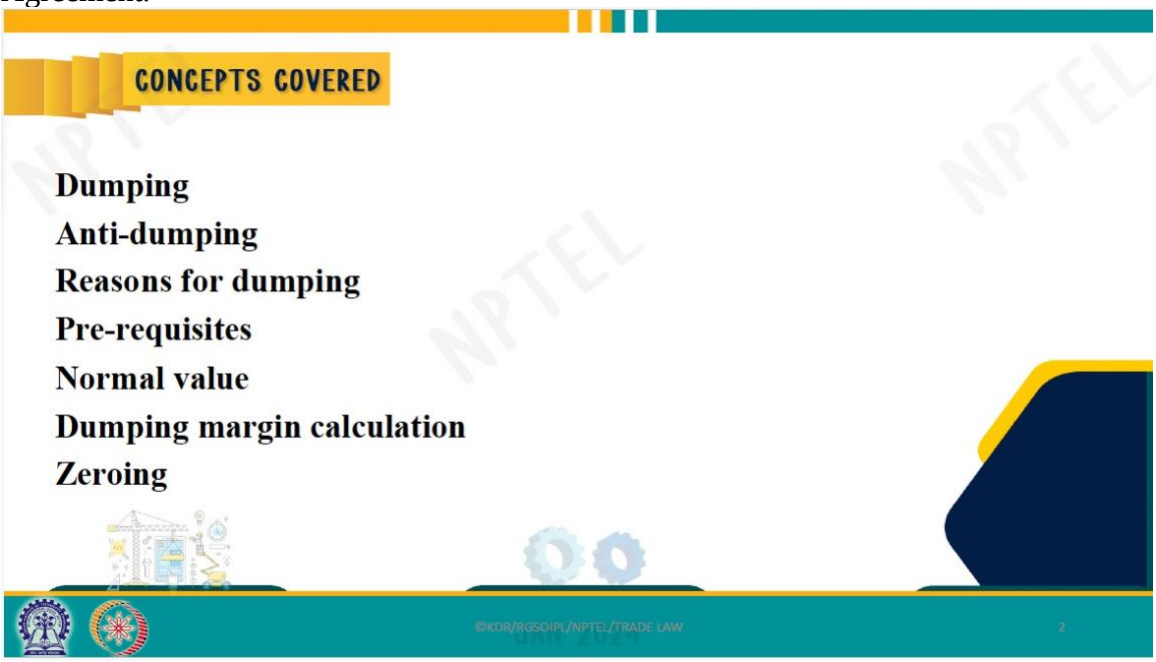
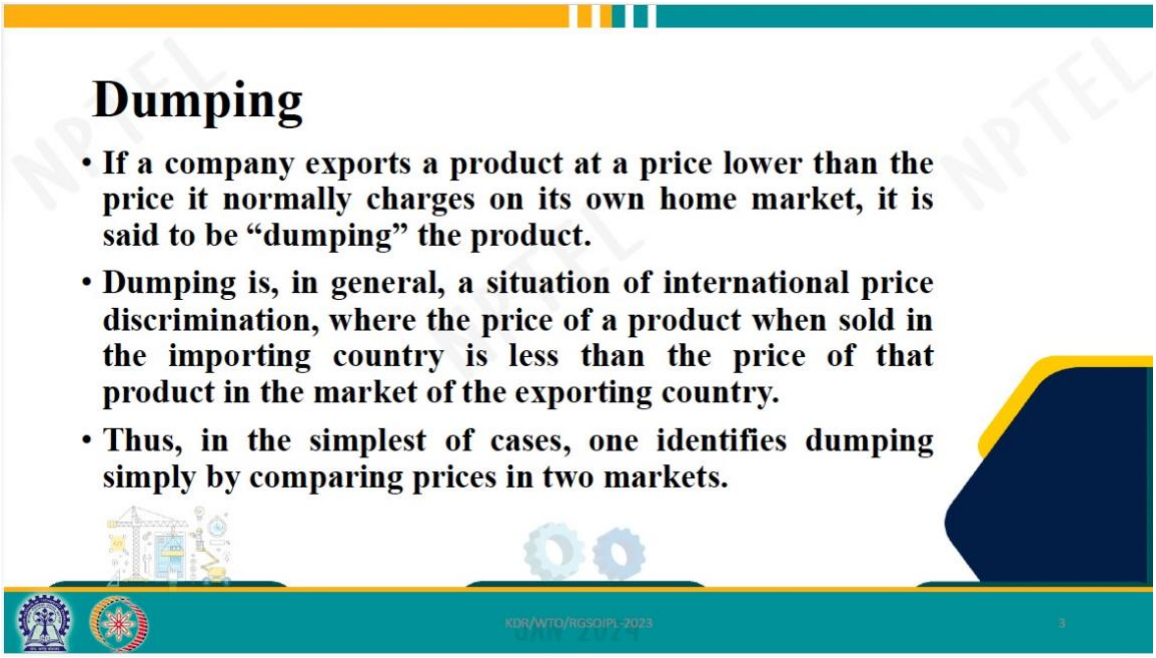
Lecture 09: Rules of Dumping and Anti – Dumping

Dear students and this week we are going to discuss one of the very important Agreement under the WTO that is the Anti-Dumping Agreement. So, why it is, I said it is a very important Agreement because the largest number of litigations under the WTO Agreements come under a single Agreement that is known as the Anti-Dumping Agreement.



So, in this class we will see that what is this we talked about Anti-Dumping. So, first we have to understand what is dumping then we will see what is Anti-Dumping duties then why the people try to dump products in other markets. So, dumping not in the colloquial meaning and dumping under this particular Agreement what is the meaning under the trade law. Then what are the prerequisites for imposing Anti-Dumping duties then we will see some of the components of finding out the dumping like normal value dumping, how the dumping margin is calculated and some of the methodologies used by the countries for the calculation of dumping margin.



So, why this Agreement is important because when we saw the history of this dumping. So, this dumping in common parlance. So, you dump your products in other markets. So, this is simply known as dumping a particular product. So, in general situations so, you can see that it is known as international price discrimination. So, whether you discriminate prices so, the members are concerned about dumping of a particular product in their market and dumping per say is not prohibited under the WTO Agreement neither under the GATT nor under the WTO. But dumping at price discrimination that is a concern, international price discrimination is a concern from the very beginning. So, if you are selling your product even at a very "low cost" that can be less than the production cost less than your domestic market if you sell it in the foreign market then the countries are concerned about it. Why the countries should concerned about it? So, it depends upon the price at which you are selling in the export market. So, dumping is nothing, but I would say that simply comparing the prices and you determine whether the other country is dumping a particular product in the market or not dumping in the market. So, why the people should?

What it Regulates

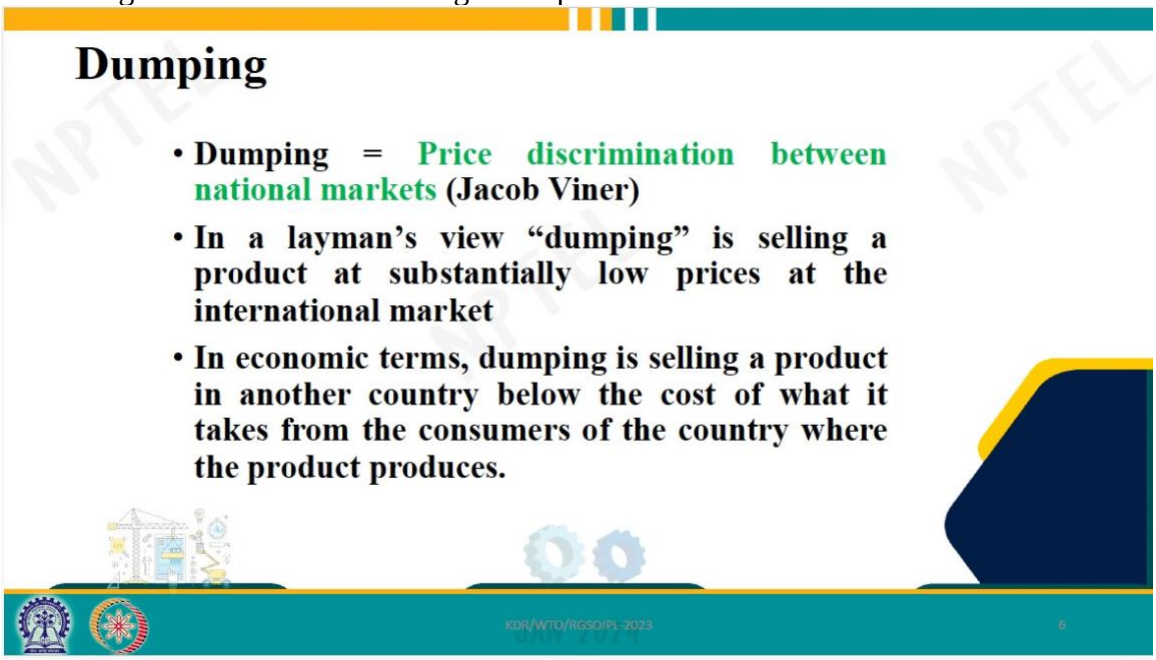
- The WTO Agreement does not regulate the actions of companies engaged in "dumping".
- Its focus is on how governments can or cannot react to dumping — it disciplines anti-dumping actions, and it is often called the "Anti-dumping Agreement".

So, what WTO actually regulates? The WTO regulates the action of dumping by the companies. So, it is not regulating the companies actually, it is regulating what the governments can do when a company dumps a particular product in the foreign market. So, WTO Agreement is not concerned about what the companies are doing. Once the companies from one particular country dumped a particular product on other country then two governments are in touch with and they talk to each other and they talk on disciplines then what to do, how it can be disciplined and what actions can be taken and what are the prerequisites for imposing an additional duty which is known as Anti-Dumping duty. This is actually discussed preliminarily in the GATT provisions and then fully in the Anti-Dumping code in the Tokyo round, and then the Uruguay round of negotiations came out with the WTO Agreement.

What is Dumping ?

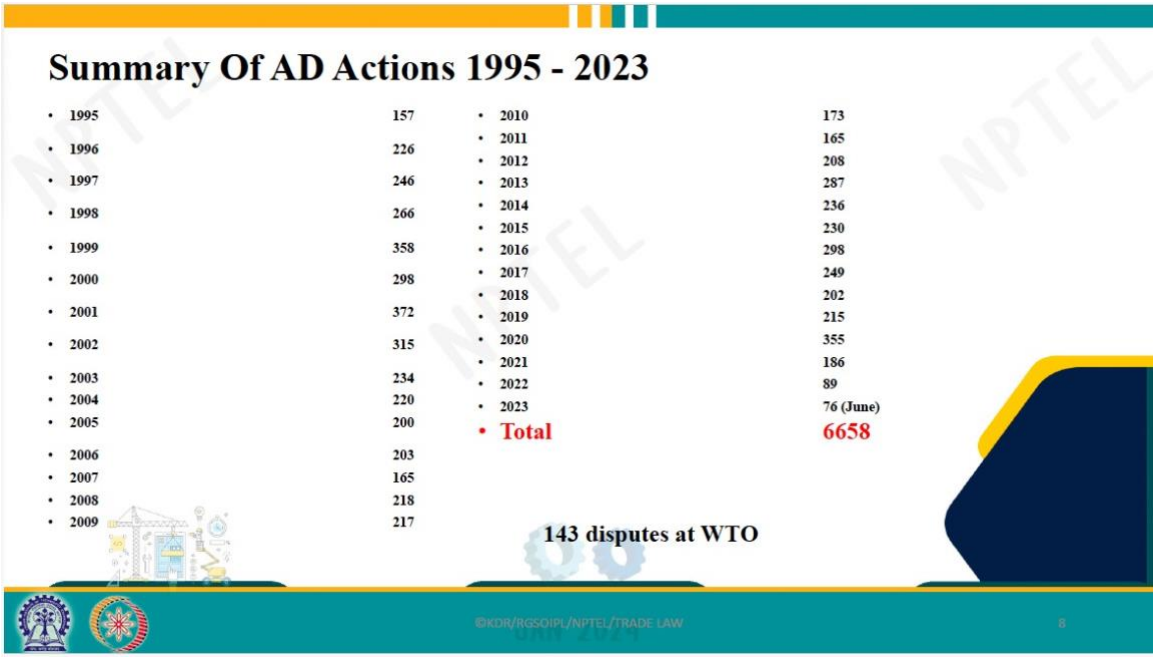
- A product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. (Article 2.1 of ADA).

