusiness.org/content/dam/doingBusiness/country/b/brazil/BRA.pdf>
82. World Bank. (202–02-28). Brazil's reforms show how to use fair-trade dumping laws without dumping competition. <https://blogs.worldbank.org/psd/brazils-reforms-show-how-use-fair-trade-dumping-laws-without-dumping-competition>
83. World Trade Report 2016: Levelling the trading field for SMEs. (n.d.). World Trade Organisation. [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report16\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf)
84. WTO ANALYTICAL INDEX Anti-Dumping Agreement – Article 9 (Jurisprudence) 1 1 ARTICLE 9, 2017 Investment Climate Statements: Vietnam. (n.d.). US Department of State. Retrieved February 22, 2022, from [https://www.state.gov/reports/2017-investment-climate-statements/\\_\\_trashed/](https://www.state.gov/reports/2017-investment-climate-statements/__trashed/)
85. Year End Review 2020 - Department of Commerce, Ministry of Commerce & Industry. (2020, December 30)
86. Козьяков, С. Ю., & Гладштейн, А. Л. (2012). Legal practitioner in contemporary international law: new opportunities

### 7.3. DIGITAL WEBSITES

1. Anti-dumping and countervailing system. (n.d.). Australian Government, Department of Industry, Science, Energy and Resources. <https://www.industry.gov.au/regulations-and-standards/anti-dumping-and-countervailing-system>
2. Anti-Dumping Duties-Boon or Bane? (n.d.). The Dollar Business. Retrieved February 20, 2022, from <https://www.thedollarbusiness.com/magazine/antidumping-dutiesboon-or-bane/46027>
3. classification of micro, medium, and small enterprise. (n.d.). [Photograph]. SME Chamber of India. <https://www.smechamberofindia.com/about-msme-in-india.php>
4. DGTR developing web app for submission of info about anti-dumping probes: Survey. (2019, July 4). The Economic Times. <https://economictimes.indiatimes.com/news/economy/policy/dgtr-developing-web-app-for-submission-of-info-about-anti-dumping-probes-survey/articleshow/70074840.cms?from=mdr>
5. DGTR launches online filing system for anti-dumping applications for speedy resolution. (2019, October 1). The Economic Times. <https://economictimes.indiatimes.com/news/economy/policy/dgtr-launches-online-filing-system-for-anti-dumping-applications-for-speedy-resolution/articleshow/71393939.cms?from=mdr>
6. Ease of doing business rank (1=most business-friendly regulations) | Data. (n.d.). World Bank Data. <https://data.worldbank.org/indicator/IC.BUS.EASE.XQ>
7. EU deploys anti-dumping measures against trade partners, Ireland's low-tax regime 'running out of road' – CFO Talks. (n.d.). CFO Talks. <https://cfortalks.com/eu-deploys-anti-dumping-measures-against-trade-partners-irelands-low-tax-regime-running-out-of-road/>
8. Government of Canada. (n.d.). Canadian Border Service Agency. Canadian Border Service Agency. <https://www.cbsa-asfc.gc.ca/sima-lmsi/ct-boa-eng.html>
9. Help for SMEs. (n.d.). European Commission. <https://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/help-for-smes/>
10. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1684674>
11. IFC, Partners to Launch New Indonesia SME Initiative. (n.d.). IFC Press Releases. Retrieved <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=20374>
12. MCTI e Sebrae se unem e lançam programa de crédito de R\$ 1 bilhão para empresas que inovam. (2021, December 13). Finep. <http://www.finep.gov.br/noticias/todas-noticias/6406-finep-mcti-e-sebrae-se-unem-e-lancam-programa-de-credito-de-r-1-bilhao-para-empresas-que-inovam>
13. Informal Working Group on Micro, Small and Medium-sized Enterprises (MSMEs). (n.d.). World Trade Organisation. [https://www.wto.org/english/tratop\\_e/msmes\\_e/msmes\\_e.htm](https://www.wto.org/english/tratop_e/msmes_e/msmes_e.htm)
14. Ministry of Business, Innovation, and Employment. (n.d.). Ministry of Business, Innovation, and Employment. <https://www.mbie.govt.nz/>
15. Ministry of Commerce, People Republic of China. (n.d.). Ministry of Commerce, People Republic of China. <http://english.mofcom.gov.cn/>
16. Ministry of Economy, Brazil. (n.d.). Ministry of Economy. <https://www.gov.br/en>
17. Ministry of Cooperation. (n.d.). Ministry of Cooperation [Press release]. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1758124>
18. MSME Day 2020: the COVID -19 pandemic and its impact on small business. (2020, June 26). ILO. [https://www.ilo.org/empent/whatsnew/WCMS\\_749275/lang--en/index.htm](https://www.ilo.org/empent/whatsnew/WCMS_749275/lang--en/index.htm)
19. MSME Industry in India – Market Share, Reports, Growth & Scope. (2021, December 17). IBEF. <https://www.ibef.org/industry/msme.aspx>

