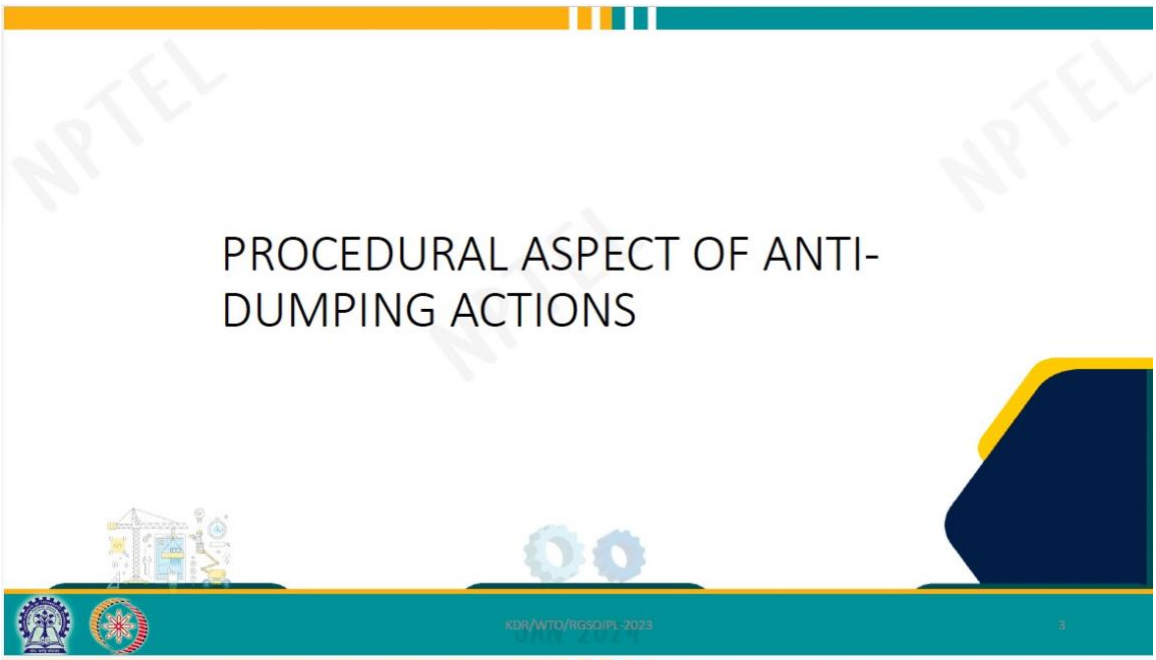
Lecture 11: Procedural Aspects and Indian Laws on Anti-Dumping

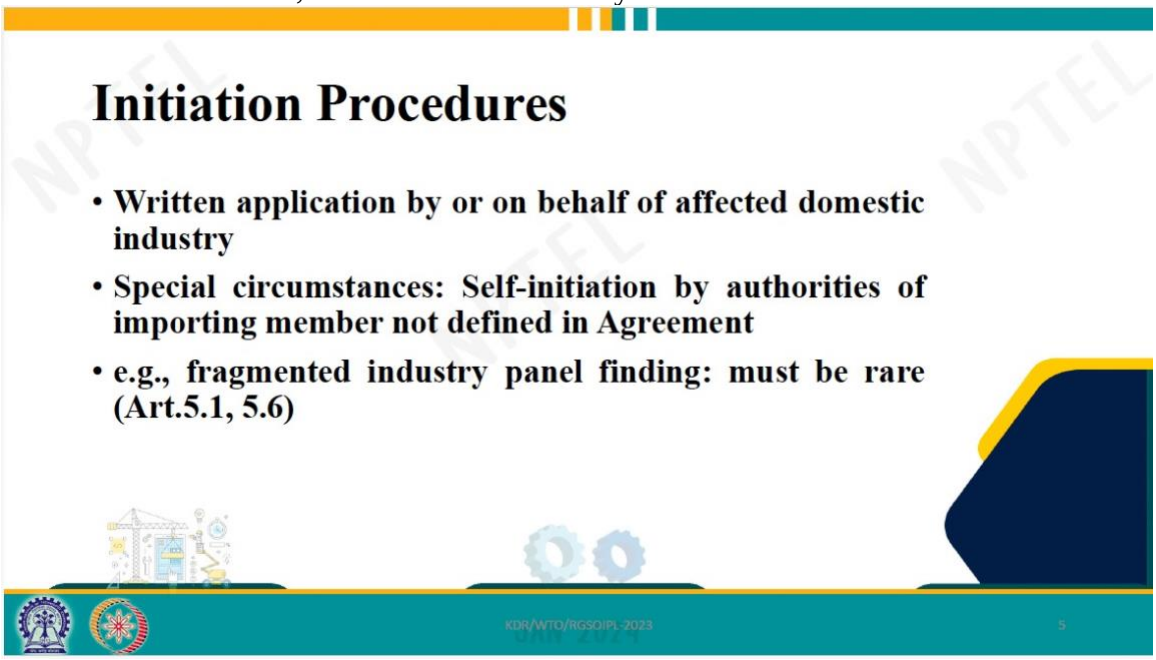
Dear students, in this class we are going to deal with the procedural aspects of Anti-dumping and also the Indian Anti-Dumping provisions. And we dealt in the last two classes about the two requirements or three prerequisites of initiating Anti-Dumping and what are the procedural aspects? Procedural aspects of initiating Anti-Dumping investigations are also very important. Because imposing an Anti-Dumping duty on a particular industry means that that industry may vanish from the market because it may not be able to withstand an Anti-Dumping action for a period of 5 years. And usually you will see that the Anti-Dumping action is imposed for how many years? What do you mean by sunset review? What do you mean by the special provisions for developing countries? What is the standard of review? And what are the special provisions available to the developing countries?

And what are the Indian provisions? What is the Indian law to deal with Anti-Dumping actions in accordance with the Anti-Dumping Agreement? This we will deal with in the present case, and this is the last class on the Anti-Dumping module.



So, we talked about the procedural aspects, and you can see that the entire process is started with an application. An application from whom? Application from the domestic industry. In the last class, we discussed what exactly constitutes domestic industry. So, the domestic industry gives an application to the domestic authorities for imposing Anti-Dumping duty. So, the domestic authorities vary from country to country, but every 164 WTO countries have domestic laws and authorities. It is the mandate of the WTO Anti-Dumping Agreement. So, in accordance with the WTO Agreement, Anti-Dumping Agreement mandate every country legislated provisions relating to Anti-Dumping including India. So, I said an investigation is started with a written application from the domestic industry. So, then the authorities will see whether the applicants really constitute the domestic industry, whether they have a local standi. We will see that what

is the local standi, who is permitted, who is eligible to submit an application. Then, the investigating authorities will gather preliminary information or conduct a preliminary investigation. And also they will make a preliminary determination. After the preliminary determination they may proceed with a formal Anti-Dumping investigation. And also you can find there can be response to the preliminary determination. The preliminary determination may result into, there may be an interim order, interim order for price undertakings, for other interim measures or any other kind of interim measures can be, we will see that what are those interim measures that can be imposed by the Anti-Dumping authorities. Then, collection of evidence, investigation - full investigation, visit of the exporting country, gathering data, and verification of the information. Then, there is a final determination, and we will see it one by one in detail.



So, we said that everything is starting with a complaint from a domestic industry. In certain cases, special cases, the Anti-Dumping authorities can also initiate suo-moto Anti-Dumping investigations. So, in cases, for example, highly fragmented industries. So, the government of India can take a decision with regard to the highly fragmented industries which cannot constitute the major proportion of the products producing that particular product. So, the government have the discretion, and it rarely happens.

Locus Standi

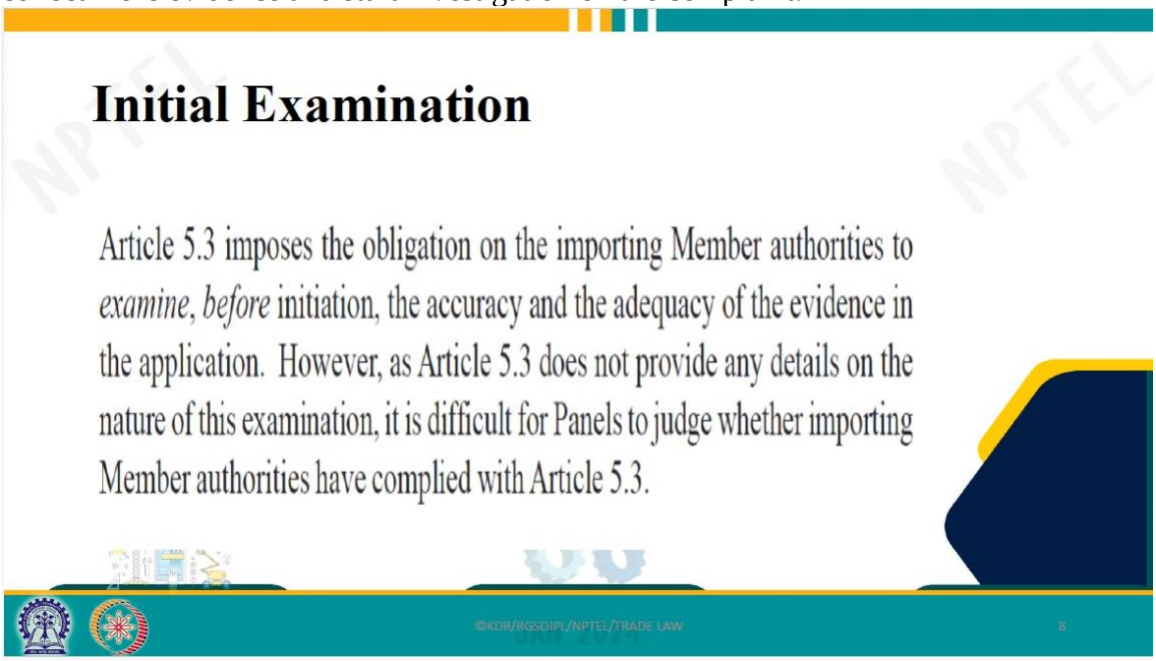
- "Standing" of domestic industry:
- –Supporting producers account for >50% of production by those expressing opinion (either support for or opposition to the application)
- –Supporting producers account for >25% of total production (Art. 5.4)

And also who can approach, here it is not only the domestic industry, the percentage of support which is required for submitting a successful application is also provided in Article 5.4 of the Anti-Dumping Agreement. So, the provision says supporting producers account for more than 50 percent of the total production or the second criteria is the supporting producers account for more than 25 percent of the total production as well. So, that means these two criteria as a whole, the entire supporting producers or support for opposition to the application, should be more than 50 per cent. It means that more than 50 per cent of the support of the whole of the producers is required. Also, within that 50 per cent, the supporting produces account for 25 per cent of the total production. These are the two economic conditions that they put in place for submitting an application to the authorities.

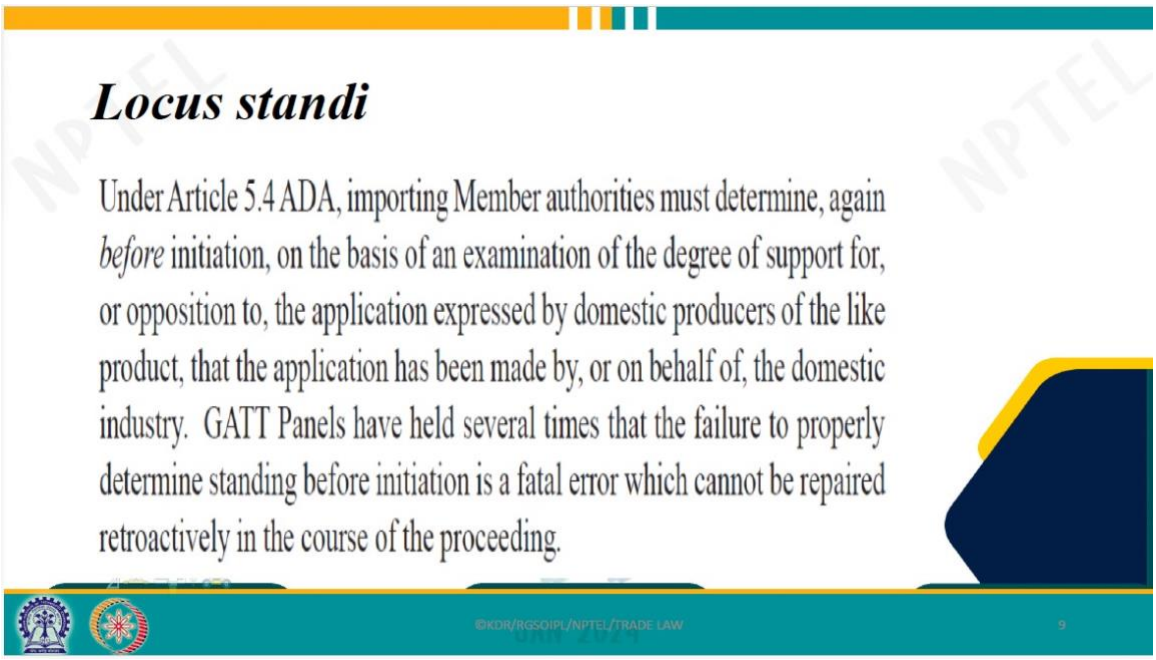
Pre-requisites for Initial Decision

- Application must include evidence of:
- Dumping
- Injury
- Causal link between dumping and injury
- Simple assertion unsubstantiated by relevant evidence cannot be considered sufficient to meet these requirements
- The information contained in the application should be such as is reasonably available to the applicant (A.5.2)