So, the Anti-Dumping Agreement defines what is dumping? What is this dumping? It is as I told this is not in the common parlance of if you dump some waste somewhere or some kind of goods somewhere and the definition under trade law Anti-Dumping Agreement is different. So, this dumping is determined mainly because on, I already said that, on price discrimination. So, from that particular background you see this particular definition Article 2.1 of the Anti-Dumping Agreement which defines dumping. It says a product is to be considered as being dumped, inclusive definition consider. So, introducing a particular product to the commerce of another country less than its normal value. So, we will see that what is the definition of normal value. If the export price of the product exported from one country to another is less than the comparable price. So, we saw normal value, export price and then comparable price in the ordinary course of trade for a like product it is not only the specific product, but also for like product when destined for consumption the exporting country. So, there are so many components we will discuss again these components separately in the coming slides. So, this is for the purposes of what we are discussing about dumping and what kind of dumping we are discussing about. We are discussing about price discrimination in different markets.



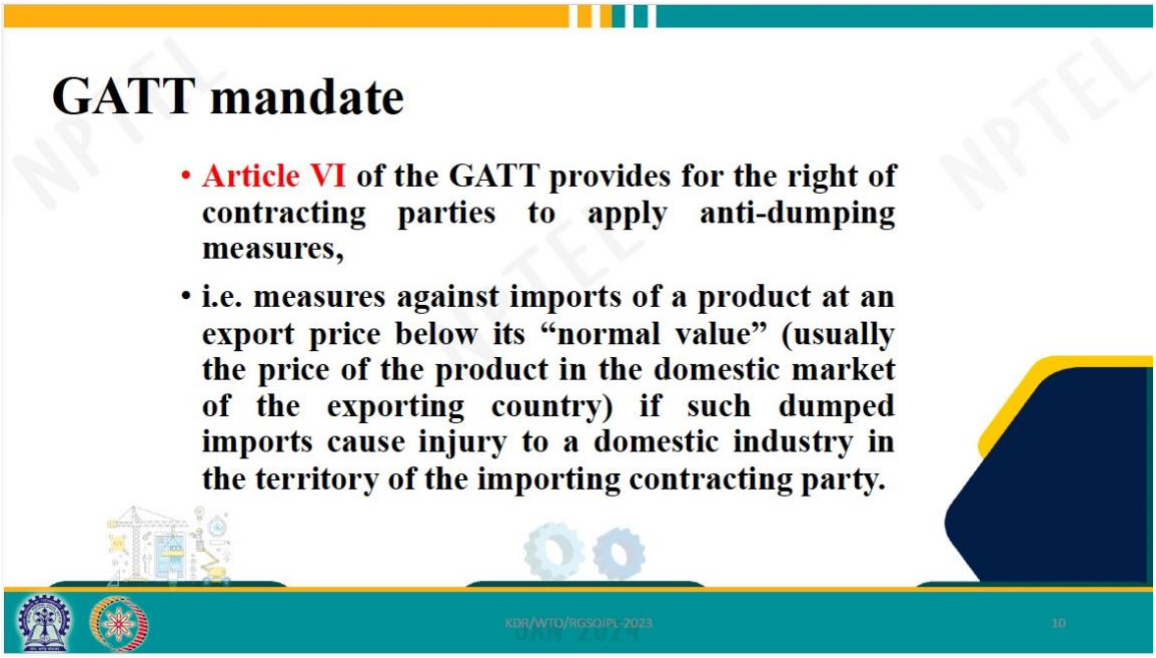
So, we can see the dumping is defined by different economist and Jacob Viner is one of the important economist who talked about or wrote about dumping. And what he said, he said that this is price discrimination between national markets, two national markets and this has nothing to do with international market. So, one country dumps a product in another country, and there is price discrimination. So, dumping is in common man's parlance it is selling a particular product for a very low price in the another country. So, in economic terms so, it can be we can termed it as below the cost of production and also the consumers in the other country are benefited by this kind of activities may be benefited.

So, and what are the motives behind the activity? Why the people should, why a particular company should sell a particular product in the international market for a lower price? It may be due to various reasons it may be due to catch the foreign market. So, they are entering first time they want to catch the foreign market or their domestic market is saturated by their stock piling and monopoly or as a part of the cartel formation also. So, it can become so, selling particular product for a very low prices or it may be for selling of the excess stocks. So, the domestic market they are not able to sell it. So, they want to sell it in the international market. Then another very important reason may be predatory in nature to send out its competitors from the market, predatory practice and even in order to retain a foreign market. So, all these are some of the reasons companies sell products in the international market at lower prices. So, anyone can be a reason for this.



Let us see what happened after 1995. So, I was talking about this Agreement is one of the most important Agreement and controversial Agreement mainly because of the number of disputes or number of Anti-Dumping we call it as number of Anti-Dumping actions. So far from 1995 to June 2023 there are 6658 Anti-Dumping actions or I would say that the complaints are received by WTO members or they have taken 6658 cases. So, actions are taken by 164 member countries. You see, from 1995 onwards, the average was 200 cases. So, this number has gone down only in you can say that 2019 or 2018. So, but 2018 also is 202, 2019 also 250 and even 2021 also 186. Then the least number of cases which was reported after the entire period of WTO is in 2022. I hope that because in 2021 and 2022 there was no much trade of goods happened mainly because of the pandemic. So, you can see the entire history of Anti-Dumping actions from 1995; even in 1995, it was 157 actions years, and it is only less in 2022 because everything stopped. So, even 2023 for the last first half up to June 2023 it is 76 actions so far, but this year also the number may be less than 200. And out of the 6658 actions at the domestic level 143 cases came to WTO dispute settlement system and this is the largest category of single Agreement cases which was dealt in WTO. One day or the other day there is an Anti-Dumping case. A dispute which came to the WTO 143 in number Anti-Dumping cases and one of the largest number of cases around 500 WTO cases, 143 cases are Anti-Dumping cases.

And then who is the champion of Anti-Dumping actions and also the victim countries the victim countries are those who are the victims of this dumping or how many cases are initiated by the initiators and against whom. So, India has the largest number of initiations, 1146 cases and remember, and all initiators, India is the champion. even the US has only initiated 891 disputes. They raise the dispute against other countries and EU 548, Brazil is a single developing country. So, India and Brazil two developing countries constitute 1500 Anti-Dumping initiations in WTO, Australia we can understand it is a developed country 378. China which become a WTO member in 2002 hardly now it is 20-21 years, it is going to be more than just 20 years, they have started Anti-Dumping actions 294, South Africa 254, at the same time the whole the Anti-Dumping actions the victim country is China already they are faced 1588 cases are filed against them. And small countries like the Korean Republic faced 490 cases. So, you can see that these countries are conceptually saying, these victim countries are dumping on this set of countries. So, they are taking actions against dumping, but interestingly you can see that some of the countries are in both sides for example, the US and India. So, US has initiated 891 cases at the same time all other countries are filed only 319 cases against the US. And very small countries like Chinese Taipei is faced 340 cases and India a champion of Anti-Dumping actions initiated 1146 cases against other countries at the same time other countries imposed Anti-Dumping duties on India only in 275 cases. A small countries like Thailand and you can find out these so-called victim countries are supplying goods to the whole world, whether it is China or it is Korea, or it is Chinese Taipei, or Thailand. Even Indonesia is faced with 246 number cases of disputes within the WTO dispute settlement system initiated by country to country. So, the entire scenario shows it is not only the developed countries using the WTO Agreement against other countries, but the developing countries are the most users of this measure against the developed countries, and definitely it is not only the developed countries a single country is China. The largest number of initiations are against China.



Now, we come to the mandate, what was the original mandate under the GATT Agreement? So, under the GATT Agreement, Article 6 which talks about Anti-Dumping measures. So, let us go a little bit before 1947. So, you can find that additional duties were imposed by the United States against imports from Canada and imports from other parts of the world to the US market. The UK has imposed additional duties on Canadian exports, and the US enacted the *Smoot-Hawley Tariff Act* to impose additional duties. So, the great depression time 1930s just before the second world war they made separate legislation to protect their domestic markets and they imposed additional duties, this is nothing, but Anti-Dumping duties. And this is mainly in order to protect the domestic industries from outside competition. So, reduced competition at the same time this is used as a barrier to export of goods into the markets. Then, after the Second World War, we talked about ITO, the failed ITO, and then the GATT came into existence. So, Article 6 which talks about Anti-Dumping actions because the members are concerned about the imposition of additional duties from the very beginning of GATT. So, what Article 6 says? Article 6 says that measures against imports of a product at an export price below its normal value. So, the WTO definition is definitely sourced from the GATT provisions and it explains what is the normal value. Usually the price of the product in the domestic market of the exporting country. So, the normal value is nothing, but the price of a product which is exported to another market. So, what is the price? For example, if India is exporting a particular product to the United States, the normal value is the price of the product which is sold in the Indian market. So, the exporting country price is the normal value. If such dumped imports are causing injury to the domestic industry, I have already said that dumping per se is not actionable; dumping per se is not prohibited. It must injure the domestic industry and cause injury to the domestic industry. So, we will see that what is this injury, what kind of injury to the domestic industry and what is this domestic industry. So, who is this domestic industry? Domestic industry in the directory of the importing contracting party. So, the WTO Agreement Article 2.1 gives clarity to Article 6. So, Article 6 clearly talks about dumping.

Previous Agreements

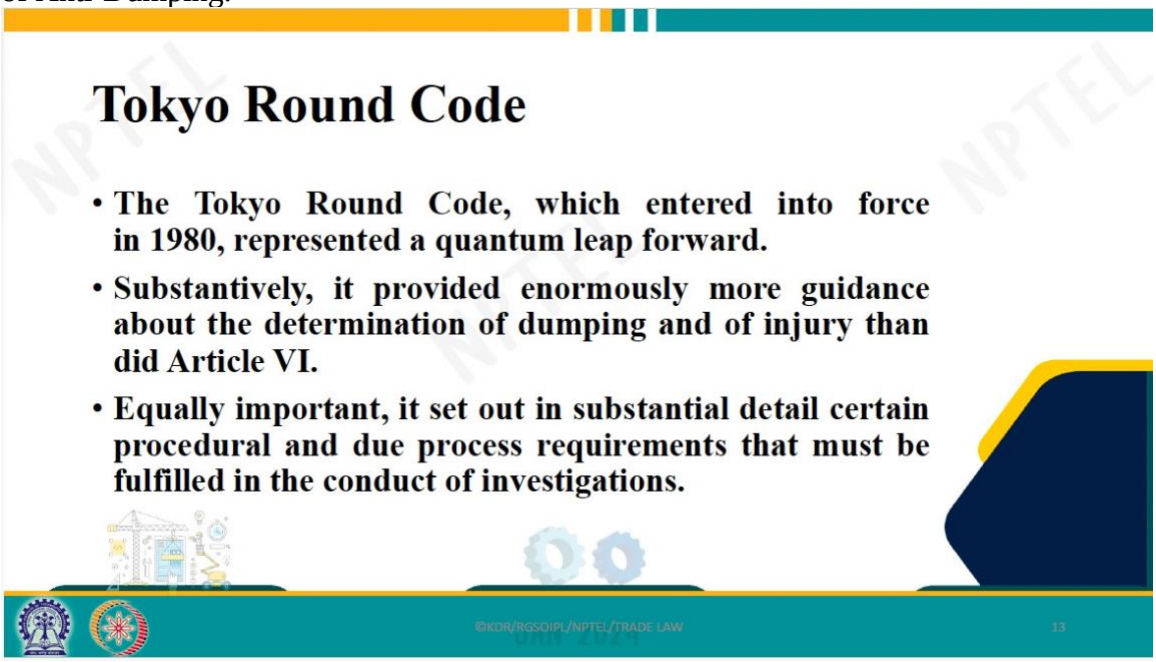
- As tariff rates were lowered over time following the original GATT agreement, anti-dumping duties were increasingly imposed, and the inadequacy of Article VI to govern their imposition became ever more apparent.
- For instance, Article VI requires a determination of material injury, but does not contain any guidance as to criteria for determining whether such injury exists, and addresses the methodology for establishing the existence of dumping in only the most general fashion.
- Consequently, contracting parties to GATT negotiated more detailed Codes relating to anti-dumping.