20. MSMED Plan. (n.d.). Department of Trade and Industry. <https://www.dti.gov.ph/negosyo/msme-resources/msmed-plan/>
21. North American Industry Classification System. (n.d.). United States Census Bureau. <https://www.census.gov/naics/>
22. NZTE helps New Zealand businesses grow in international markets. <https://www.nzte.govt.nz/>
23. Revoking of CVD, ADD to hurt earnings of domestic stainless steel industrys. (2021, February 5). Business Standard. [https://www.business-standard.com/budget/article/revoking-of-cvd-add-to-hurt-earnings-of-domestic-stainless-steel-industry-121020300395\\_1.html](https://www.business-standard.com/budget/article/revoking-of-cvd-add-to-hurt-earnings-of-domestic-stainless-steel-industry-121020300395_1.html)
24. Sectors. (n.d.). CII. <https://www.cii.in/Sectors.aspx?enc=prvePUj2bdMtgTmvPwvisYH+5EnGjyGXXO9hLECVtUNuXK6QP3tp4gPGuPr/xpT2f>
25. SMEEIS. (n.d.). Central Bank of Nigeria <https://www.cbn.gov.ng/devfin/smeeispage.asp>
26. Subsidies and Countervailing Measures overview. (n.d.). World Trade Organisation. [https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)
27. Tang, Cai, Zhou And Wang, D. T. J. C. Y. Z. J. W. (2021, September 29). The International Trade Law Review: China. The Law Review. <https://thelawreviews.co.uk/title/the-international-trade-law-review/china>
28. The New Zealand Small Business Strategy. (n.d.). Ministry of Business, Innovation & Employment. <https://www.mbie.govt.nz/assets/the-new-zealand-small-business-strategy.pdf>
29. The Single Market Programme (SMP). (n.d.). European Commission. [https://ec.europa.eu/competition-policy/single-market-programme-smp\\_en](https://ec.europa.eu/competition-policy/single-market-programme-smp_en)
30. Thomson Reuters, Practical Law. [https://uk.practicallaw.thomsonreuters.com/w-016-4262?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a746712](https://uk.practicallaw.thomsonreuters.com/w-016-4262?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a746712)
31. Trade Defense. (n.d.). The Ministry of Trade, Industry, and Tourism. [https://www.mincit-gov-co.translate.google.com/mincomercioexterior/defensacomercial?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=wapp](https://www.mincit-gov-co.translate.google.com/mincomercioexterior/defensacomercial?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp)
32. Trade Remedies. (n.d.). International Trade Administration Commission. <http://www.itac.org.za/pages/services/trade-remedies>.
33. Electronic Document Information System (EDIS) Support. (n.d.). United States International Trade Commission. [https://www.usitc.gov/press\\_room/edissupport.htm](https://www.usitc.gov/press_room/edissupport.htm)
34. Trade Remedies. (n.d.-c). Department of Trade and Industry. <https://www.dti.gov.ph/negosyo/imports/trade-remedies/>
35. Trade Remedial Measures. (n.d.). The Directorate General of Trade Remedies. <https://www.dgtr.gov.in/>
36. U.S. Customs and Border Protection. (n.d.). U.S. Customs and Border Protection., <https://www.cbp.gov/>
37. Vietnam. Mondaq. <https://www.mondaq.com/international-trade-investment/1092370/notes-to-the-process-of-anti-dumping-investigation-in-vietnam>
38. WTO | Regional Trade Agreements - goods (GATT) provisions. (n.d.). World Trade Organisation. [https://www.wto.org/english/tratop\\_e/region\\_e/regatt\\_e.htm](https://www.wto.org/english/tratop_e/region_e/regatt_e.htm)
39. ACHARYA, R. (2018, December 20). Regional trade agreements: challenges and opportunities. International Trade Centre. <https://www.intracen.org/news/Regional-trade-agreements-challenges-and-opportunities/>
40. Ministry of Planning and Investment Portal. (2019, December 25). Ministry of Planning and Investment Portal. <https://www.mpi.gov.vn/en/Pages/tinbai.aspx?idTin=44933&idcm=108>