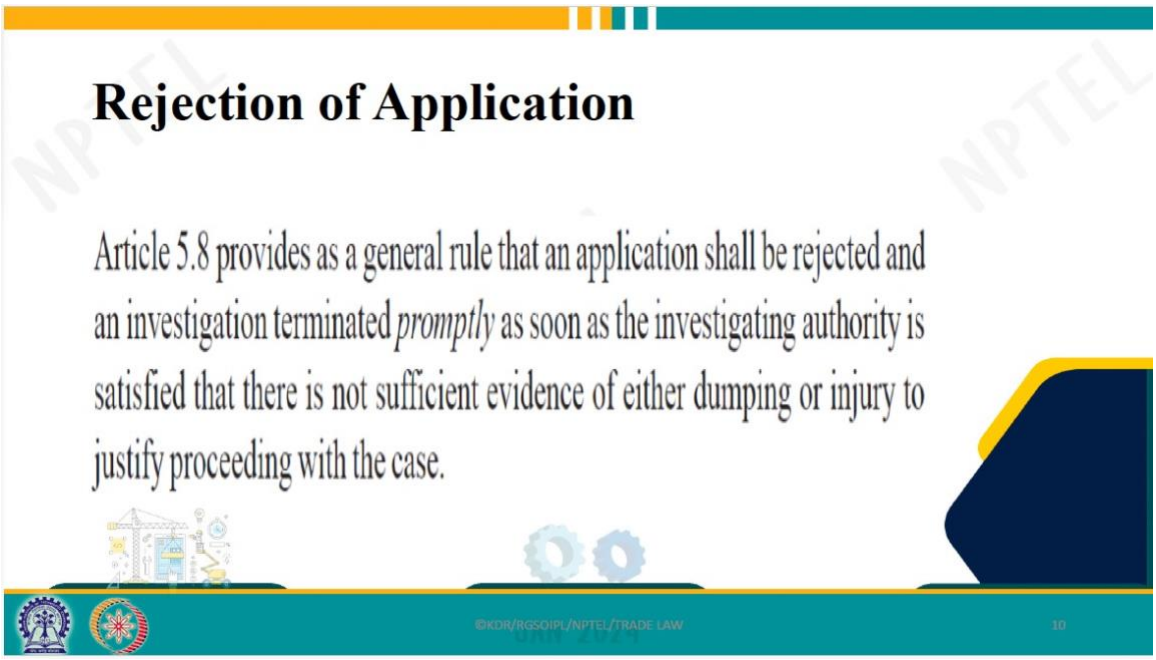
Also, it is not just a one-page application that is sufficient. The complainant must produce some kind of evidence, not the conclusive evidence, but some kind of evidence with regard to dumping, with regard to injury to the domestic industry and the causal relationship link between dumping and injury. So, we saw the provision, simple assertion or declaration without evidence is not admissible. So, the information in the application should be reasonably available to the applicant. It means without any evidence mere statement assertion is not sufficient to start an investigation. The complainant must produce some kind of evidence. So, that the investigating authorities can verify and collect more evidence and start investigation on the complaint.



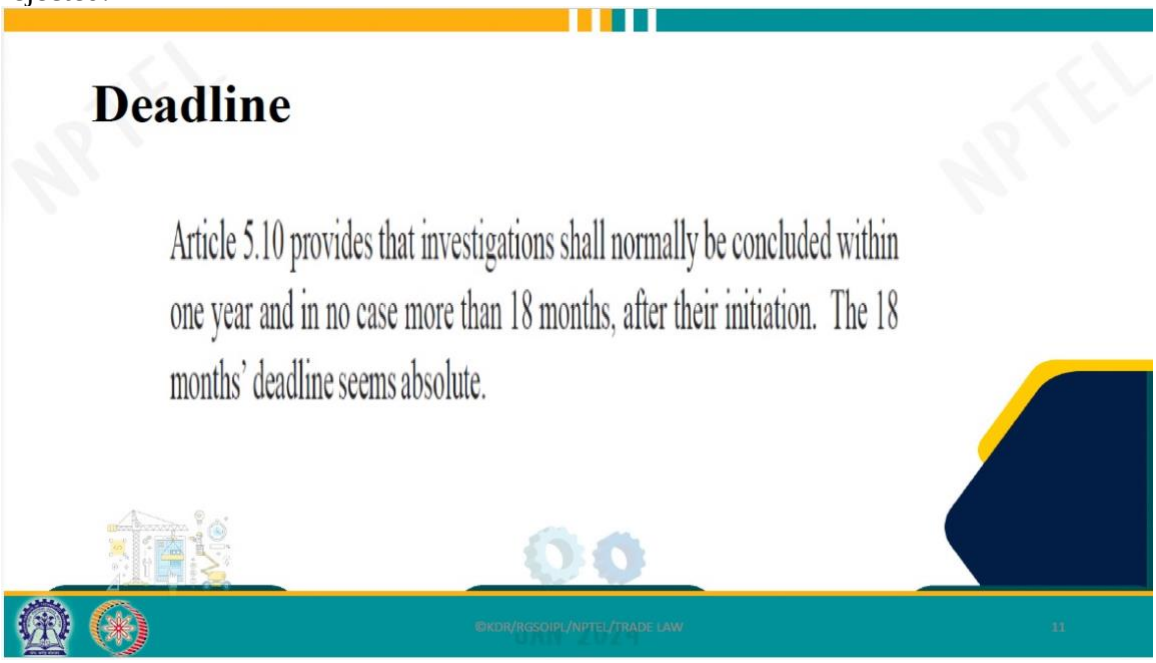
So, the initial examination: so, Article 5.3 very clearly says that there is an obligation on the importing member authorities to examine before initiating any Anti-Dumping actions, the accuracy and adequacy of the evidence submitted by the applicant. And also details, detailed examination, detailed data is not required because it is very difficult to get detailed data for the complainant. So, even within the limited data which is available to the complainant to show the injury to the domestic industry the investigating authorities should examine it its accuracy and adequacy. It cannot be manipulated data. The accuracy and adequacy of the data should be examined by the investigation or investigating authorities of the individual member countries.



So, again it says that before, the degree of support of the domestic industry should be there and what is the opposition? So, the provision says that it should not exceed 50 percent of support or opposition. More than 50 percent support is required, greater than 50 percent support is required. So, what is the support? degree of support from the domestic industry? It is not only domestic industry producing the same product, but like product or who is the complainant whether really they are the domestic industry that is to be verified by the investigating authorities. So, the failure on the part of the investigating authorities to determine whether there is sufficient support or whether it really constitutes the domestic industry is an error which will severely affect the entire investigation. So, the entire investigation is going to be held void if the investigation authorities make a mistake, an error in case if there is no support prescribed by the act, or if there is no sufficient evidence to show that an Anti-Dumping is going on. So, this cannot be repaired later on and this will vitiate the entire Anti-Dumping investigation.

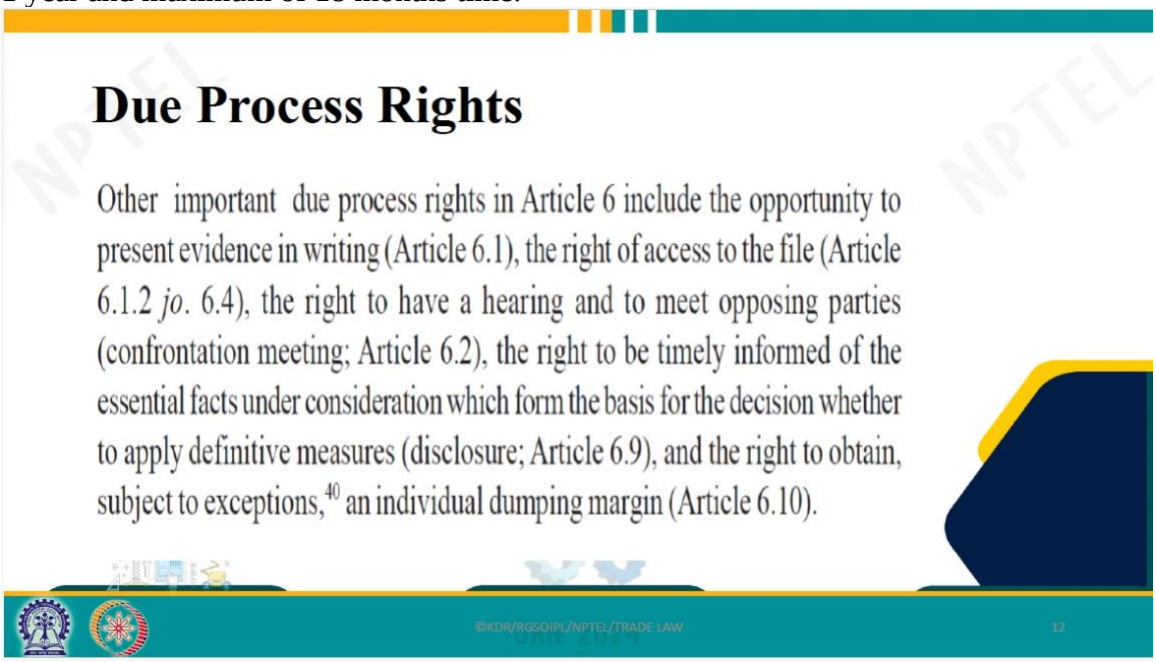


And then Article 5.8 provides that if the preliminary investigation proves that there is no sufficient support from the domestic industry or if there is no sufficient evidence of dumping or injury or the causal relationship between dumping and injury, causal effect on dumping and injury to justify the proceedings then the investigating authorities will discard, stop further investigation or the application will be rejected. So, in the preliminary investigation itself the application for Anti-Dumping initiation can be rejected.

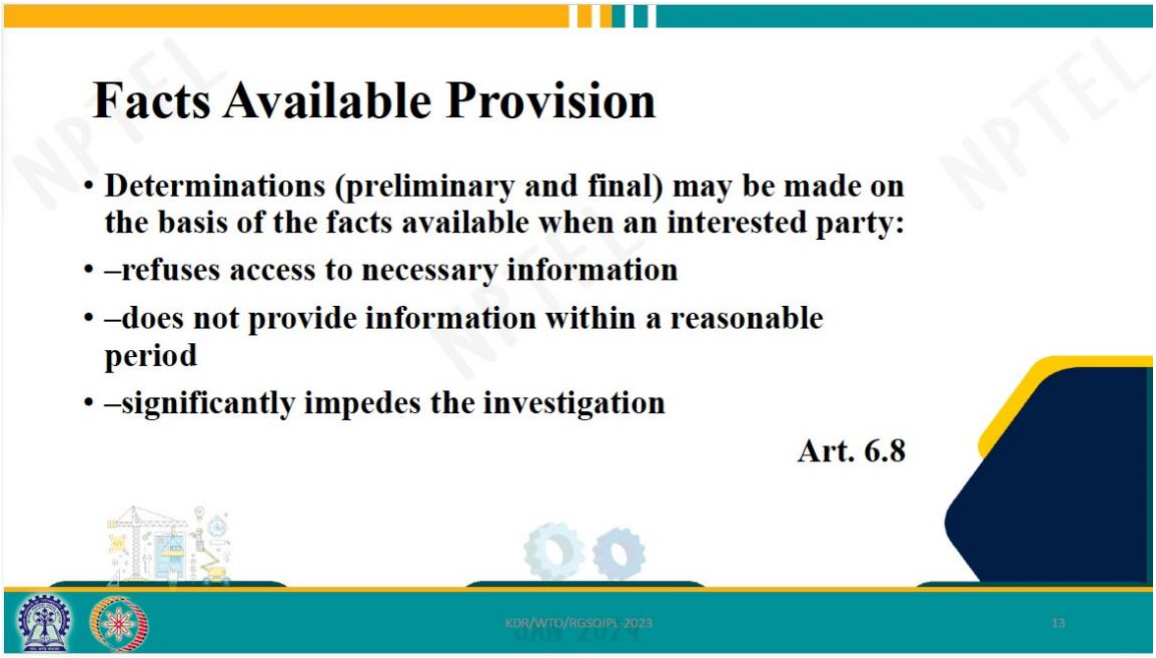


Then again you can see, you cannot investigate for years and years. So, Article 5.10 very clearly mentioned about the usual period of time: within 1 year that is 12 months and in no case more than 18 months. So, it is very clear: 1 and half years. So, the investigation period should not be more than 1 and half years because if the investigation extends, this