And also, we can see that the previous Agreements because when the tariffs were lowered in a particular country there is every possibility that the countries increasingly there will be a surge in imports into that particular country. So, in order to counter this dumping, the member countries want to impose additional duties. So, Article 6 puts certain conditions for the imposition of duties. And the first condition is a material injury to the domestic industry. We will see the definition of material injury and also the domestic industry. So, Article 6 gives clear guidance as to what you mean by export price and what it is mean by injury or material injury, and what is the domestic industry. So that countries can look into these specific criteria for imposing anti-dumping duties. So, the various codes are, because as I said that Article 6 very clearly talks about Anti-Dumping actions.

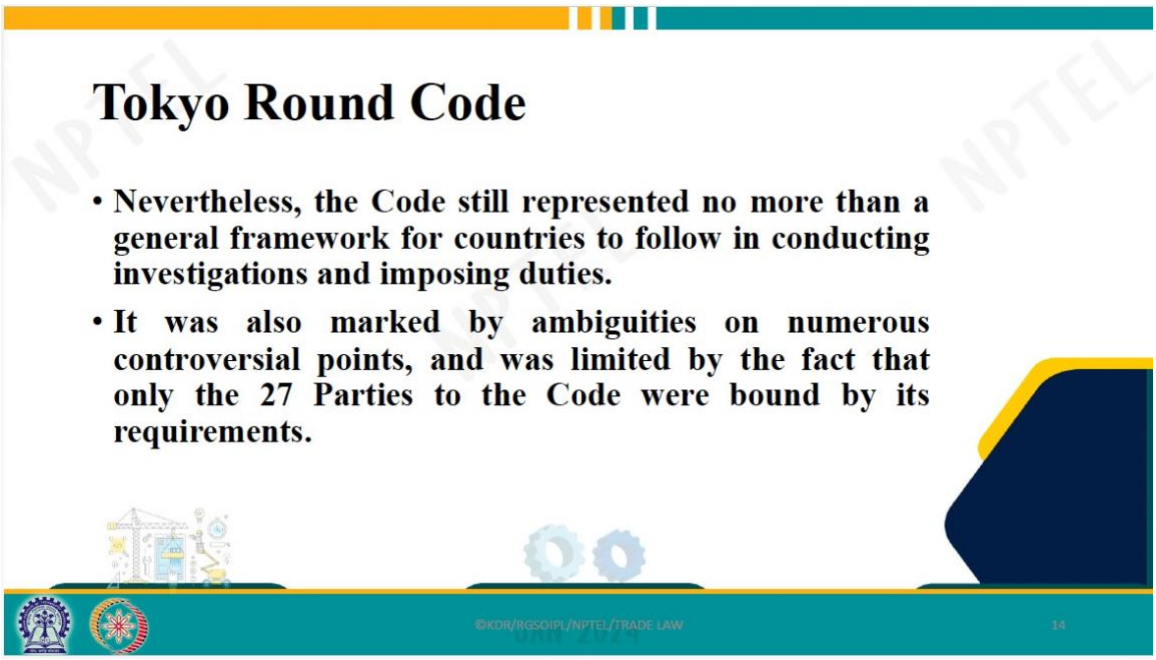
Kennedy Round Code

- The first such Code, the Agreement on Anti-Dumping Practices, entered into force in 1967 as a result of the Kennedy Round. However, the United States never signed the Kennedy Round Code, and as a result, the Code had little practical significance.

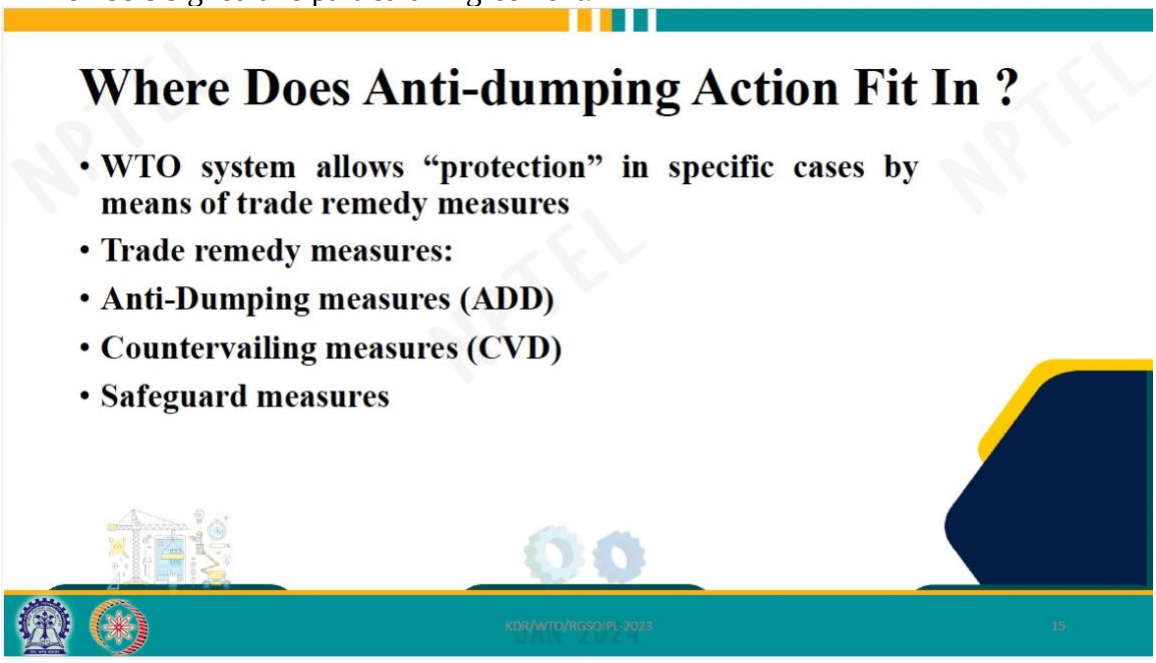
And also you can see that the subsequent important rounds, the two important rounds one is the Kennedy round and the other one is the Tokyo round. So, when compared to all other streams, the Kennedy round code come out with Anti-Dumping code, a code on Agreement on Anti-Dumping practices and which came into force in 1967. So, but the United States refused to sign this mainly because they want to impose duties, additional duties. So, if you sign this particular Agreement, then their imposition of additional duties will be subjected to the particular guidelines of this particular code. So, they did not sign it. So, if the largest trader does not sign an Agreement, then there is no point in it; the practical significance is much less. So, that is what happened to the Kennedy round code of Anti-Dumping.



Then comes the second Tokyo round of code and Tokyo round of code improved and more guidance is added to the GATT Article 6. So, and certain procedural aspects and requirements are also and requirement of investigation and other procedures were prescribed under Tokyo round code. So, the Tokyo round code was a full code on Anti-Dumping and, but again you can see that.

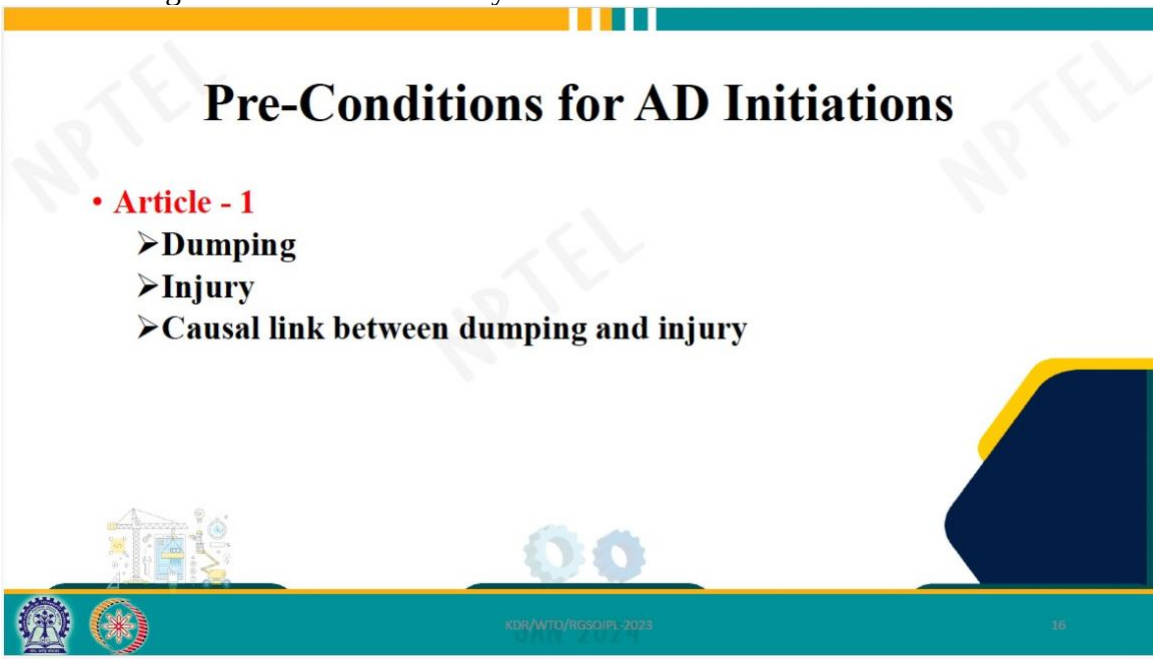


So, it is a general framework for the determination of dumping, determination of injury and also other prerequisites were discussed and concluded in the Tokyo round of negotiations. But the drawback of the implementation was that only 27 members are party to this particular Agreement. Unlike the WTO Agreements, to be signed as a single undertaking, the GATT Agreement applicability was much less. So, only 27 members become party to this Agreement it is not necessary that you should take it as a complete package you cannot pick and choose from WTO Agreements, but GATT you can pick and choose you can you can you can remain to not sign a particular Agreement. So, only 27 members signed this particular Agreement.