41. Suneja, K. (2020, January 13). Legal platform to counter cheap imports. *Economic Times*. <https://economictimes.indiatimes.com/news/economy/foreign-trade/legal-platform-to-counter-cheap-imports/articleshow/73220520.cms>
42. Small business. (2020, September 28). Ministry of Business, Innovation & Employment. <https://www.mbie.govt.nz/business-and-employment/business/support-for-business/small-business/>
43. Major Challenges Faced by the MSME Sector. (2021, January 18). SME Corner. <https://www.smecorner.com/major-challenges-faced-by-the-msme-sector/>
44. Arora, N. (2021, February 1). India suspends anti-dumping duty on some steel products from China. *Reuters*. <https://www.reuters.com/article/india-budget-steel-idUSL4N2K73I5>
45. India's high import duties are killing MSMEs. (2021, March 25). *India Today*. <https://www.indiatoday.in/india-today-insight/story/india-s-high-import-duties-are-killing-msmes-1783664-2021-03-25>
46. Ministry of Commerce & Industry. (2021, April 20). <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1712873>
47. Rangan, G. (2021, April 28). India imposes anti-dumping duty on chemical from four regions. *The Economic Times*. <https://economictimes.indiatimes.com/news/economy/policy/india-imposes-anti-dumping-duty-on-chemical-from-four-regions/articleshow/82296194.cms?from=mdr>
48. Moraes, Dias, O. J. D. (2021, May 1). International Trade in Goods and Services in Brazil: Overview. Thomson Reuters, Practical Law. [https://uk.practicallaw.thomsonreuters.com/w-011-0773?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a231281](https://uk.practicallaw.thomsonreuters.com/w-011-0773?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a231281)
49. Adeyemi, T. (2021, June 4). Panaceas: Dumping And Trade Remedies In Nigeria. *MONDAQ*. <https://www.mondaq.com/nigeria/export-controls-trade-investment-sanctions/947900/panaceas-dumping-and-trade-remedies-in-nigeria->
50. Soni, S. (2021, August 30). Small Industry Day: What Indian MSMEs believe would help them become big amid myriad challenges. *Financial Express*. <https://www.financialexpress.com/industry/sme/msme-eodb-small-industry-day-what-indian-msmes-believe-would-help-them-become-big-amid-myriad-challenges/2319156/>
51. Berenholc, Guilherme, M. R. (2021, September 29). The International Trade Law Review: Brazil. *The Law Reviews*. <https://thelawreviews.co.uk/title/the-international-trade-law-review/brazil>
52. Paratz, Soto, A. W. (2021, September 29). The International Trade Law Review: Argentina. *The Law Reviews*. from <https://thelawreviews.co.uk/title/the-international-trade-law-review/argentina>
53. Jarsoz, Scheitterlien, P. C. (2021, September 29). The International Trade Law Review: Canada. *The Law Review*. <https://thelawreviews.co.uk/title/the-international-trade-law-review/canada>
54. Defending Indonesian Exporters. (2021, November 25). *ARISE+ Indonesia*. <https://ariseplus-indonesia.org/en/events/trade-remedies-workshop-series.html>
55. Sen, A. (2021, December 12). Anti-dumping duties doubled during peak Covid, WTO report shows. *The Hindu Business Line*. <https://www.thehindubusinessline.com/news/anti-dumping-duties-doubled-during-peak-covid-wto-report-shows/article37938187.ece?homepage=true>
56. Shaw, R. (2021, December 20). MSMEs protest against rising input costs. *Deccan Herald*. Retrieved February 20, 2022, from <https://www.deccanherald.com/business/msmes-protest-against-rising-input-costs-1063002.html>
57. Banik, N. (2022, January 20). Budget: As Chinese stainless steel imports surge, Indian MSMEs feel the heat. *The Economic Times*. <https://economictimes.indiatimes.com/small-biz/sme-sector/budget-as-chinese-stainless-steel-imports-surge-indian-msmes-feel-the-heat/articleshow/89010238.cms>
58. Finep - Início. Retrieved February 21, 2022, from <http://www.finep.gov.br/>

59. KADI CASE. (n.d.). KADI. Retrieved February 22, 2022, from [https://kadi-kemendag-goid.translate.google/about?\\_x\\_tr\\_sl=auto&\\_x\\_tr\\_tl=en&\\_x\\_tr\\_hl=en&\\_x\\_tr\\_pto=wapp](https://kadi-kemendag-goid.translate.google/about?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp)

#### 7.4. ACTS

1. Agreement on Implementation of Article VI, Antidumping Agreement. (n.d.). International Trade Administration. <https://enforcement.trade.gov/regs/uraa/saa-ad.html>
2. Agreement on subsidies and countervailing measures
3. Anti Dumping Agreement
4. Anti-Dumping Rules [Custom Tariff ( Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and or Determination of Injury) Rules, 1995
5. Countervailing and Anti-Dumping Duties Act 1996. (n.d.). Singapore Statutes Online. <https://sso.agc.gov.sg/Act/CADDA1996?ProvIds=P12-#pr3->
6. Customs Tariff (Identification, Assessment, and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995
7. Customs Tariff Act, 1975
8. General Agreement on Tariffs and Trade
9. Marrakesh Agreement
10. REPUBLIC ACT NO. 8752 The Anti-Dumping Act of 1999, Republic of the Philippines
11. Section 40.1 (3) of the Special Import Measures Regulations.