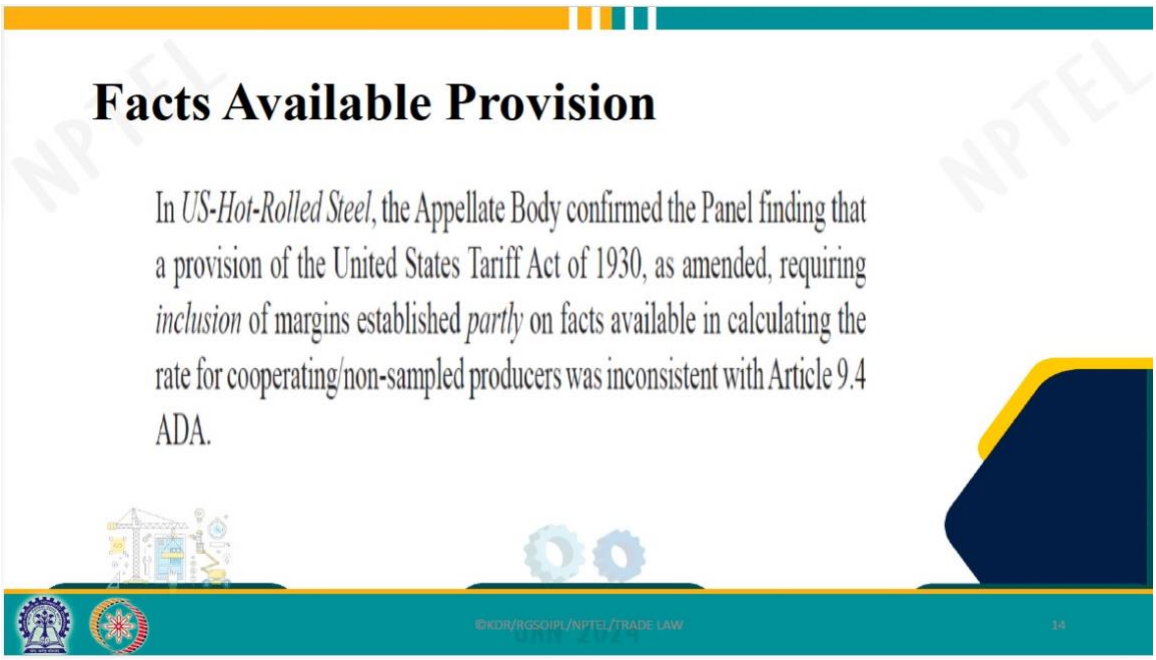
Anti-Dumping investigation itself is going to affect the entire industry because nobody is going to import that particular product from a particular country or a producer any further while an investigation is going on. It means that an Anti-Dumping investigation can stop imports of a product from a particular country. Starting an investigation itself is sufficient to affect the industry in the exporting country. So, the Act very clearly gives a deadline of 1 year and maximum of 18 months time.



And what are the due process rights? Due process rights of the respondents? So, Article 6 talks about very important due process rights. So, the respondent, as well as the complainant, must be given an opportunity to present evidence in writing, and the respondent must have access to the files of the evidence submitted to the investigating authorities, you cannot have secret dealings. So, the respondent must have access to the files and the right of hearing, and even to meet the opposite parties, which is known as a confrontation meeting. The name itself is confrontation meeting. So, it means that both parties should meet. There is a right to meet the other party to confront the allegations. Then timely transfer of information and also before imposing Anti-Dumping duties, measures; a notice should be given to both the parties and the determination of dumping margin. So, it means that neither the complainant nor the investigating authorities can deal very secretly and impose anAnti-Dumping duties. A reasonable opportunity of being heard is to be given to the respondent as well. So, the principles of natural justice is applicable in Anti-Dumping investigations. So, this is mentioned in Article 6. So, it is very clear that all the opportunities are to be given to the respondent, whether it is in submitting evidence or oral hearing, meeting the respondent, and being heard before imposing Anti-Dumping duties. So, all the due process clauses must be complied with before imposing Anti-Dumping duties.



Article 6.8 of the Anti-Dumping Agreement is a very important provision because, in most cases, the respondents do not cooperate with the investigation authorities. Definitely, these producers will be in another country, and the investigating authorities usually go to the producing countries and ask for the production of evidence or the production or export data. In most cases, for example, countries like China never respond even to the notices. In that case, what will you do? Article 6.8 of the Anti-Dumping Agreement provides that if the members fail to submit or refuse access to data or necessary information or does not provide information within a reasonable period of time or significantly impede the investigation, then the investigating authorities can go ahead with the Anti-Dumping investigation with whatever is available with the investigating authorities, that is, Article 6.8 is known as *Facts Available Provision*. Some countries have even interestingly submitted the data in a computer format that nobody can read. It has happened in some of the cases, so that they can drag the case saying we have submitted. So, they can drag the investigations to unreasonable period of time. So, that is not acceptable. In that case, also, the investigating authorities will go ahead with the *Facts Available Provision*. So, the facts available provision is a weapon in the hands of investigating authorities against those who never submit data on time or those who refuse to submit, those who do not submit information in time and do not respond to the notices of the investigating authorities. So, *Facts Available Provision* gives the investigating authorities freedom to use, whatever data is available with them, against the respondent.



And in the *US Hot-Rolled Steel* case, the appellate body confirmed these kind of provisions in the domestic legislations. For example, in the case of US Tariff Act of 1930 which was the famous Act which was enacted during the time of economic crisis or the great depression. So, they amended this particular Act, which required the inclusion of margins established partly on facts available in calculating the rate of cooperation or non-sampled producers, which was inconsistent with Article 9.4 of the ADA. So the story is very simple. So, they included a provision which says that we will calculate the dumping margin differently for those people who are cooperating and non-cooperating. So the appellate body said that this is discrimination against cooperating and non-sampled producers - this is discrimination with regard to Article 9.4 of the Anti-Dumping Agreement. So, facts available provision also has to be used sparingly. So the domestic legislations violating Anti-Dumping Agreement will be held against the Anti-Dumping Agreement and accordingly proceed with by the members of the WTO. So, it is very clear you cannot have a domestic law which is overruling Anti-Dumping Agreement provisions.

Conditions for Application of Provisional Measures

- Provisional measures may be applied only if:
- an investigation has been initiated (in accordance with the provisions of Article 5), a public notice has been given to that effect, and the parties have been given opportunities to submit information and comments
- a preliminary affirmative determination has been made of dumping and consequent injury to a
- Domestic industry
- it is judged that such measures are necessary to
- prevent injury being caused during the investigation.

• A.7.1.

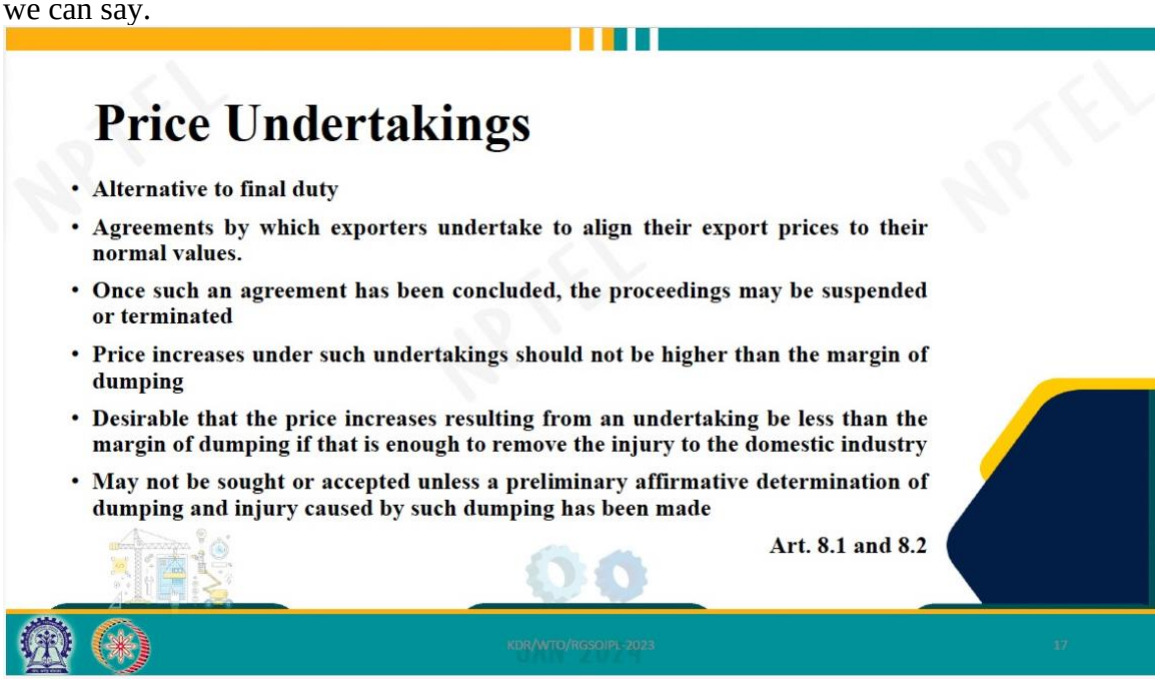
So we said that after the preliminary investigation the Anti-Dumping authorities may impose provisional measures and what are the provisional measures? So here you can see that a public notice is to be given to that particular effect on provisional measures and before imposing provisional measures an opportunity of hearing to be given and also has to submit documents and comments. And also, there must be the affirmative determination of dumping, affirmative determination of injury and affirmative determination of causal link as well. And also, finally, the investigating authorities should identify this and also come to the conclusion that imposing these provisional measures will be preventing injury, further injury to the domestic industry. Otherwise unnecessarily the provisional duties cannot be imposed on the exporting country.

Forms of Provisional Measures

- Provisional measures may take the form of a provisional duty or, preferably, a security (by cash deposit or bond)
- The amount of the duty may not be greater than the margin of dumping provisionally estimated
- The security should be equal to the amount of the provisional duty

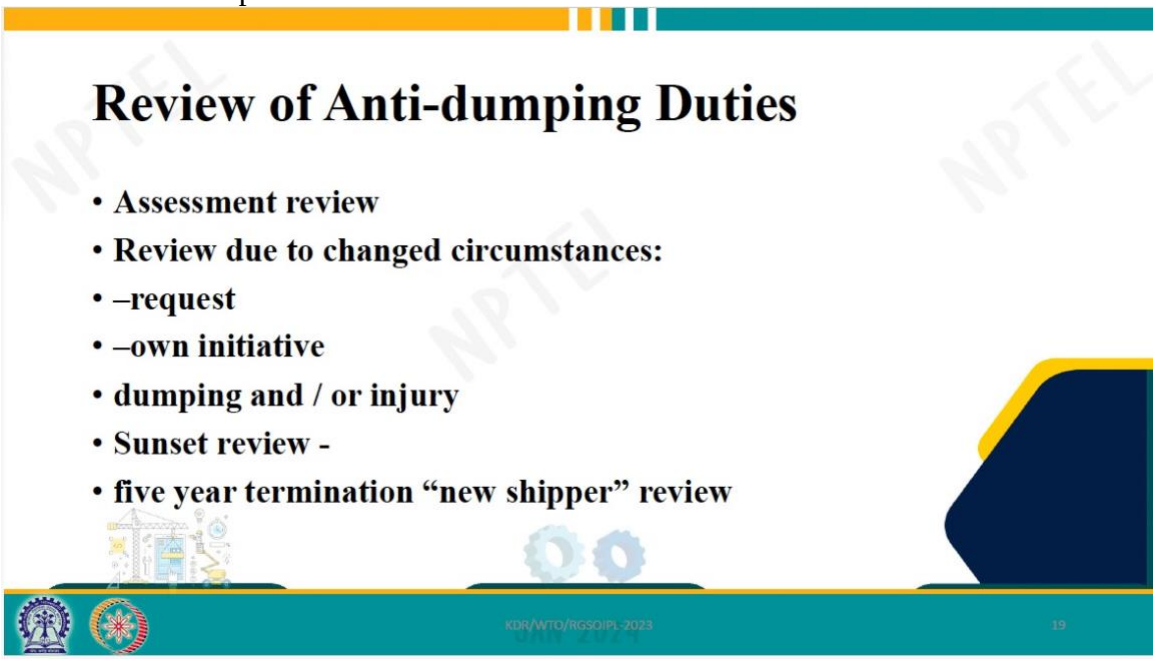
Art. 7.2

And what are the form of provisional measures? So the provisional measures are in the form of provisional duty. So Article 7.2 says that it may be a provisional duty imposed or it can be in the form of security. Security of cash deposits or bonds or any other format of deposits and take an undertaking that I am not going to continue with these particular measures at this price or I am not going to continue with the dumping. So the provisional duty should be calculated and these provisional measures for example, the cash deposit should be equal to as that of the provisional duty. So you cannot charge huge amounts, but you can only ask for equal to as that of the provisional duty to be deposited by cash or by bond or by other receipts or depository receipts with the authorities. So, provisional measures include the provisional duty and also cash undertakings or price undertakings we can say.