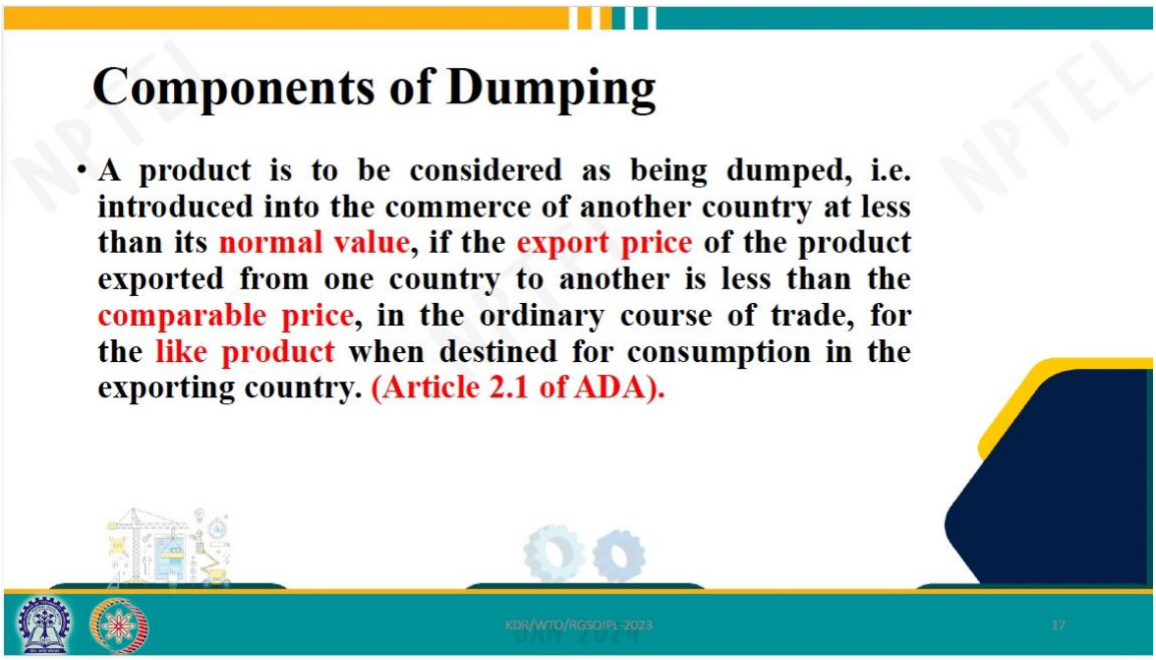


So, what is known as what will come of these Anti-Dumping actions fits into the WTO scheme, and this fits into the scheme of trade remedy measures. Along with two other

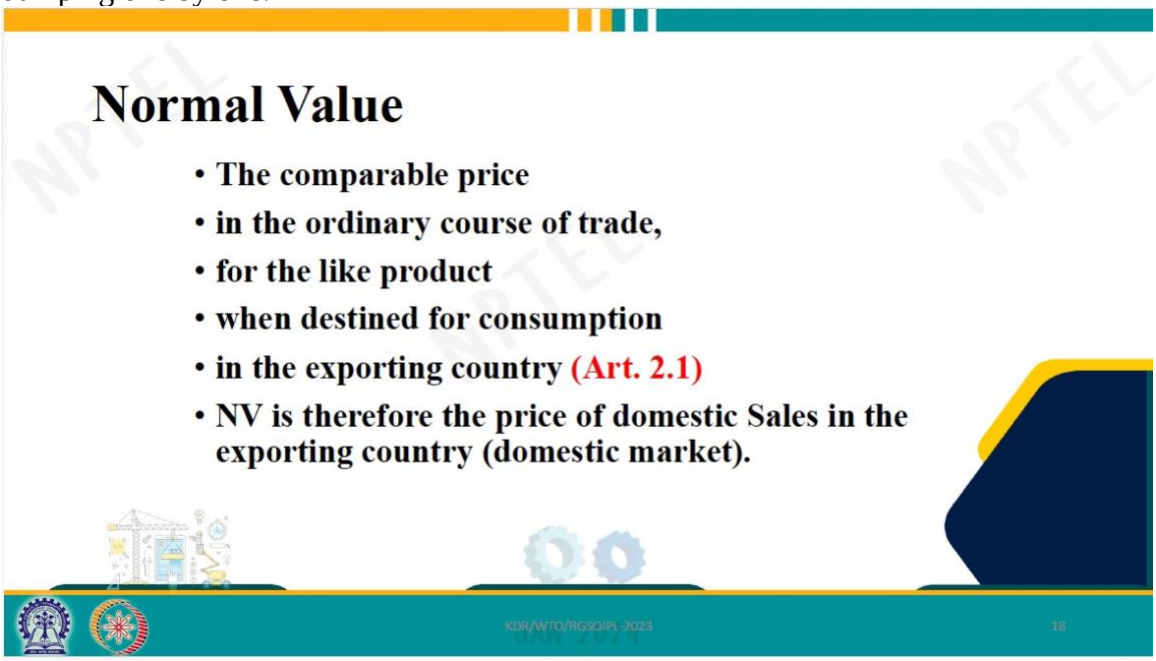
Agreements and the two other Agreements were and one is on subsidies and countervailing duties and other one is safeguard measures. So, if a product is exported a subsidized product is exported. So, in order to counter so, you have to put subsidies and countervailing measures or countervailing duties and if there is a sudden surge in imports of materials then the safeguard measures to be safeguard duties to be imposed and when a product is dumped in the market then Anti-Dumping duties to be imposed, but the WTO not giving any clear guidelines with regard to the alternative uses of these methods. So, in a practical sense, these three trade remedy measures can be imposed on the same imports. So, the same imports can be found to be dumped, the same imports can be found to be subsidized and it means that the same set of imports can meet Anti-Dumping actions, countervailing duty measures, subsidies and countervailing duties also and safeguard duties also. So, three duties can be imposed on the same imports. So, this Anti-Dumping fit into the Agreements of trade remedy measures with other two.



What are the preconditions for initiating an Anti-Dumping action? The preconditions for imposing Anti-Dumping actions are one, there must be dumping, two, injury or material injury to the domestic industry, and three, a causal link between dumping and injury to the domestic industry. So, three criteria dumping, injury and causal link and we will see elaborately one by one.

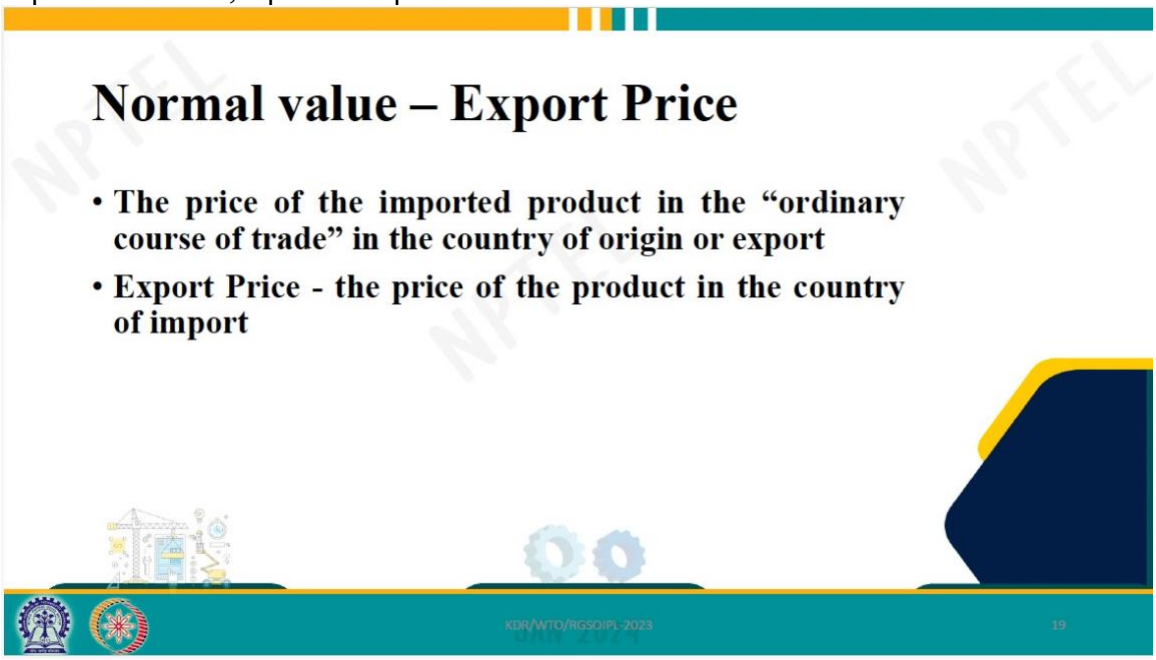


So, we saw earlier the definition. So, what are the important content or components of the definition, we saw that one is normal value and the second is export price, and then there is a comparable price like product. So, we will see these components of the definition of dumping one by one.

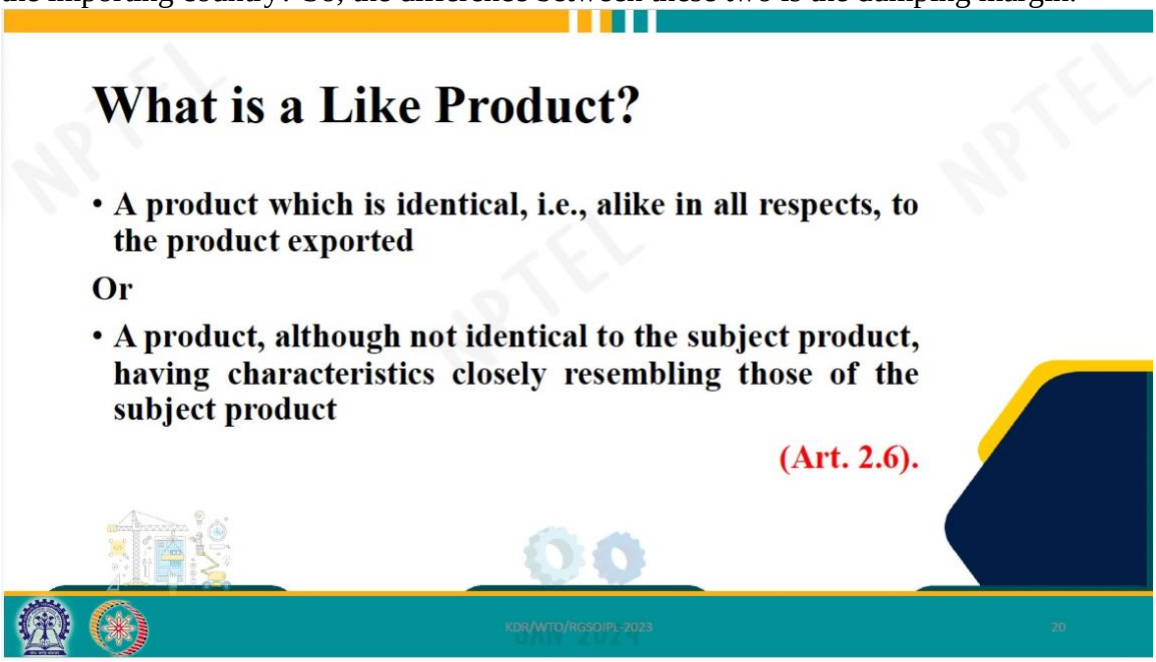


And first of all the normal value. So, normal value we said that GATT very clearly said, explained there is a price comparison between the export market and the import market or the normal value is the price at which the product is sold in the exporting country or domestic market. But in the WTO the normal value is elaborated. It says the normal value is the comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country. So, normal value is simply, it wants to say it is the domestic sale prices of the goods which are exported, the same goods what is the

price at your domestic market then what price you are selling the same product at the export market. So, a price comparison is made that is the normal value.