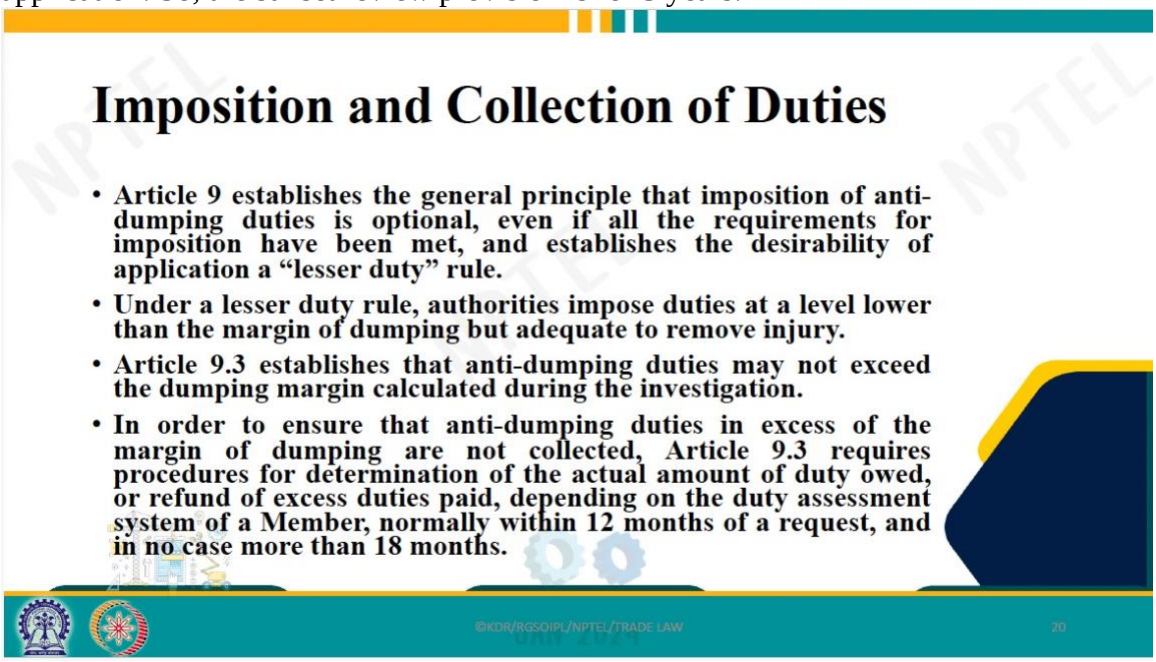
So before the final duty the Anti-dumping authorities can impose provisional measures as price undertakings. So it is very simple. The exporters undertake to align their export prices to the normal values and also you can see that they agreed to suspend the exports in the dump prices and the price undertakings or the price increases should not be exceeding the margin of dumping even though you are free to increase the prices. So, in most of the cases, your complaint will be that they are selling it at a lower price. So, the price increase also should not exceed exorbitant prices. You cannot ask them to increase the prices exorbitantly, but you can only ask to the extent of the margin of dumping. So the price increases must be below the margin of dumping or sufficient margin to remove the injury to the domestic industry. So, and also the other factors which we discussed earlier. If the other factors are responsible for the problem or other factors are responsible for the finding of dumping, then it cannot be considered. So the price undertakings cannot be taken or the provisional measures should not be imposed on the exporters.

So then in certain cases the investigations are leading to the final measures. So and also every time an opportunity of being heard to the respondent as well as the complainant and verification of information, sufficient time to be given to defend the case. What is a sufficient time? So we saw that the total investigation period is 1.6 months in maximum cases. So the parties cannot take 1 year period, ask for 1 year to analyze the data, you cannot take that much time. So, the investigation authorities should give a reasonable period of time within these 18 months to submit data otherwise they can go ahead with the facts available provision.

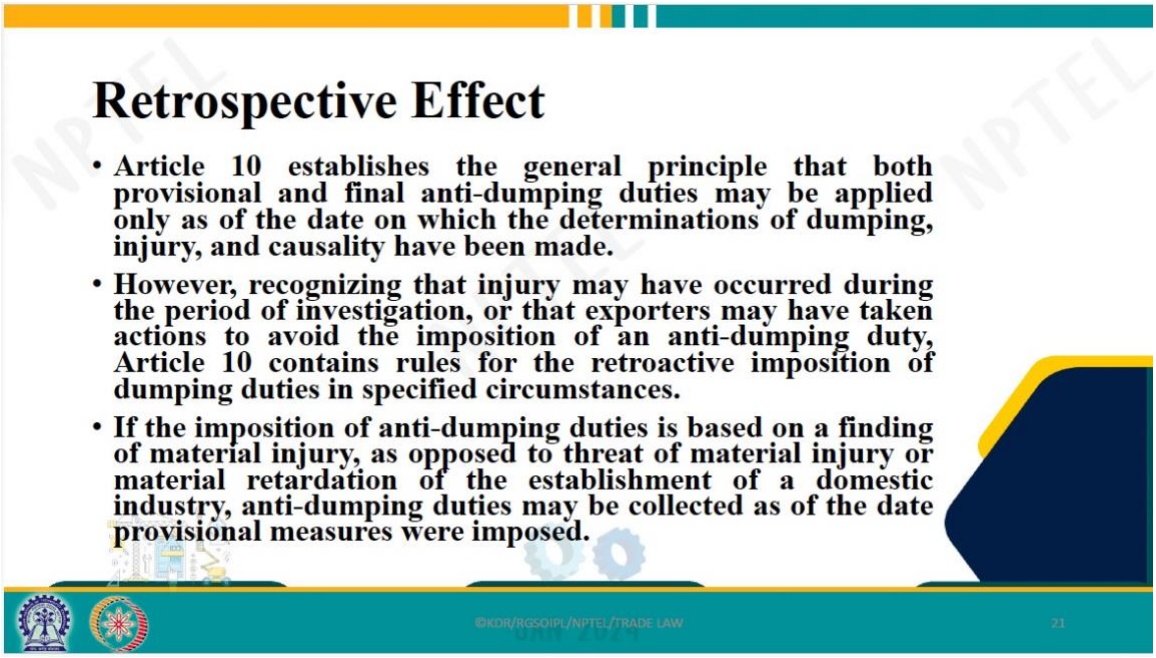


And review of Anti-Dumping duties to be done from time to time. So this “time to time” is usually 5 years, maximum period of 5 years. So that means the sunset review provision or new shipper provision which says that you can impose Anti-Dumping duties to the

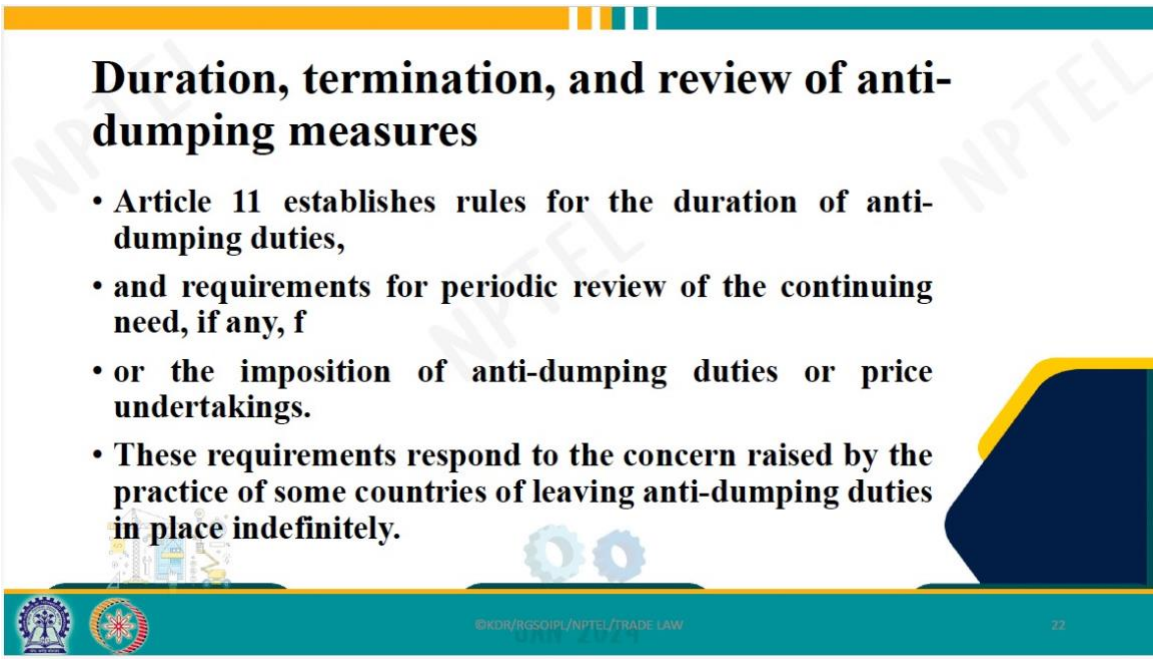
tune of maximum 5 years and even much before that also the states can do a review, but until there is a review investigation pending so you have to do away with the Anti-Dumping duties within a period of 5 years. The Anti-Dumping duties are to be terminated within 5 years. So, this assessment can be done with a request from the exporter or even a request from the complainant. By its own initiative by the investigating authorities also it can be done, but it is mandatory to do it at the end of 5 years. No application is required at the end of 5 years. So if they want to do it before, then they have to give an application. So, the sunset review provision is for 5 years.



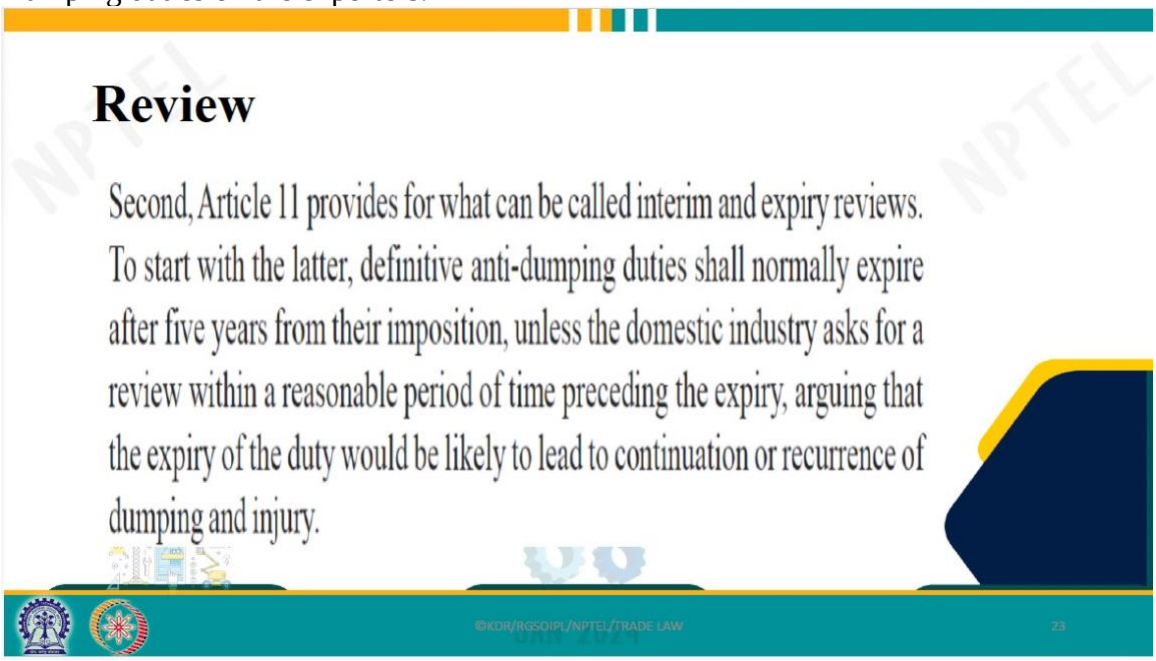
So how is the collection of duties done, what are the provisions for collection of duties? So we talked about the lesser duty rule. This is nothing, but when you impose Anti-Dumping duties, the Anti-dumping authorities must look into the margin of dumping. The first rule is that they cannot impose more than the margin of dumping. (2), it is not necessary that you impose the full margin of dumping in order to offset the dumping. So you can put a lesser amount also, you can impose a lesser duty as well to remove the particular dumping. So the lesser duty rule should be applicable. So under the lesser duty rule the authorities, the Anti-Dumping authorities must be imposing a lower duty than the margin of dumping which is an amount which is adequate to remove the injury. And Article 9.3 very clearly says that Anti-Dumping duties may not exceed the margin of dumping. So in any case, in no case you can impose Anti-Dumping duties more than margin of dumping. So, if more duties are collected under the provisional measures, so if you imposed the actual amount of duty, a refund must be made of the excess duties normally within 12 months of the request. And again, that is also in no case more than 18 months because of the maximum investigation period. That means under the provisional duties if you collected a higher amount than the margin of dumping then the authorities must return the money, excess money already collected with interest. So we have court cases in India where the Indian Supreme Court has ordered for, we will see some of the cases later on, ordered for return of this money with interest. So, the collection of duties are also under severe constraint.



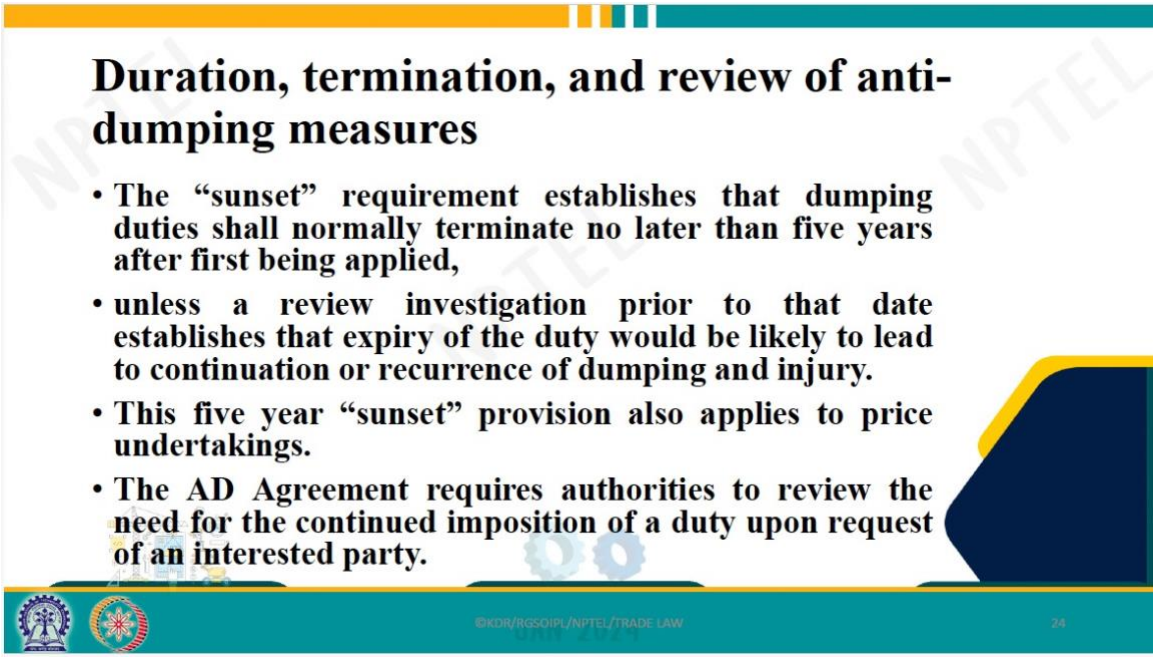
Then, the question you ask is whether a retrospective effect can be made for the imposition of duties. Article 10 talks about the retrospective effect for the provisional duties as well as the final duties. What is the date on which the duties will be applicable? So it says, Article 10 says that the date on which the determination of dumping, injury and causality have been made. So, whether it is within the period of 18 months investigation period when they do it that is the particular date on which you can impose Anti-Dumping duties. So but, in certain cases, the injury can be done during the investigation period as well and that is also to be taken into consideration. So in that case if the dumping continues during the investigation period then the authority can impose a retroactive imposition of duties for that particular investigation period. So, the imposition of Anti-Dumping duty is basically based on material injury and also definitely opposed to the threat of material injury or material retardation of the establishment of domestic industry. And also in most of the cases the provisional duties are imposed. So, the duties are collected from the provisional duties imposed. So we already said that if excess duty is paid you have to retain the excess amount.



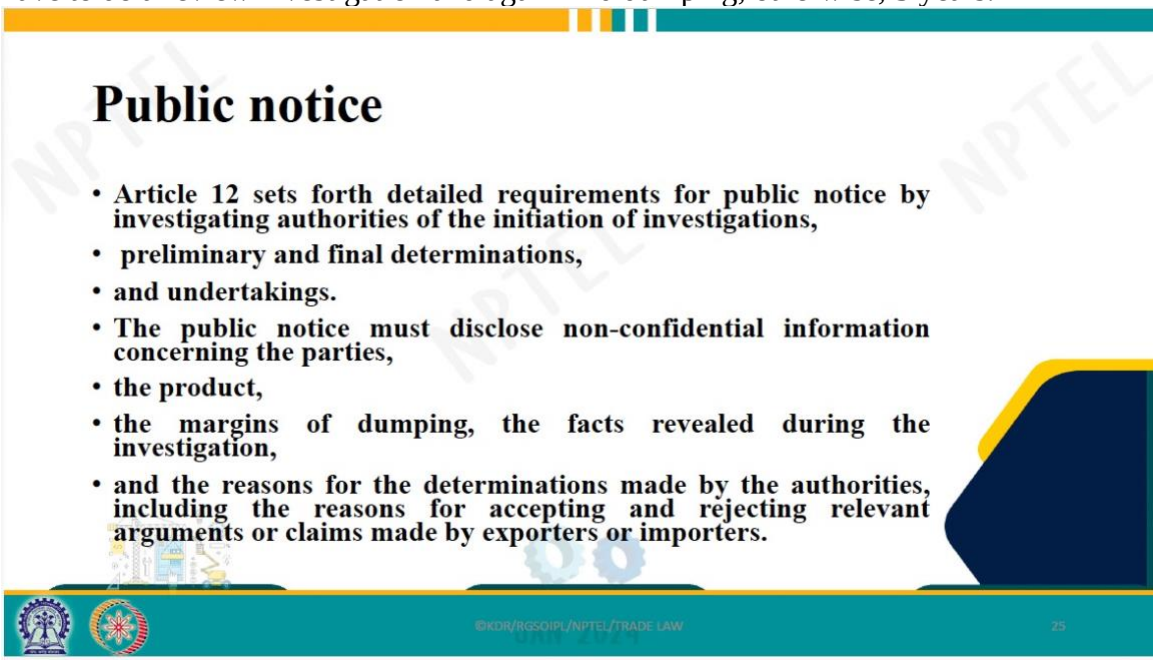
Article 11 very clearly states the duration of anti-dumping duties. So the provision says that as soon as possible, a periodic review is to be made, and as soon as possible, if the dumping is stopped or the price undertakings are made, then the Anti-Dumping duties are to be removed. It means that if an exporter submits a price undertaking, then the countries should immediately stop imposing Anti-Dumping duties or continue to impose Anti-Dumping duties on the exporters.



And how the review is to be done? So as I said that the maximum period is 5 years either the domestic industry asked for a review or the exporter asked for a review or the domestic industry shows that there is a recurrence of dumping in order to continue with the dumping duty.

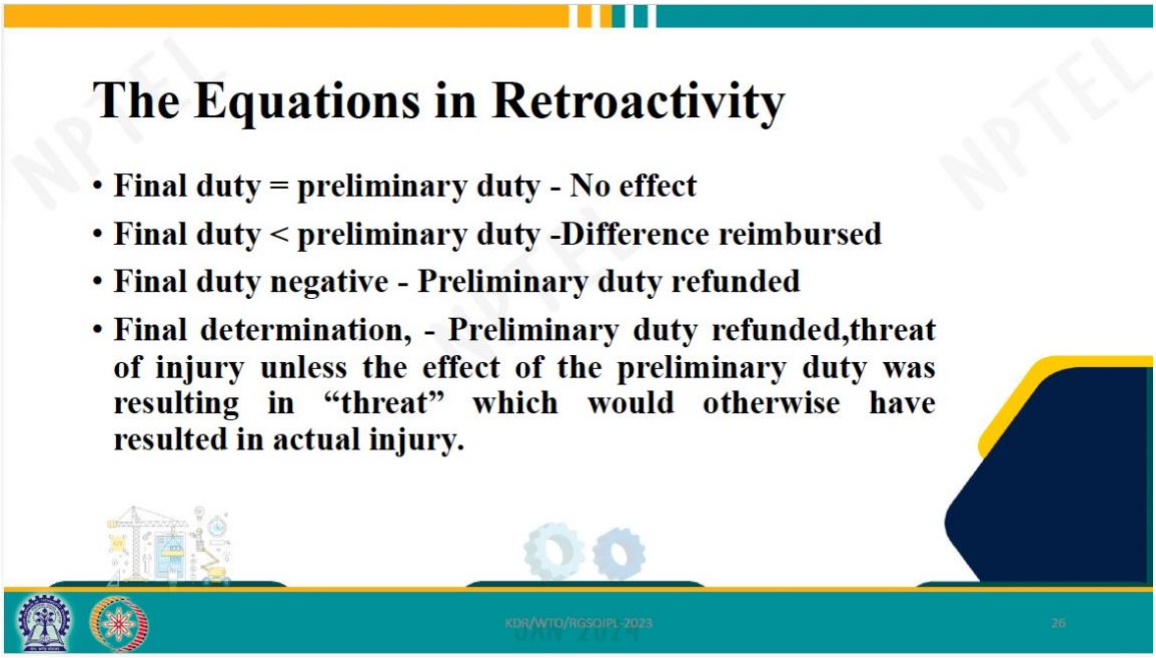


And termination is very important, termination of Anti-Dumping duties. We already said that the sunset requirement is 5 years. And also, the review is to be asked by the domestic industry or by the exporter or even, in certain cases, by the suo moto process of the investigating authorities, but in no case more than 5 years. And this 5 years is applicable to price undertakings as well. So, the sunset review provision is applicable to, the 5 years provision is applicable to price undertakings. Provisional measures as well. So it means that no country can continue with the provisional measures beyond 5 years. So you have to review and terminate if you want to continue with the Anti-Dumping duties. Then you have to do a review investigation and again find dumping; otherwise, 5 years.



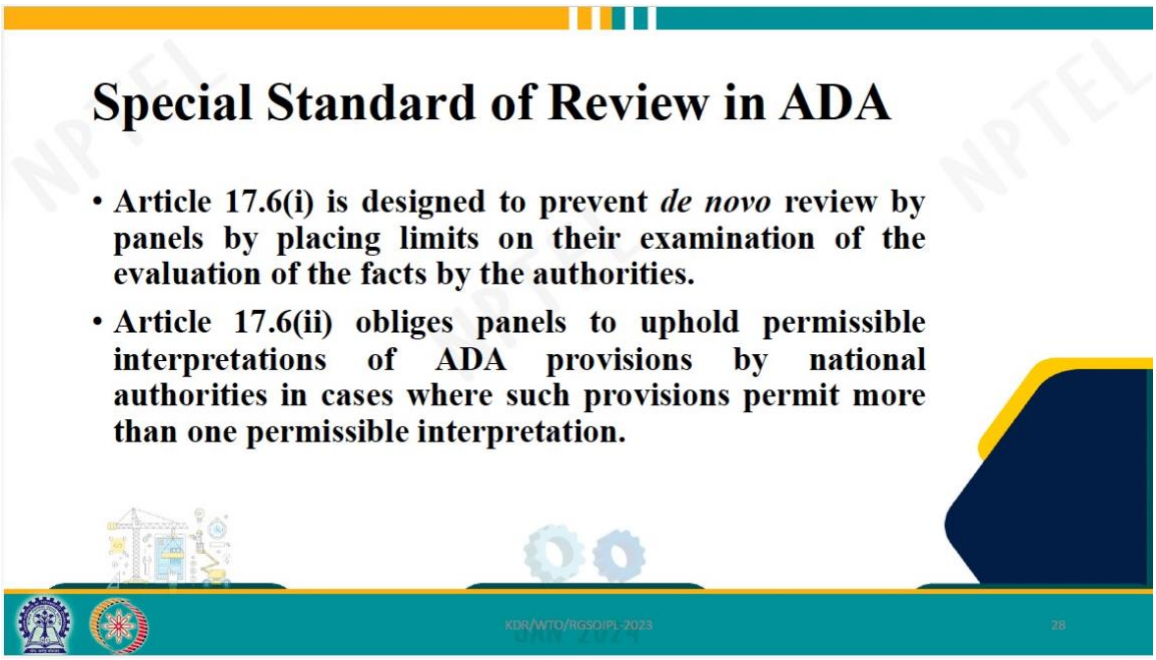
Article 12 talks about a public notice not only for investigation but also for finding of dumping, even preliminary findings. A public notice should be given because the

purpose is very simple. The purpose is very clear. All the exporters and importers know that an anti-dumping investigation has started. That is why you can find the initial investigation recorded on the Anti-Dumping Director's website. You can find it as it is publicly available. And also, the margin of dumping also to be revealed and the reasons for determination by the authorities. So, the reason for rejecting and accepting arguments and evidence is also to be put in the public place in the decisions of the Anti-Dumping Director's website. So, a public notice is required with regard to not all of the data; there are confidential information, but initiation and ending or termination of Anti-Dumping duties or even price undertakings; for these the information should be in the public domain.