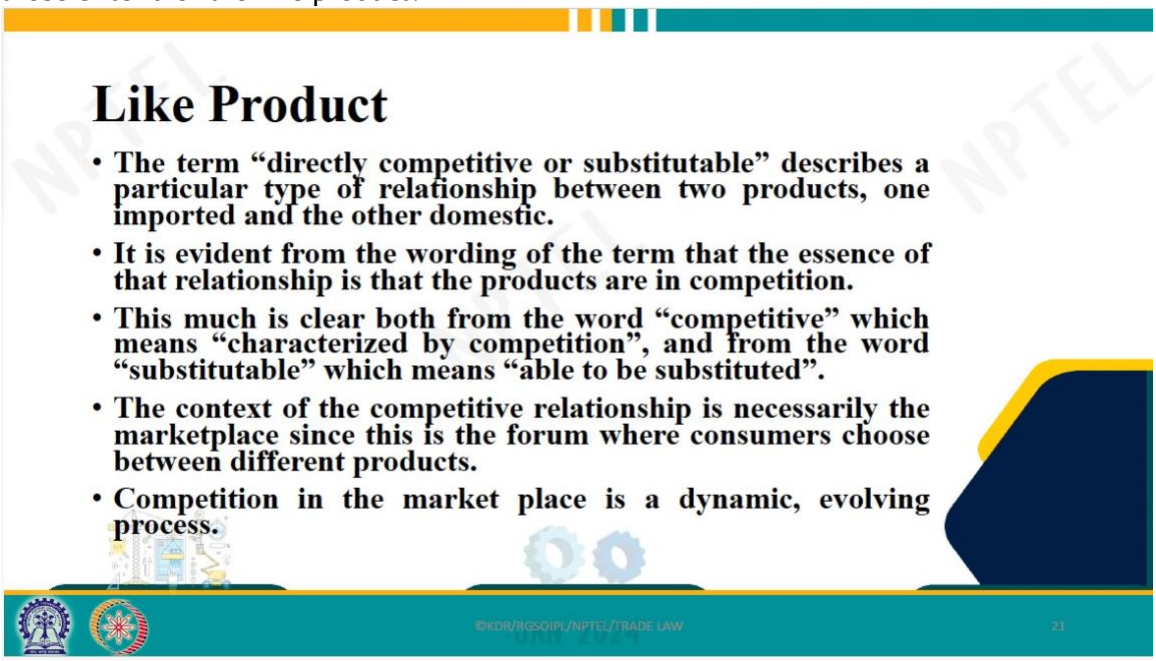


And the export price is the and the entire transaction should be in the ordinary course of trade, it should not be at a special price. So, export price is the price of the product in the country of import. So, the dumping margin is calculated simply between the normal value and export price. So, what is the price at which you are selling that particular product in the domestic market of an exporting country and the export price. So, what is the price in the importing country? So, the difference between these two is the dumping margin.

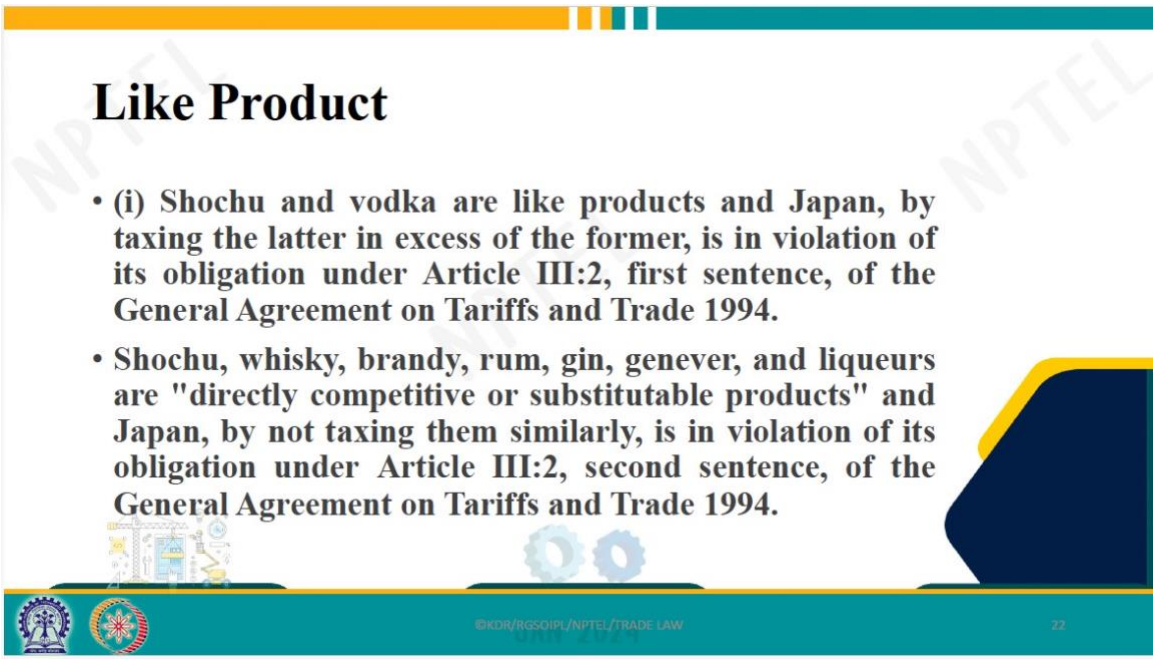


We will come to the dumping margin again how to calculate the dumping margin again detail later. So, in between there is a terminology which is known as like product. What is this like product? So, the WTO Agreement says a product which is identical or alike in

all respects to the product exported. So, it means that it is not only the same product which is exported, but like the product which is exported, it can be a like product as well. So, even though it may not be identical, but having the characteristics close to resembling those of the subject product. It means that it can be, again the question is whether apple and oranges can be compared together, whether the prices of apple and oranges can be compared together, the answer is no. So, certain criteria are to be fulfilled. So, what are those criteria of the like product?



So, the WTO says that, the Agreement says that directly competitive or substitutable product. And, this relationship between the exporter product and also the domestic product should be very close directly competitive or substitutable that is the first condition. Second so, the essence of the relationship is the competition between these two particular products. And thirdly the competitive means characterized by competition. So, substitutable means able to be substituted. So, the context of competitive relationship is necessarily the market place, and also, it is a consumer choice. So, competition between products is always evolving in the market, and the competition laws of domestic countries will take place and not the Anti-Dumping Act. But when for the determination of a like product this competition and substitutability is to be taken into consideration.



And we will see one example. So, this is a Japan Alcohol case, which is in WTO. It is known as the Japan alcoholic case. And basically, it is a tax case that Japan has imposed additional taxes on the import of vodka. And vodka is everybody knows that it is a famous alcoholic product from Russia. And so, Japan has imposed this additional taxes under the domestic law and which was questioned before the WTO Agreement. So, here are two products so, what was the basic argument? So, the basic argument was that a domestic product which is known as *Shochu*. And *Shochu* is a product in Japan which is made by every household as a domestic drink. And they take it along with the dinner, dinner time they almost everybody in the family takes this particular drink *Shochu* in the in Japan, which was not taxed at that point of time. So, the question was whether a domestic drink known as *Shochu* and an imported alcoholic product, Vodka, are like products. The WTO dispute settlement panel and appellate body, they said that the *Shochu* is an alcoholic product it is similar to as that of or the language used is like product as that of whiskey, brandy, rum, gin, genever and any other liquids which are directly competitive or substitutable products. So, the panel said if you are taxing whiskey, brandy, rum, gin and vodka you should tax *Shochu* as well otherwise it is violation of the obligations on the Article 3.2 of the GATT Agreement. So, it is very clear you cannot discriminate between a national product and a foreign product under the national treatment principle. And we said that the entire WTO is based on two cardinal principles one is the MFN clause and the second one is the national treatment. So, Article 3.2 violation, so and you cannot escape from saying that every household uses it. So, the WTO panel and appellate body looked into what is the purpose and what is the characteristics and whether it is similar to those of characteristics and whether it is an exchangeable or equally competitive product. The panel and appellate body said that *Shochu* is a similar product to that of vodka. So, this is the interpretation given in this particular case the Japan alcoholic case and you can look into the Korea alcoholic case as well.

Situations In Which Domestic Prices May Be Rejected As The Basis For Normal Value

- When: there are *no sales* of the like product in the *ordinary course of trade*, OR
- when such sales do not permit a proper comparison because of: –a *particular market situation*; or –the *low volume* of sales in the domestic market of the exporting country
- Then the normal value is taken to be either:
- *the export price to a third country*; or a constructed value

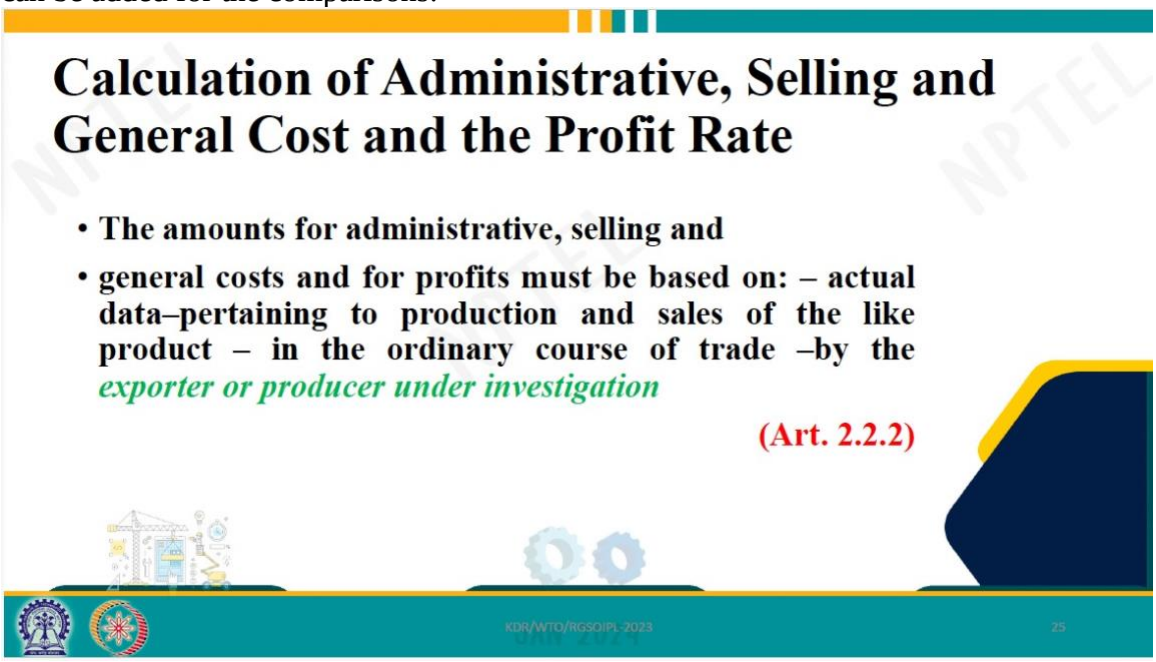
(Art. 2.2)

So, what we want to say is that it is not only the same product it is the similar product as well like product as well can be taken to consideration for the imposition of Anti-Dumping duties. Then in certain cases the prices may be rejected and because we already said that in the ordinary course of trade if the sale of a particular product is not in the ordinary course of trade then that prices will be rejected. And second a particular market situation for example, very low volume of domestic market sale and very high volume of export it is a special market situation then you cannot compare these prices. Thirdly, if a price is not available, a third country export price is to be taken to consideration and you construct the normal value. So, this is the constructed normal value method. So, Article 2.2 which talks about exclusion of normal value calculation in certain circumstances.

If Domestic Price to Export Price Comparison not Possible

- Export price to third country:
- Use a comparable price of the like product when exported to an appropriate third country, provided that this price is representative
- Constructed value:
- Cost of production in country of origin and reasonable amount for administrative, selling and general costs And for profits.

So, if domestic price as I already said that if the comparison is not possible then you take a third-country price or third-country comparable price of a like product not even the same product like product and you construct the normal value. So, this construction is happening, the value is calculated based upon the cost of production and the reasonable amount of administrative charges selling general costs and other profits. So, this prices can be added for the comparisons.



And how this cost of administrative selling and general cost and profits rights are calculated Article 2.2.2 says that these particular prices should be based on actual data pertaining to the production and sales of like product and the problem is that how many companies will be ready to give the cost of production data to the investigators and most of the companies never give the actual cost of production to the investigators. So, this is the constraint the investigating authorities face when they make this comparison-normal value calculation. So, if the original cost of production is not disclosed it will be very difficult to calculate the normal value.