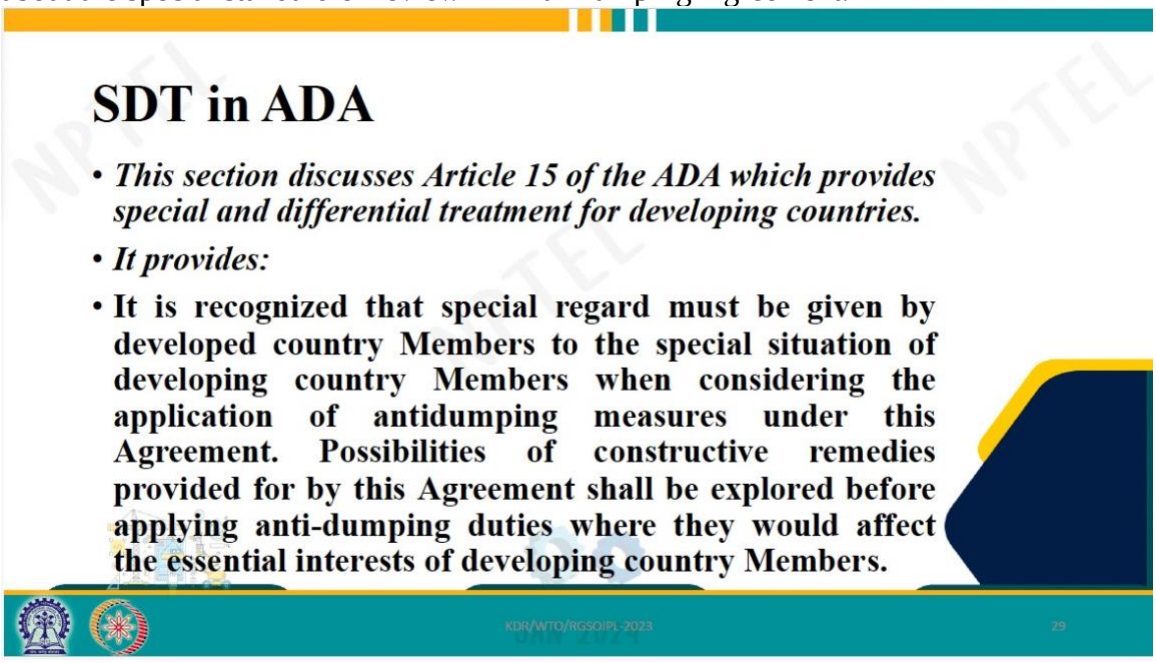


Then, we can see some equations with regard to retroactivity. So if final duty is equal to the preliminary duty then you can say that it will continue. But if the final duty is less than the preliminary duty, the difference in the amount should be reimbursed to the respondents. And if the final duty is negative, the preliminary duty is to be refunded. So, in the final determination, if the preliminary duty is refunded or you can say that if there is a threat there or if the threat may lead to actual injury, then also this amount can be retained; otherwise, it is to be refunded.

And you can say that in order to implement or as a part of the implementation process, I already said that (1) every member country is obligated to form or legislate upon Anti-Dumping law in accordance with the Anti-Dumping Agreement. (2) Arbitral tribunals, judicial authorities, and other procedures are to be put in place for the prompt review of final determinations of anti-dumping authorities. So, if the Anti-Dumping Authority's decisions have to be appealed, there must be appellate authorities that are in the form of tribunals or the form of judicial courts, in the form of arbitration or administrative tribunals. In India, you can find that so the Central Appellate Tax Tribunal is taking care of the Anti-Dumping cases. And in this tribunal, the procedures must be independent of the authorities. So, it means that the Anti-Dumping authorities do the entire investigation and imposition of duties. In India there is also a difference, it is very interesting. The investigation is done by the Anti-Dumping Directorate under the Ministry of Commerce, the finding of dumping also is made by the Anti-Dumping Directorate under the Ministry of Commerce. And the Anti-Dumping duties: so they recommend to the Ministry of Finance for the collection of duties. And the Ministry of Finance can reject the recommendation of the Ministry of Commerce. So it has happened in India, in some of the cases, the recommendations of the Ministry of Commerce to impose Anti-Dumping duties on certain products were rejected by the Ministry of Finance. So, ultimately, the Anti-Dumping duties are imposed and collected in India by two ministries; the imposition and collection is by two ministries. So it also increases transparency and also the review mechanism. And moreover, under the Anti-Dumping Agreement, India has maintained arbitral tribunals, specialized tribunals are also there and finally the appeals can be filed before the Supreme Court of India. And only to a limited extent can they go to the High Court during the period of investigation under the respective jurisdictions. So this (1) is to maintain transparency and (2) the independence of the authorities, (3) the accessibility of three different investigating authorities, the appellate authorities and also you can see who is collecting and imposing the final Anti-Dumping duties.

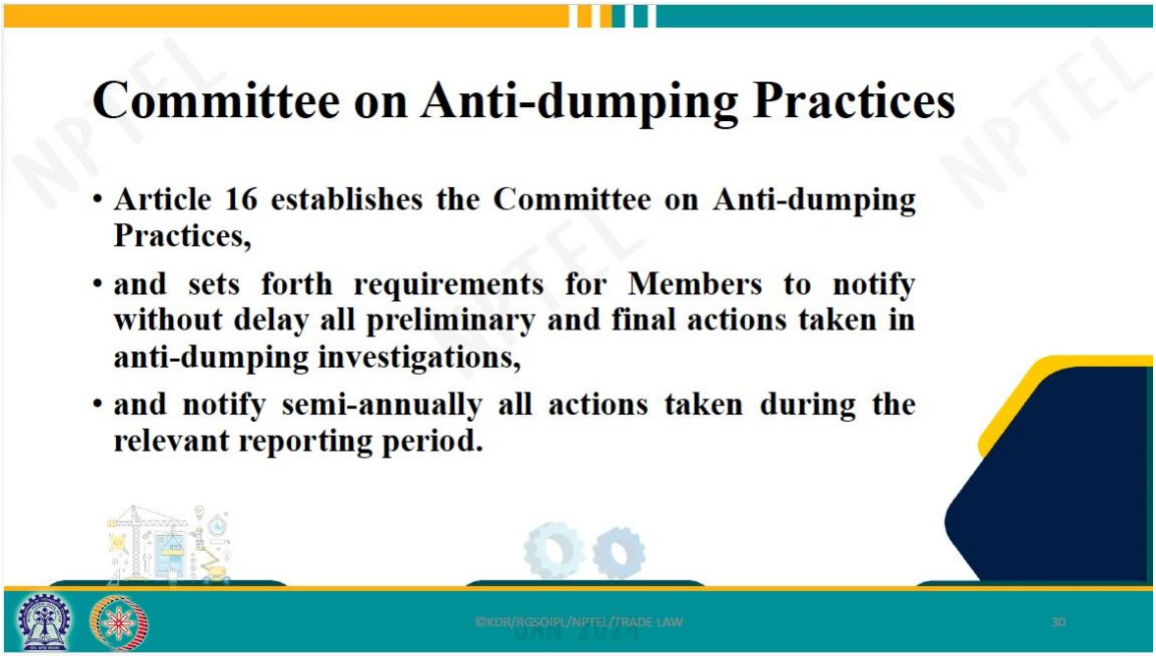


Article 17 talks about special standard of review in Anti-Dumping Agreements. So it says that a de novo review by panels placing limits on their examination of the evaluation of the facts by the authorities. That means Article 17.6 obliges the panels to uphold permissible interpretations of Anti-Dumping provisions by national authorities in cases where such provisions permit more than one permissible interpretation. It means that there is a possibility for domestic authorities to interpret the provisions, and preference should be given to if more than one permissible interpretation is possible; it is the authority's interpretation that should be given primacy. This is Article 17.6 which talks about the special standard of review in Anti-Dumping Agreement.



And then special and differential treatment in the Anti-Dumping Agreement. Article 15 which talks about special and differential treatment for developing countries. So it says

that special regard must be, this is the language which is used, special regard must be given by developed country members to the special situation of developing countries. But more than 300 cases have been dealt with by the panel so far, and 150 cases have been dealt with by the appellate body, and more than 6000 initiations all over the world, and we could not find any special concessions given to the developing countries. And also the provision says that, Article 15 special and differential treatment provision says that possibilities of constructive remedies should be explored. So if you are fighting in the panel or in the appellate body what constructive remedies are explored and also it says that constructive remedies should be explored before applying Anti-Dumping duties. It is not very clear whether the act has mentioned any kind of negotiation or any kind of mediation or any kind of other arbitration or even in reference to any other countries like good offices. It is not a very clear, constructive remedy. So, what happened? So, Finally, Article 15 remains to be a provision in the Anti-Dumping Agreement, where the developed countries never give any special treatment to developing countries. Even though the developing countries, for example, many times India asked for special treatment with regard to the concessions under Article 15. But no countries consider developing countries. No concession were given to the developing countries under Article 15.



So, the committee on Anti-Dumping practices: all the Anti-Dumping initiations, preliminary actions, and final imposition of duties are to be notified to the WTO committee on Anti-Dumping practices every 6 months. So, if an Anti-Dumping duty is imposed, action is taken, even if the investigation is started by 164 member countries, they should inform the WTO dispute settlement body. So, this will be publicly available on the WTO Anti-Dumping site. So that it is clear how many Anti-Dumping actions you are initiating, this is part of the transparency process.

Special standard of review – A.17

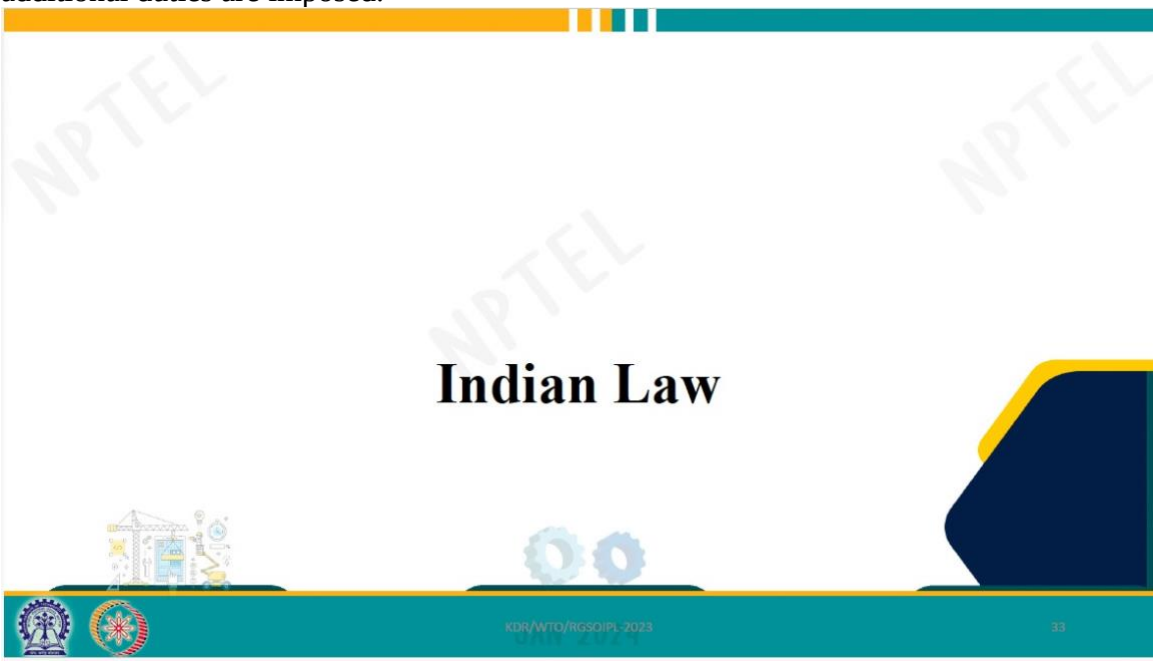
- Article 17 establishes that the Dispute Settlement Understanding is applicable to disputes under the AD Agreement.
- However, Article 17.6 establishes a special standard of review to be applied by panels in examining disputes in anti-dumping cases with regard both to matters of fact and questions of interpretation of the Agreement.

And there is a special standard of review under Article 17. Article 17 says that dispute settlement process is applicable to Anti-dumping. So that means, DSU provisions dispute settlement understanding Agreement is applicable to Anti-dumping provisions. It means that all Anti-dumping cases will be subjected to the dispute settlement process of the WTO. So here also it says that a special standard of review is to be applied by the panels in examining disputes in Anti-Dumping cases with regard to both matters of fact and question of interpretation of the Agreement. And another provision which we saw is that they should look into the positive evidence, positive evidence which is submitted to them, and objective examination of all the facts, not subjective examination. So, these provisions you can see that the language is very clear, but it is vague language which is already put forward.

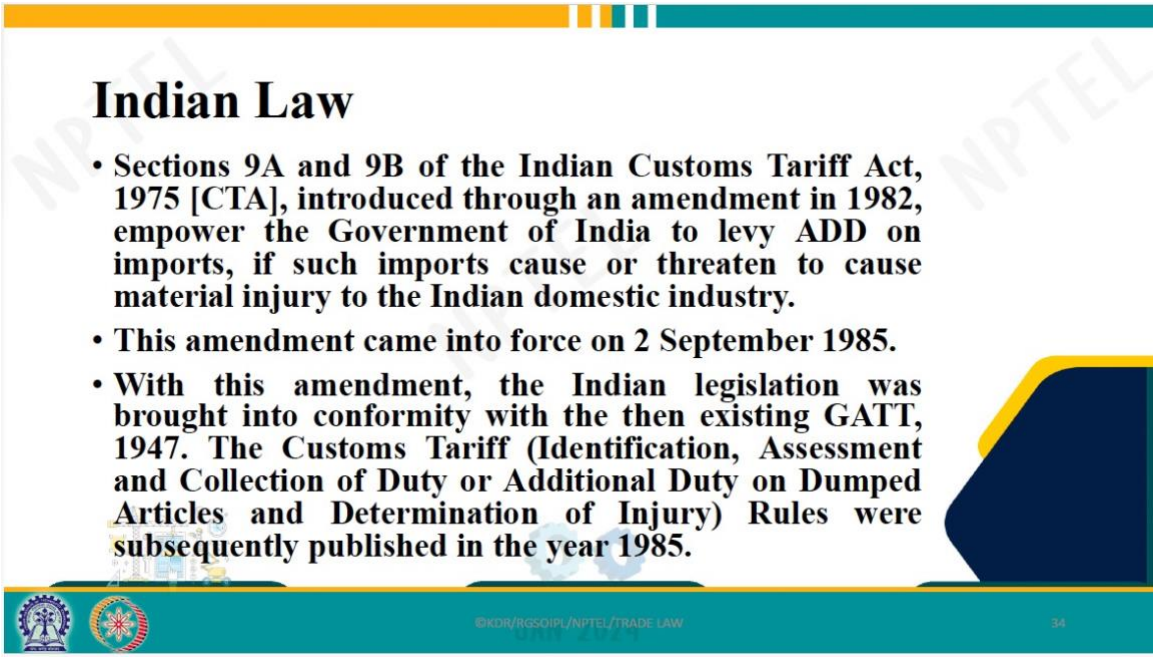
Special standard of review – A.17

- This standard gives a degree of deference to the factual decisions and legal interpretations of national authorities, and is intended to prevent dispute settlement panels from making decisions based purely on their own views.
- A Ministerial Decision, which is not part of the AD Agreement, regarding this provision establishes that its operation will be reviewed after three years with a view to consideration whether it is capable of general application.

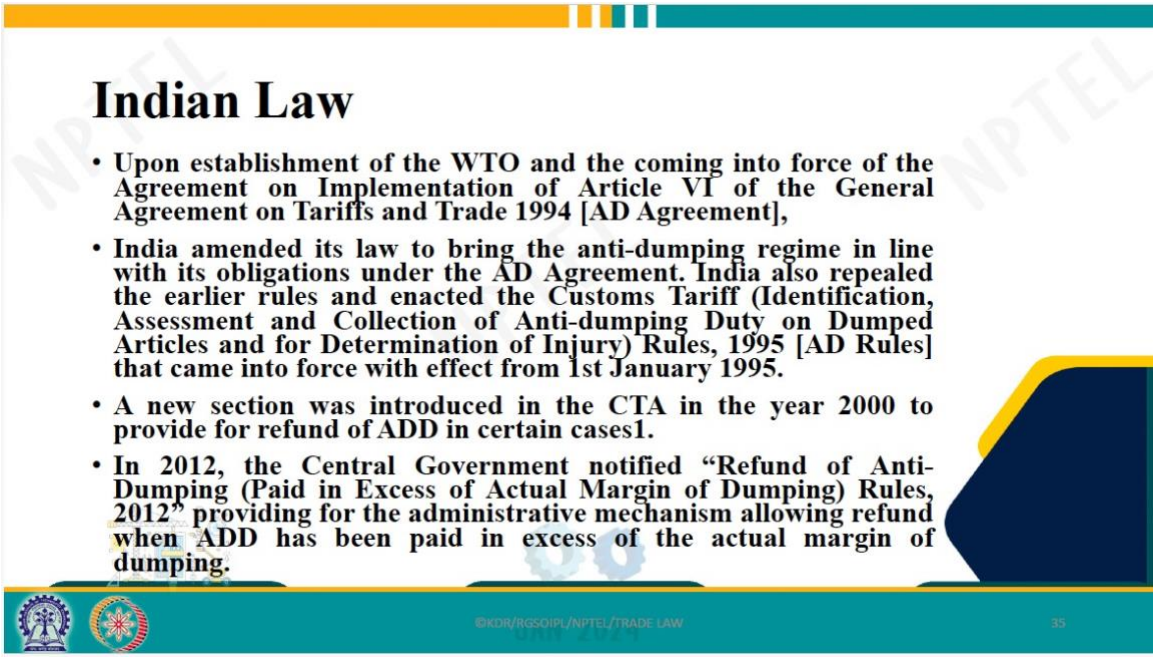
The degree of deference to the factual decisions and legal interpretations of the national authorities: So, we already said that if two interpretations are possible, primacy is to be given to the interpretation of the domestic authorities. And also, you can see that the operation of the Anti-Dumping committee is to be reviewed every 3 years, and the activities of members with regard to Anti-Dumping are to be reviewed every 3 years. So we can see that from for the last 27, 28 years, for example, if you take India the number of Anti-Dumping actions have increased, it never decreased. So it means that the countries like India are highly protectionist in nature. They want to protect the domestic industries from goods coming from outside, in the name of Anti-Dumping actions additional duties are imposed.



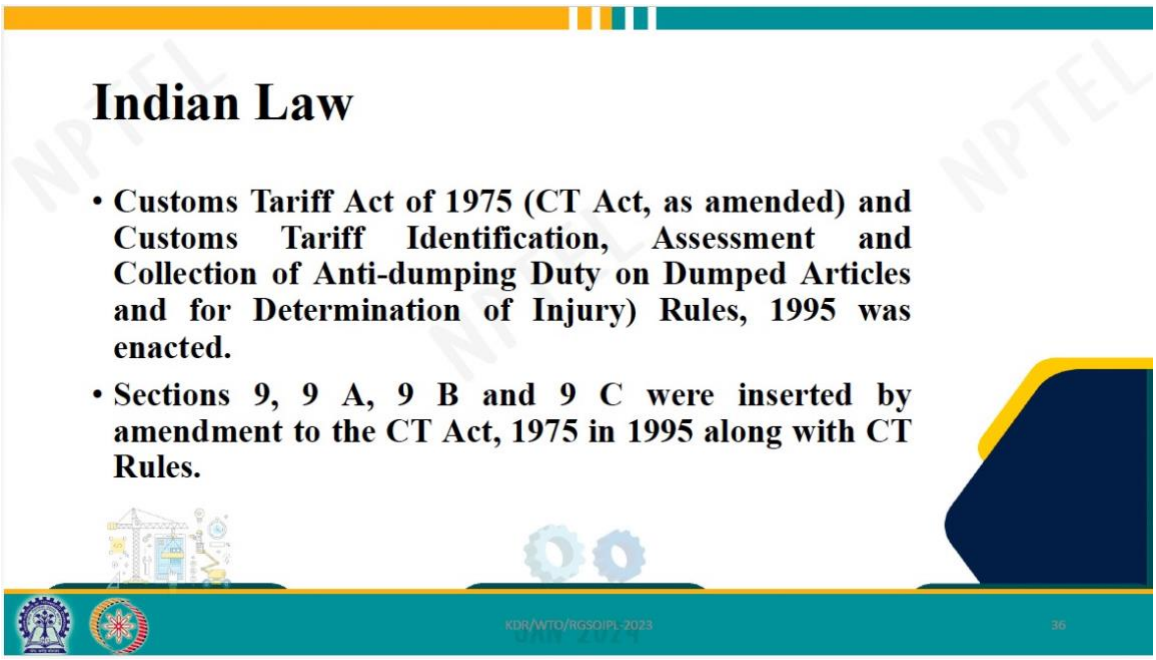
So we were talking so far with regard to the Anti-Dumping Agreement. Quickly, we will see what the Indian law and Indian provisions with regard to the Anti-Dumping Agreement are.



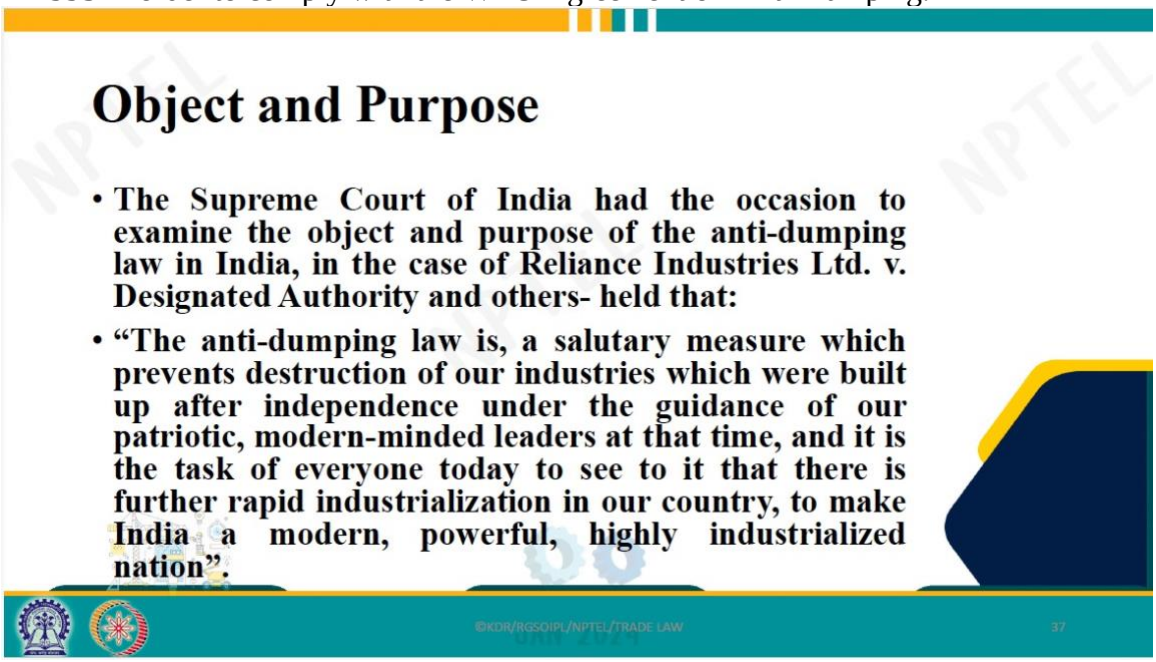
So India has inserted certain provisions into the Customs Tariff Act of 1975; Section 9A, 9B are incorporated, these particular provisions are included. Remember, it is very interesting, you can see that these provisions are included or a new law is enacted by India much before the WTO Anti-Dumping Agreement. You can see the period of 1982 - In 1982 India started Anti-Dumping investigations or included the provisions. It means during the Tokyo round or much before the Tokyo round of negotiations, India included Anti-Dumping provisions in order to protect the Indian domestic industry. Then again, an amendment is made in 1985. And this 1985 amendment was in conformity with Article 6 of GATT. It is very interesting. So, we can see the provisions of the *Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles And Determination of Injury) Rules*, which was notified in 1985. So that means even 10 years before the WTO Anti-Dumping Agreement, which came into force in 1985, in 1985 itself in accordance with the GATT provisions, India amended its law and inserted Anti-Dumping provisions in the Indian Customs Act 1975.



So, in 1994 the Anti-Dumping Agreement was established as a part of Article 6. So again in 1995 India amended its customs laws and the new rules, the *Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles And Determination of Injury) Rules,* 1995 was notified. That means in 1985, then again amended in 1995 and again the rules were amended in the year of 2000. So that means after 5 years of the WTO Agreement again, the rules were amended to provide or to give a refund of duties which are collected during the provisional period. And you can see the provisions which was made in 2012. *Refund of Anti-Dumping (Paid in Excess of Actual Margin of Dumping) Rules* 2012. So, remember the Anti-Dumping Agreement was in 1995, we made rules for the refund of duties in 2012, only after 12 years. So, it created the administrative mechanism for refunding duties. So, what they did with the collected duty from 1995 to 2012 is unknown. But the rules were passed in 2012 only.