Particular Market Situation

- **Not defined in AD Agreement**
- **No guidance available**
- **Panel: EC - Cotton Yarn from Brazil – Hyperinflation/Frozen exchange rate continuation did not constitute a "particular market situation."**

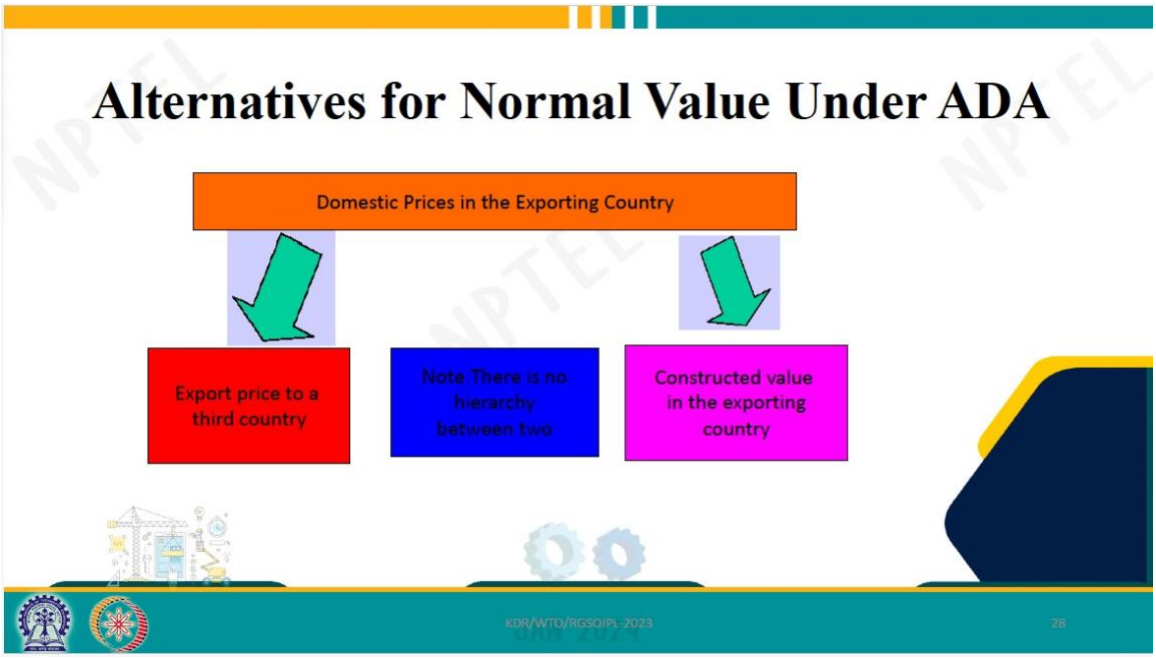
And then we talked about the particular market situation and what is this particular market situation is not defined and one market situation can be if there is no domestic sales. So, what it says for example, in the panel in the EC-Cotton Yarn from Brazil Case dispute talked about hyper-inflation, frozen exchange rate. So, the panel said that these situations do not or did not constitute a particular market situation. Hyper-inflation and frozen exchange rate continuance – this is not a particular market situation. Then the question is, what exactly constitutes a particular market situation, and there is no guidance available under the WTO Agreement.

Calculation of dumping margin

If this is found to be the case and if, for example, the domestic price of a model is 100 and its export price is 80, the *dumping amount* is 20 and the *dumping margin* is 20/80x100=25%.[10]

So, it will depend upon place to place and circumstances and case to case decided by parallel and appellate body. Now we talk about the calculation of dumping margin. How is the dumping margin? Why you want to calculate the dumping margin? Because the

duty to be imposed is calculated based on dumping margin. So, it is very simple formula to calculate dumping margin. It is the difference between the domestic price, the export price and normal value that is I would say that it is a difference between domestic price and export price. So, the calculation is very simple. For example, if a particular product's price is 100 and its export price is 80 and the dumping margin to be calculated is very simple. So, the amount is 20. So, it is 20 divided by 80 multiplied 100. So, the dumping margin is 25 percent. So, the dumping margin calculation is by using a very simple formula.



The domestic prices in the exporting country and the domestic prices in the importing country. So, we already said that it is a price discrimination. So, if the prices are not available either you construct the prices or if you take the prices of a third country. So, how the members, how the investigating authorities are going to construct the price or whether they are going to look into the third country price or whether they are going to look into the normal value and there is no guidelines are provided by the WTO Agreement. So, usually, it is the normal value calculation.

Constructed Export Price

- **Constructed on the basis of :**

– Price at which product is first sold to an independent buyer

OR

– If no such sales, or not sold in the condition as imported, on reasonable basis as the authorities may determine

So, how is this export price constructed, which we talked about? So, it is calculated based on selling the particular product to an independent buyer or if there is no sales at all for example, in certain cases where there will be 100 percent export oriented units and also export is only to certain countries. So, if there is no domestic sales it is very difficult to calculate the normal value. In such conditions, and you can see that they are not sold in the condition as imported or on reasonable basis, then the constructed export price is calculated or constructed based on certain conditions.

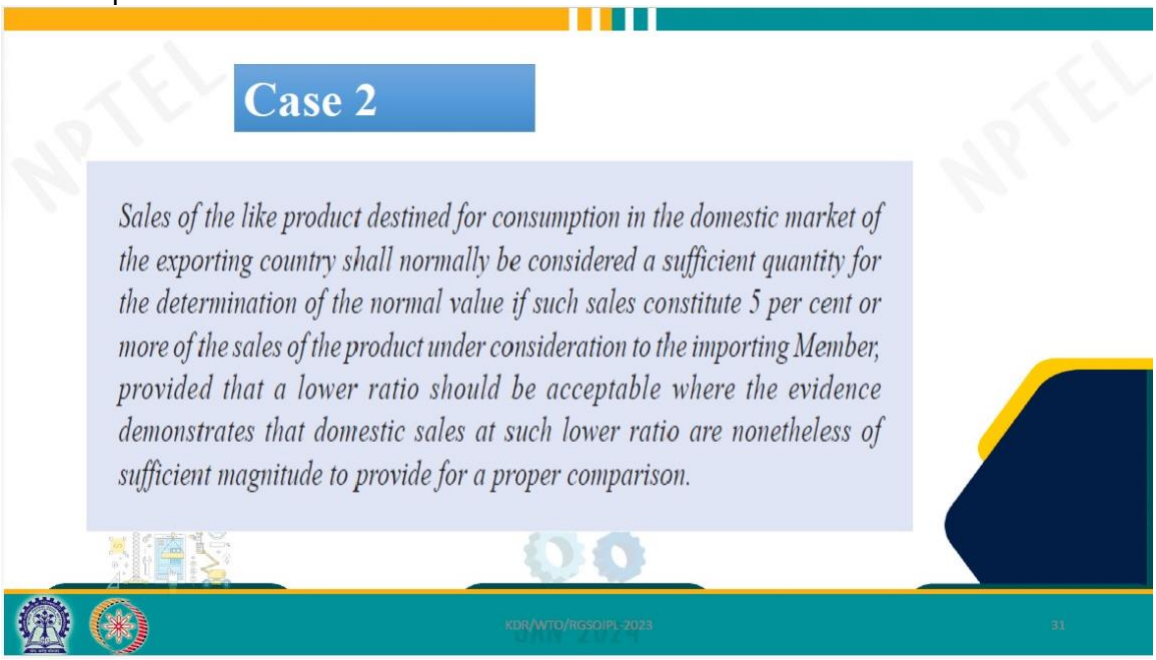
Situation 1: No domestic sales in the ordinary course of trade.

It may occur that different models are sold in the domestic and the export markets.In the case of CTVs, for example, some countries have the PAL/ SECAM system while other countries use the NTSC system. Authorities may then decide that CTVs with different systems cannot be compared.

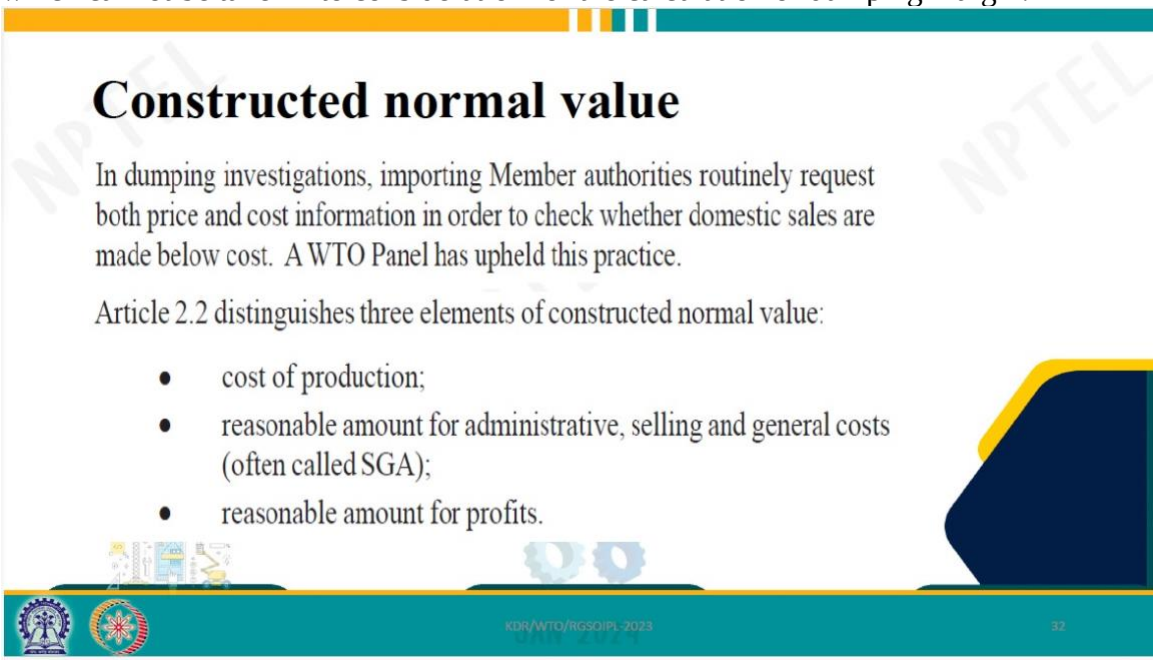
It is also possible that there are no domestic sales *in the ordinary course of trade*, notably because domestic sales (either of the like product or of certain types) are sold at a loss.

So, one we talked about is if there is no domestic sales in the ordinary course of trade and then in certain cases there is completely export oriented. So, sometimes there is no sales of the same product in the domestic market in that particular case you can take into

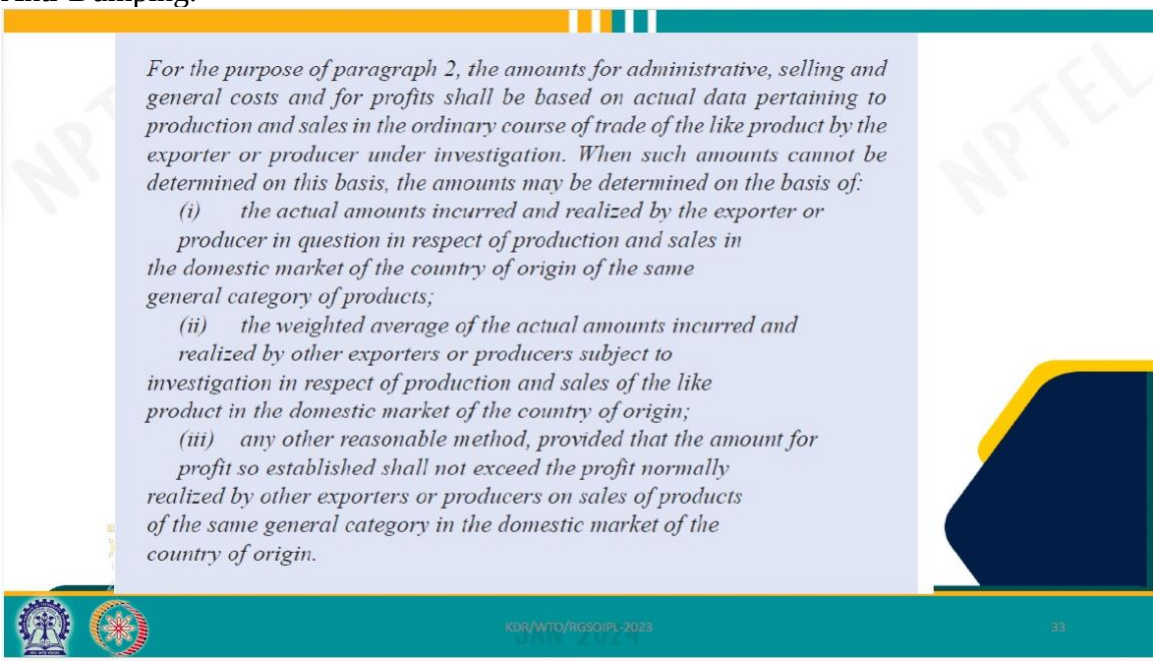
consideration of like product or certain type of products sold in the domestic market. So, it is like product as well.