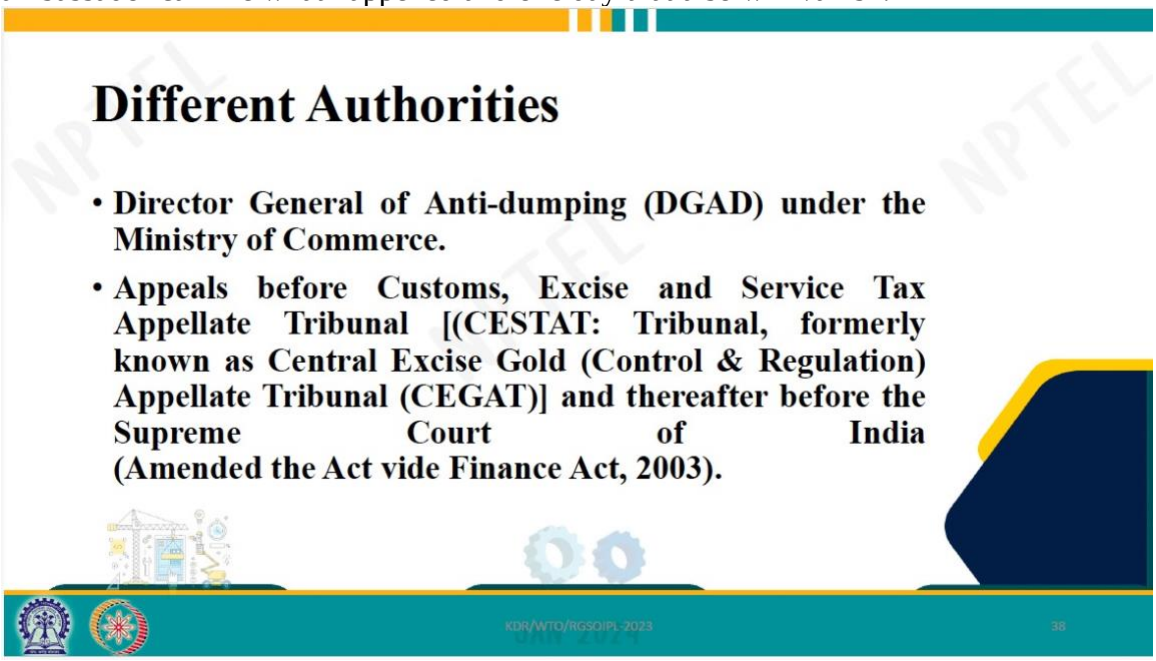


So similarly, you can see that sections 9, 9A, 9B and 9C were inserted by the amendment in 1995 in order to comply with the WTO Agreement on Anti-Dumping.



Also, you can quickly see some of the cases, and what is the Supreme Court response on Anti-Dumping. The Supreme Court considered what was the object and purpose of this particular Agreement in the case of *Reliance Industries Limited versus designated authority and others*. So, the designated authority in India is the Anti-dumping Directorate General or Anti-Dumping Directorate, which is headed by the Directorate General of Anti-Dumping. So the court, the Indian Supreme Court said in this particular case, the Anti-dumping law is a salutary measure which prevents destruction of our industries which were built up after independence under the guidance of our patriotic modern-minded leaders at that time and it is the task of every man today to see to it that

there is further rapid industrialization in our country to make India a modern powerful highly industrialized nation. I can see this judgment only from the part of the government's protectionist agenda. So, the Supreme Court very clearly says it is the duty of everybody to protect the domestic industry. I would say that as a big supporter of globalization, I would say that it is the duty of the domestic industry to be competitive in the international market. If you are not competitive in the international market, the goods will come from outside. So if you are waiting for imposing Anti-dumping duties, your domestic industry is going to be more non-competitive and ultimately you may have one ambassador car like what happened and one day that also will vanish.

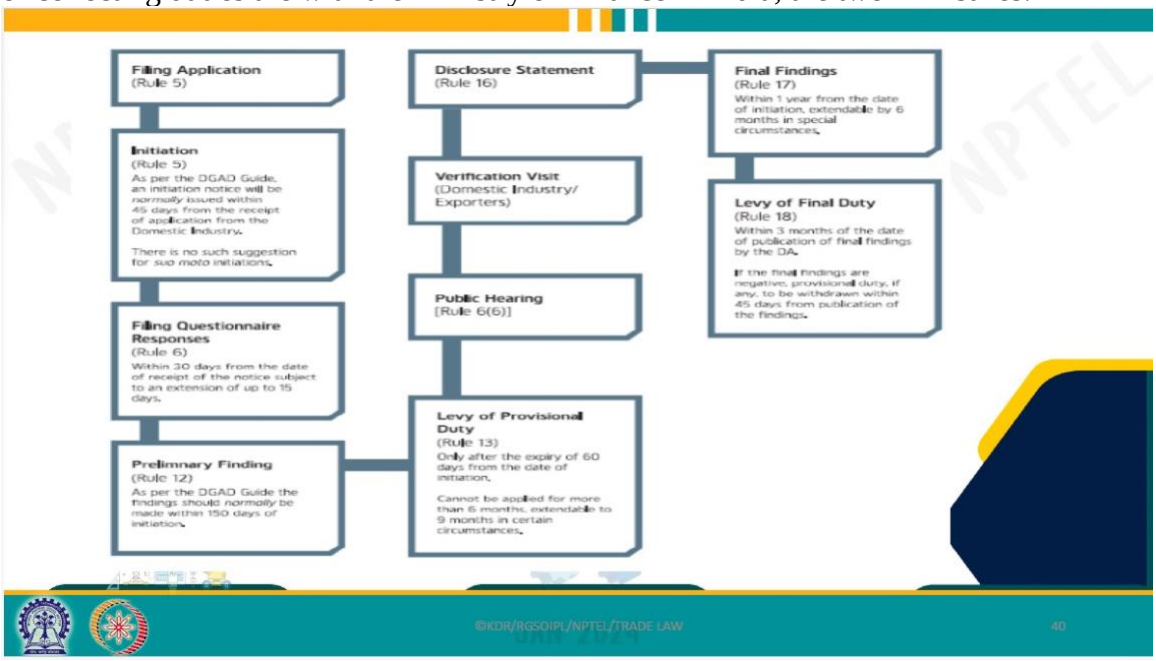


So and also we can see that the Indian authorities, I was talking about, it is the Director General of Anti-dumping under the Ministry of Commerce is the authority for investigation of all Anti-dumping actions. All the appeals from the decision of the Anti-Dumping Directorate go to the Customs Excise and Service Tax Appellate Tribunal, which is known as CESTAT, from 2003 onwards. So it is the appellate tribunal for the decision of Anti-Dumping authorities.

Imposing Duties

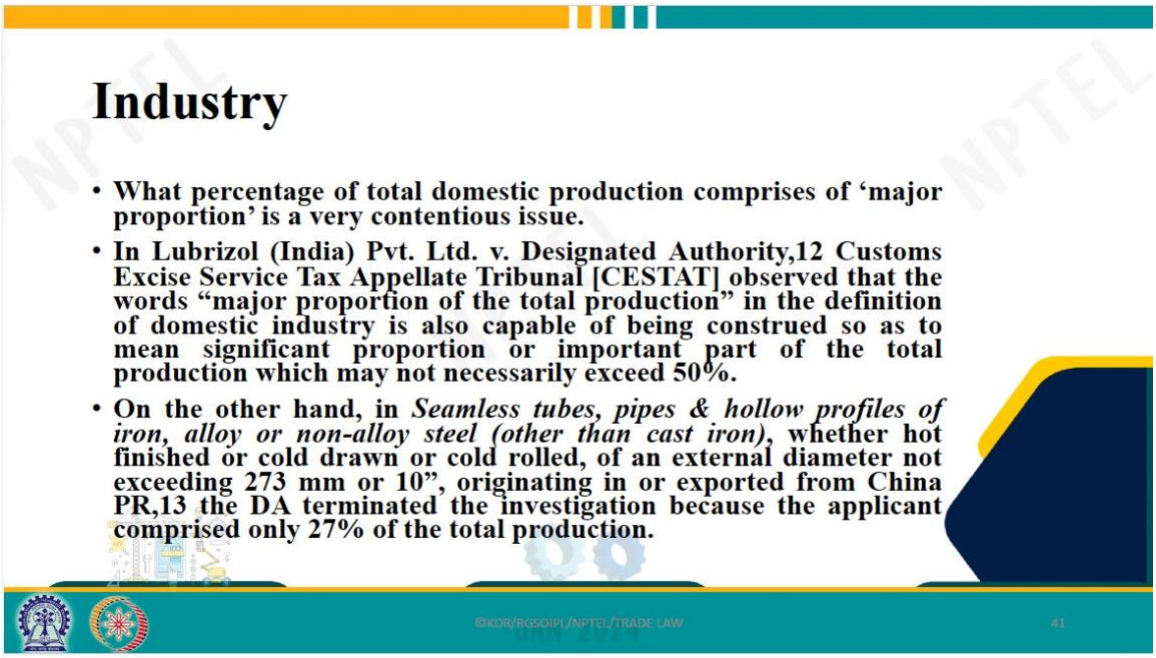
- The actual power to impose an Anti-dumping duty vest with a different ministry, i.e. the Ministry of Finance.

And then I already talked about the Anti-dumping duty investigation is done by the Anti-Dumping Directorate under the Ministry of Commerce but to determine, to decide whether to impose Anti-dumping duties or whether to collect duties, the responsibilities of collecting duties are with the Ministry of Finance in India, the two Ministries.



And quickly we look into the Indian investigation process, it is similar to as that of WTO you can see filing of application under rule 5, then there is an initiation under rule 5 again you can see initiation by the Director General of Anti-Dumping then the filling of questionnaires under rule 6 then there is a preliminary finding under rule 12 then a disclosure statement and there can be a final finding under 17 or levy of duty. Otherwise in between the authorities can go for a visit, verification visit to the domestic industry of exporters. Mostly the Anti-dumping Directorate makes a visit whether they get data or

not it is unknown or it is confidential in nature then there will be a public hearing, may be a public hearing under rule 6 as well then provisional duty either the provisional duties can be made and after the levy of provisional duty it may go to the final findings and then levy of duties can be finally made under rule 18. So, this is very simply the investigation procedures and the imposition of Anti-dumping duties and collection of duties under the Indian Act.



So, you can quickly see some of the judgments of the Supreme Court of India. So, the Indian Supreme Court has clarified what constitutes a domestic industry. In the case of *Lubrizol India Private Limited versus Designated Authority*, the tribunal in this case observed major proportion of the total production. So, We saw in the Anti-Dumping Agreement the definition of domestic industry is also capable of being constituted as to significant proportion or important part of the total production which may not necessarily exceed 50 percent. So, the CESAT has clarified the Anti-Dumping provision, what it constitutes or who is this domestic industry. So, and also you can see in another case also, you can see that in some exceptional cases, the court has said the applicant comprise 27 per cent of the total production. So this happened in the case of *Seamless Tube Pipes And Hollow Pipes of an Iron Alloy or Non-Alloy Steel (Other than Cast Iron)* - this is the case name. So, you can see that in certain cases the calculation comes to only 27 percent.

Rules of Origin

- The ADD is country-specific and therefore, rules of origin are typically important to determine the country of origin of the imported product. Duty liability on the imported goods may depend on the country of origin. Rules of origin are typically of two types:
- a. Preferential Rules of Origin (for preferential trade) b. Non-preferential Rules of Origin (for MFN Trade) India has notified preferential rules of origin pursuant to free trade agreements with several countries.
- The non-preferential rules of origin are notified to identify the country of origin for the purpose of ADD, safeguard duties and countervailing duties and also for the purpose of administering tariff quotas, other non-tariff barriers and trade statistics.
- However, unlike United States and European Union, India has not notified the non-preferential rules of origin till date.

So, the anti-dumping duties are country-specific. It is not a common duty imposed on each and everybody. So, it will depend upon the margin of dumping. So, the duty liability is different from one country to another country. So, it is very important to look into the rules of origin of that particular product. The product may be made in US or elsewhere. So, if it comes to Sri Lanka and through the *India-Sri Lanka Free Trade Agreement*, it comes to India, then the Indian authorities will look into the rules of the origin of this particular product. It is very important to look into because all over the world Regional Trade Agreements and Preferential Trade Agreements are proliferating like anything after the conclusion of WTO. So, the rules of origin are to be looked into for the purpose of Anti-dumping duty. It is also very important.

Conclusion

- Procedural Aspects are simple, but most of the countries do not supply sufficient data for the determination of dumping.
- To impose or not to impose duties are with the countries investigating.
- India complied with the Agreement on Anti-dumping.
- This is important vis-à-vis the largest initiator of anti-dumping actions.

So, in conclusion I would say that the procedural aspects of Anti-dumping duties are giving lot of leeway for the investigating authorities to determine the margin of dumping. And also there are provisions which talk about if neither the complainant nor the respondent supply sufficient data or information then they can go ahead with whatever information is available with them, which is known as facts available provision. And more importantly it is for every country to decide whether to impose Anti-dumping duties. Even though you find dumping it is up to the countries to decide whether to impose duties or not to impose duties. So, the Indian law which we saw the very preliminary provisions we complied absolutely with the Anti-dumping Agreement and inserted provisions in 1995 as well. And I would say that we are successfully using this particular Agreement as a tool of protectionism that is why you find that India is the largest user of this Agreement in WTO, the largest user and more than 1000 initiations so far from 1995. And another important thing, we foresaw this situation much before the WTO Agreement in 1995 and we included provisions in 1982 itself. Then we amended provisions in 1985 and then last amendment 1995 and some of the subsidiary provisions for the return of the excess collected duties in 2012. So, India complied with the Anti-dumping Agreement as well as India is one of the highest user of this particular Agreement as a protectionist measure to save, in the words of Supreme Court of India it is the duty of every citizen to save our industry. So, it is the duty, but at the same time I would say that we have to see very closely that imposing additional duty on each and every Anti-dumping item and becoming the largest user of this Agreement is to be reviewed. Then only our industry is going to be a competitive industry rather than a domestic industry.

Thank you.