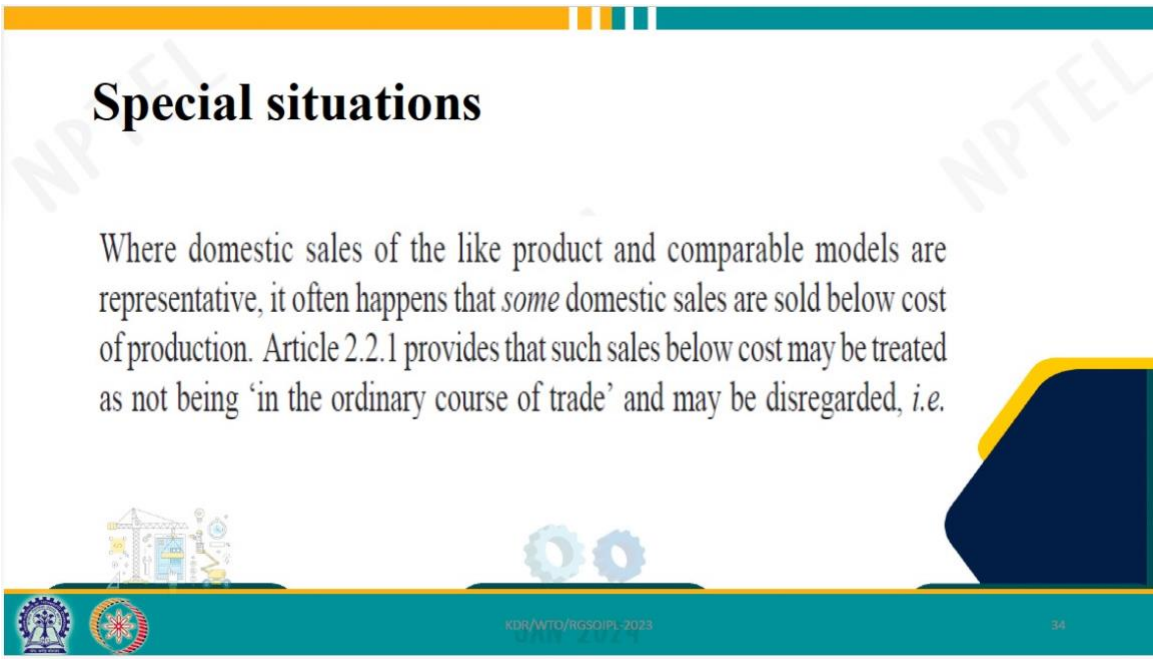
In certain cases, sales of a like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of normal value, sufficient quantity. So, if the quantity constitutes 5 per cent or more of the sales of the product under consideration to the importing member, then a low ratio should be acceptable where the evidence demonstrates that domestic sales at such level ratio are none less of sufficient magnitude to provide a proper comparison. So, the provision which clearly says that the quantity should be adequate for proper comparison of the prices otherwise it will be considered as de minimis level and which cannot be taken into consideration for the calculation of dumping margin.



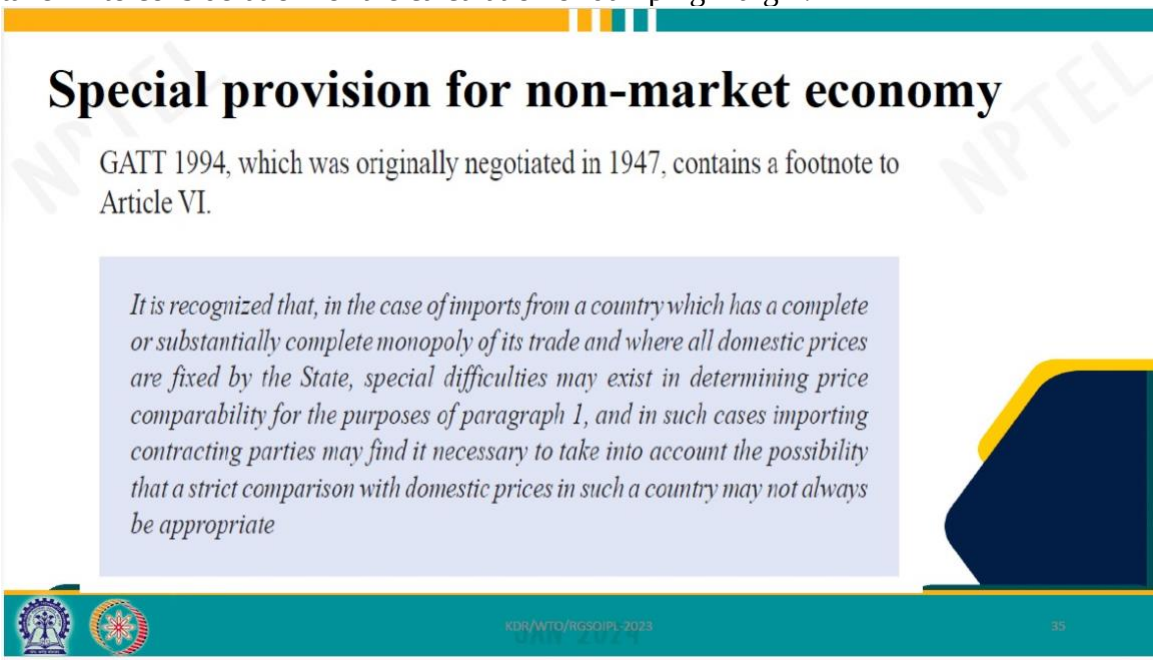
So, we talked about constructed normal value. So, the panel said that what are the components to be taken into consideration for the constructed normal value which includes the cost of production, reasonable amount of administrative selling and general cost and reasonable amount of profits. These are the three components to be taken into consideration for the constructed normal value under Article 2.2 of the Agreement on Anti-Dumping.



And then also we can see that what are the components, how the administrative charges, selling, general cost and profits shall be determined. So, we already said that this should be based on actual data, but how many manufacturers will be willing to give this particular data to the investigating authorities? In that case, and also it says that it should be based on actual amounts incurred and realized by the exporter or producer and also it says that the weighted average of the actual amounts incurred and realized by other exporters or producers subjected to investigation. So, the weighted average price can also be taken into consideration for the calculation of the dumping margin. And also you can see even like product also can be taken into consideration of the constructed normal value.

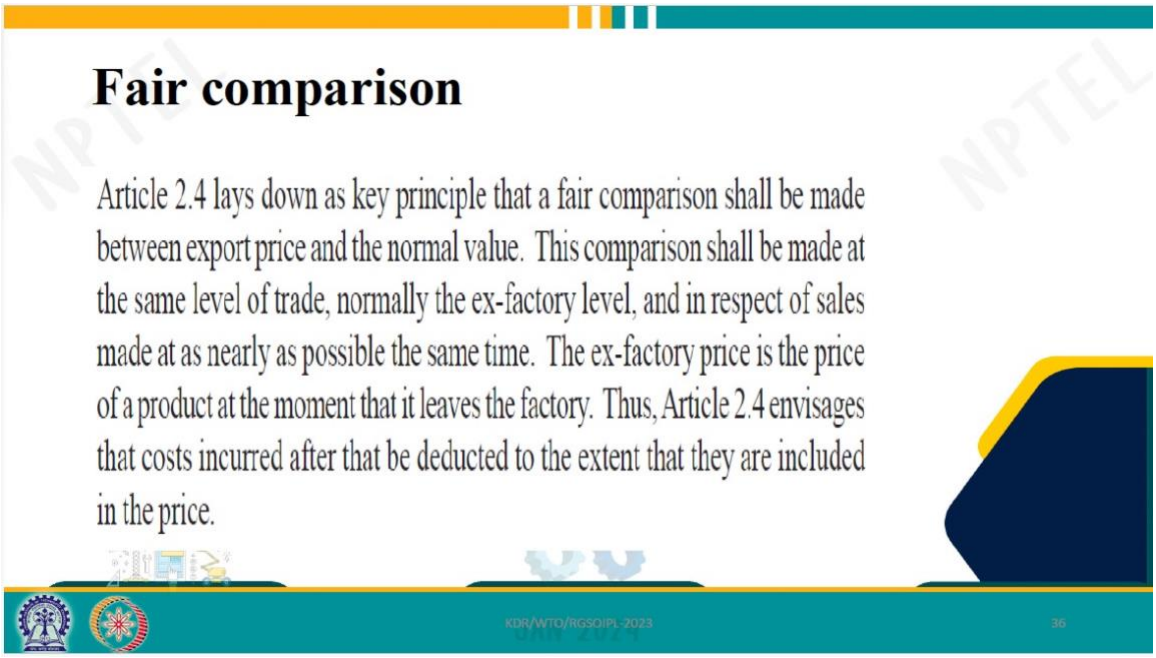


And certain special situations to be taken into consideration as well. So, because in certain circumstances a product is sold in the domestic market below the cost of production. Such sales may be considered to be treated as sometimes disregarded in the ordinary course of trade. And so sometimes so it will depend upon the economic condition of that particular country. So, that means certain special circumstances to be taken into consideration for the calculation of dumping margin.



So, special provisions for non-market economic provisions, this was mainly talking about China. Still, China is considered to be a non-market economy because the largest companies, the producing companies, are under the ownership of the state. So, the presumption is that these companies whatever they produce the prices are not according to their cost of production nor according to the market prices. These are artificially made

prices. So, there is a special provision for non-market economies. And what it says? It says that if importing from a particular country which is a non-market economy, then the comparison should be taken carefully with regard to the domestic prices. So, in most of those cases the comparison is to be made with a third country of the same product or the like product. So, non-market economies' prices are not supposed to be taken into consideration.

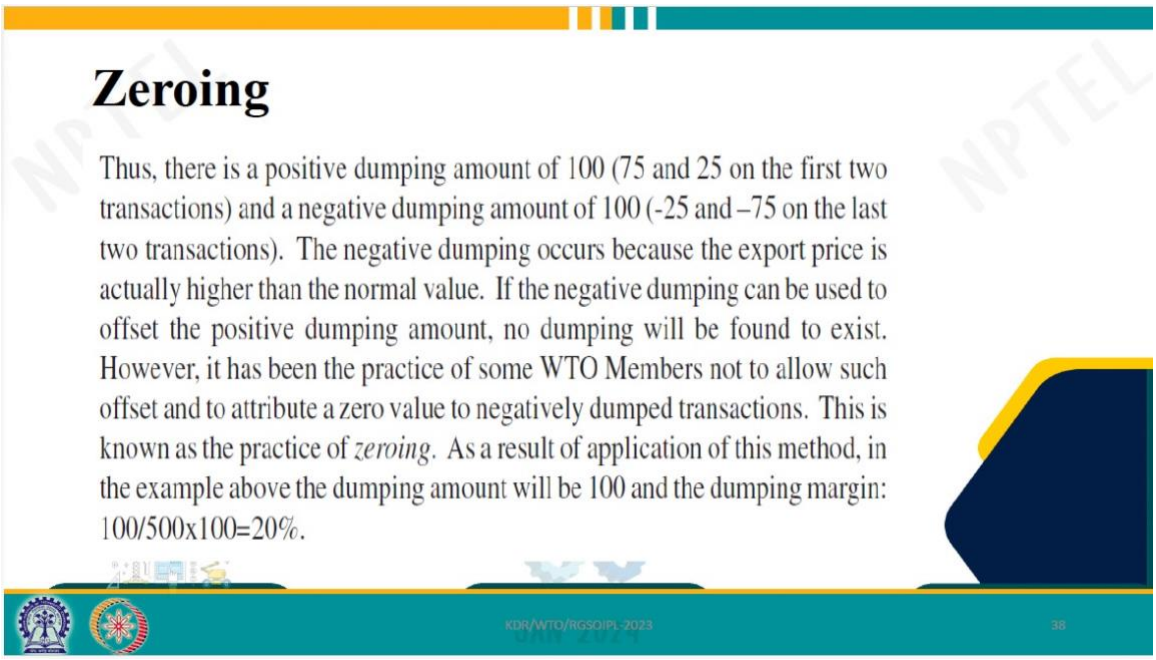


Then, a fair comparison is to be made. How do you make a fair comparison according to Article 2.4? What are the key principles of a fair comparison? So, this comparison may be made at the same level possibly at the ex-factory level and also sale at the same time. So, it means all the sales to be taken in a same period of time and at the same level of sale. So, ex-factory prices of a particular product are to be taken into consideration and the cost are also to be included. What are the other costs to be included in the price? That component, for example, the other cost, which includes the transporting cost or loading unloading and other costs, is also to be taken into consideration in the prices. So, a fair comparison is to be made and the guidelines are given under Article 2.4 to be taken into consideration.

Zeroing

Date	Normal value WA basis	Export price T-by-T	Dumping amount
1 January	125	50	75
8 January	125	100	25
15 January	125	150	-25
21 January	125	200	-75

And most or more importantly the margin of dumping is calculated we said that already it is a very simple formula. But some of the countries like European Union or the United States even including India has used certain methodologies which are not acceptable, or it is against the WTO Agreements. One such methodology is zeroing. What is this zeroing? If the margin of dumping is found to be minus, then these countries considered that minus figure to be zero. For the example given in this particular table. So, you can see the transactions and the normal values and different transaction dates and normal values are the same and the export price on this particular transaction is found to be different. Then you got the dumping margin 75, 25, minus 25 and minus 75. So, if you calculate the total dumping margin it is to be zero. But what do these countries do? These countries put minus 25 and minus 75 as zero. So that they can always find the dumping margin according to what they want. So, this methodology is even adopted in the EU India-Bed linen case.



So, it is very simple zeroing. So, there is always a positive dumping margin. So, it is very simple if there is a positive dumping margin and negative dumping margin it is supposed to offset. But the value of this negative dumping margin is to be considered only as zero by these particular countries. Then always, if once you zero the negative dumping margin and then it is always going to be a positive dumping margin. So, instead of zero dumping margin you will end up in finding minimum 20 percent dumping margin. So, actually, no way in the Anti-Dumping Agreement this kind of methodology is prescribed. But the countries practice it. And India blamed the European Union for imposing this particular methodology in EU India-Bed linen case. But later on it was found that India also used in some of the cases this methodology to calculate a dumping margin. So, it is a double-edged sword. So, sometimes, it can be used against you, and then you also use it against others.

WTO - DSB

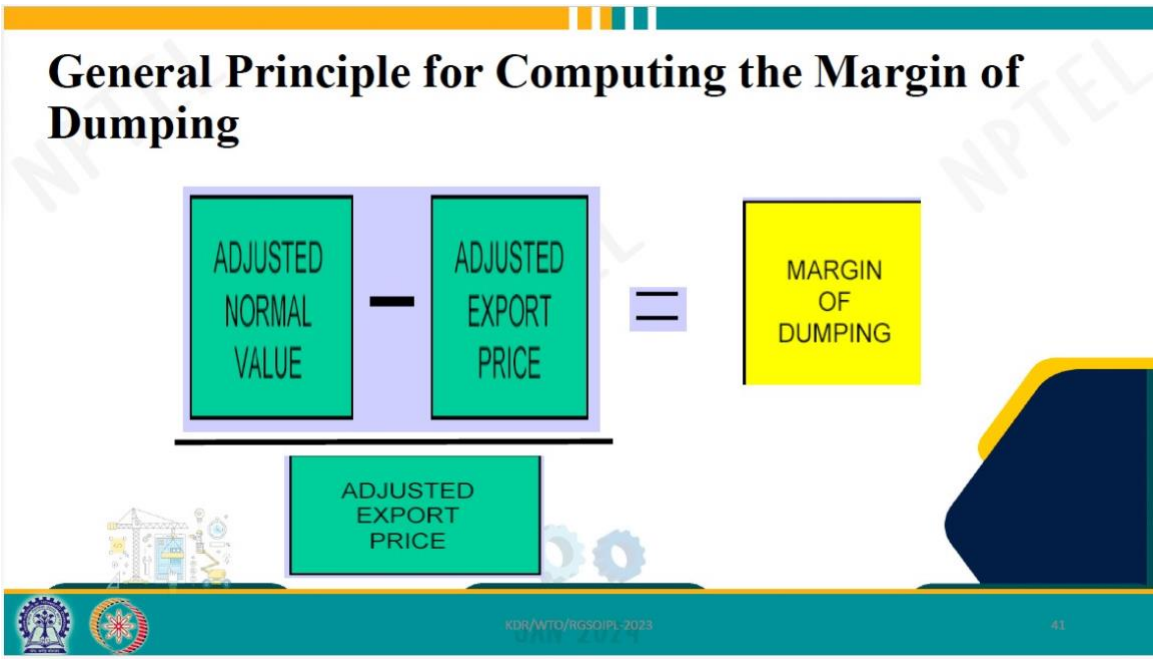
- EC – Bed Linen Case
- https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds141_e.htm.

So, this zeroing methodology was considered to be in the EU India-Bed linen case dispute settlement system very clearly said that this is against the WTO Agreement. But still some of the countries were using this particular methodology for finding dumping.

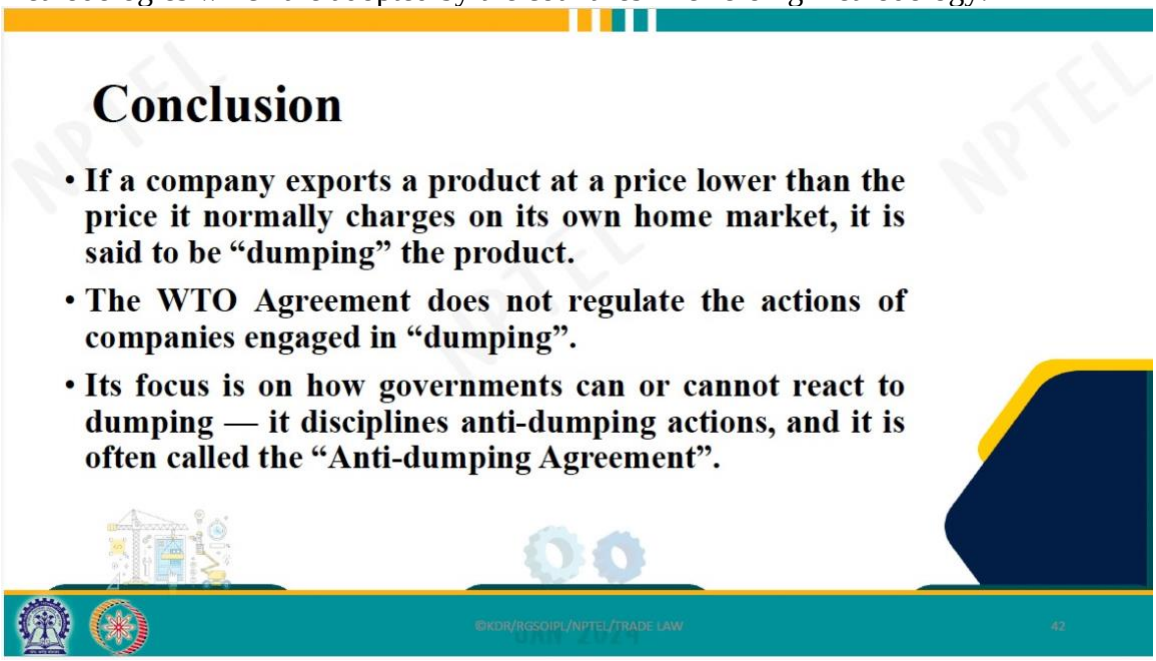
Comparison of Domestic Price to Export Price

- For price comparison to be fair, a number of adjustments need to be made to export.
- Price and domestic price (A.2.4)

And we said that comparison between export domestic price and export price. So, this is basically the normal value. So, these prices are to be compared, a fair comparison is to be made between the prices.



So, it is very simple: the margin of dumping is the adjusted normal value minus the adjusted export price divided by the adjusted export price and is equal to the margin of dumping. It is very simple. So, any other methodology is not acceptable especially the methodologies which are adopted by the countries like zeroing methodology.



So, in this class we discussed about what is known by dumping, what is the common meaning of dumping and what is the meaning of dumping under the Anti-Dumping Agreement or the trade law and what are the components of dumping. And especially when a product is known to be or says it is dumped? So, we said that dumping per se is not prohibited, but dumping when it affects the domestic industry or injury or material injury to the domestic industry and then only Anti-Dumping actions can be taken or additional Anti-Dumping duties can be imposed. So, the three criteria and prerequisites

for imposing Anti-Dumping duties are one is to find dumping, the first criterion and the second criterion is injury to the domestic industry or material injury to the domestic industry and what the domestic industry also is very important and we will look into the next class. And three a causal relationship between dumping and injury. If there is no causal relationship between dumping and injury, no Anti-Dumping action can be taken. For example, if dumping has happened and there is no connection between injury to the domestic industry and the injury to the domestic industry is attributable to any other reason like economic slowdown, pandemic or any other, for example, foreign exchange fluctuations, any other economic criteria then Anti-Dumping duties cannot be imposed. So, clearly there must be a connection between Anti-Dumping duties and imposing Anti-Dumping duties, dumping and injury to the domestic industry. If there is no injury to the domestic industry, no Anti-Dumping actions can be taken. Then we looked into how to calculate the dumping margin because the calculation of dumping margin is important because the WTO Agreement says that you can impose duties only to the tune of dumping margin maximum, a lower duty also can be imposed to offset the dumping, but the margin of dumping to be calculated, the maximum percentage is the maximum margin of dumping. So, what do the countries do? The countries impose methodologies which are never mentioned under the Anti-Dumping Agreement and one such methodology is zeroing methodology and zeroing methodology always inflates the margin of dumping, and even though the WTO panel and the appellate body said that especially in EU-India Bed Linen case, this is against the WTO Agreement on Anti-Dumping provisions, still it is known to be continued by the members. These kind of methodologies always inflate the dumping margin so that they can impose Anti-Dumping duties. So, we talked about dumping, we talked about the prerequisites and we talked about zeroing and we talked about the framework of the Anti-Dumping actions how this margin, the duties can be imposed and in the next class we will talk about the second criteria that is injury to the domestic industry or what constitutes material injury or what constitutes material retardation of the industry, that is the second prerequisite and the third prerequisite is the causal link, what do you exactly mean by causal link between these two. That we will discuss it in the next class.