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Anti-Dumping Agreement and Exhaustion of Law Remedies

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Anti-dumping Agreements and Exhaustion of Local Remedies

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ABSTRACT

Article VI of the GATT, 1947, for the first time, sought to standardize national anti-dumping laws by reference to international standards. The Kennedy Round and Tokyo Round Codes on anti-dumping further refined the concepts and provided procedural safeguards so as to curb the arbitrariness of national administrative authorities. The Uruguay Round produced a comprehensive anti-dumping code providing for judicial review of administrative action imposing anti-dumping duties on imported goods. But it is noticed that exporting countries often resort to the dispute settlement body of the WTO without exhausting judicial remedies provided by the legal system of the importing countries. This article argues that this bypassing of judicial remedies is a violation of Public International Law.

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I. INTRODUCTION

Among all international institutions, the World Trade Organization (WTO) has the most effective and credible system of settlement of disputes between member states. The dispute settlement mechanism embodied in the Agreement on Dispute Settlement Understanding (DSU), forming part of the WTO system, has often been hailed as the 'crown jewel' of the regime governing international trade. It will be interesting to consider the interface between the traditional international legal doctrine of exhaustion of local remedies and settlement of disputes under the WTO. Going back to 1947, when the General Agreement on Tariffs and Trade (GATT) was adopted, the relevance of the 'local remedies rule' to the GATT/WTO regime was raised only in the context of the provisions governing anti-dumping measures under the GATT and presently under the WTO.[2]

The doctrine of exhaustion of local remedies is concerned with the treatment of foreigners by the host governments. Among the Multilateral Trade Agreements (MTAs) constituting the WTO system, the Anti-Dumping Agreement (ADA) (i.e. "Agreement on Implementation of Article VI of the GATT 1994" as per the WTO terminology) is the only agreement under which foreigners are subjected to adverse treatment by host governments for the conduct attributable to them. In other words, the importing country can impose anti-dumping duty on the products dumped by foreign traders. In the case of two other trade remedies, namely, countervailing and safeguard measures, the foreign traders suffer the consequences of the acts attributable to their home and host governments. Countervailing duties are levied on imported products to counterbalance the subsidies given by the home governments of exporters. Safeguard measures are imposed on imported products to help the domestic industries tide over their own problems. Against this background, it is surprising that the application of the local remedies rule was contested precisely in the context of ADA. The issue was officially raised for the first time by a GATT Panel in the United States: Anti-Dumping Duties on Gray Portland Cement and Cement Clinkers from Mexico.[3] The relevant observations of the Panel are as follows:

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2 For a general discussion on these issues, *see* Rustel Silvestre J. Martha, *World Trade Dispute Settlement and Exhaustion of Local Remedies Rule* 30(4) JOURNAL OF WORLD TRADE 107-30 (1996).

3 ADP/82 (September 7, 1992).

> The Panel further noted that in respect of administrative proceedings in the U.S., there was nothing in the Agreement which explicitly required the exhaustion of administrative remedies, i.e. that for an issue to be properly placed before a Panel, it would have had to have been raised in the domestic administrative proceedings. The Panel considered that if such a fundamental restriction on the right of recourse to the Agreement's dispute settlement process had been intended by the drafters of the Agreement, they would have made explicit provisions for it. The Panel noted that Article 15.5 provided that the Committee "shall establish a panel to examine the matter, based upon: …(b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country". The Panel observed that this provision did not require the exhaustion of administrative remedies, but provided that the matter examined by the Panel would have to be based on the facts raised in the first instance, in conformity with the appropriate domestic procedures, in the administrative proceedings in the importing country.[4]

It may be noted that this case was based on the Tokyo Round Code which did not mandate the judicial review of administrative decisions concerning dumping. In fact, international anti-dumping law evolved within the framework of the GATT, 1947 to counteract the abuse of anti-dumping law by the domestic authorities of importing countries. Thus Article VI of the GATT, 1947, defined dumping authoritatively for the first time and required 'material injury' as a condition precedent for imposing anti-dumping duties. The Kennedy Round Code and Tokyo Round Code elaborated the administrative procedures to be followed by the domestic authorities of importing countries. The Uruguay Round Code, as will be shown, introduced for the first time, judicial review of administrative decisions imposing anti-dumping duties. In the context of the Tokyo Round Code, it was correct to say that it did not mandate exhaustion of local remedies, generally associated with judicial safeguards.

Articles 5 and 6 of the Tokyo Round Code laid down the standards to be followed by administrative authorities while investigating the complaints

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4 *Ibid.* at para. 5.9

concerning dumping. The central issue in this case was whether Mexico could raise certain arguments concerning "standing" (i.e. whether the American complainants represent American domestic industry as per Article 4 of the Agreement) and "cumulation" (i.e. the U.S. administrative authority's decision to assess the impact of imports from Mexico cumulatively with imports from Japan). The U.S. argument was that these issues were not raised before the U.S. administrative authorities by Mexico and hence they could not be raised before the Panel for the first time. The Panel ruled that Mexico could raise these issues *de novo*, provided they were based on the "facts made available to the authorities of importing countries"; Mexico's arguments were based on such facts.

It may be noted that as per Article 5 of the Tokyo Round Code, the function of administrative authorities was to investigate the existence, degree and effect of any alleged dumping. Article 6, titled 'Evidence', shows that the administrative authority is essentially engaged in investigation of facts, for Article 6 uses the expression "information" to be supplied by the parties. The implication is that the administrative authority is engaged in the investigation of facts and legal arguments, if any, would be incidental to questions of fact.

Article 13 of ADA, forming part of the WTO Agreement, reads:

> Each member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations within the meaning of Article 11. Such tribunals and procedures shall be independent of authorities responsible for the determination or review in question.

The above article provides for what we call in Common Law parlance the judicial review of administrative action. It is in perfect consonance with the international legal requirement of exhaustion of local remedies. But there exists a loophole in Article 17.4 of the ADA, which reads:

> If the Member that has requested consultation considers that the consultations…have failed to achieve a mutually agreed solution, and if final action has been taken by administering authorities of

> the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body (DSB). When a provisional measure has significant impact and the Member that requested consultations considers that the measure taken is contrary to the provisions of paragraph 1 of Article 7, that member also may refer the matter to the DSU. (Emphasis added)

The above provision is often construed literally and the governments of exporting countries often rush to DSB once the administrative authorities of importing countries decide to levy anti-dumping duties bypassing judicial authorities.[5] Surprisingly, this bypassing of judicial authorities was never questioned in the WTO proceedings by the respondents (i.e. the importing countries). It is humbly submitted that this bypassing amounts to violation of Public International Law relating to exhaustion of local remedies and right of diplomatic protection.

II. The WTO as an International Institution

The WTO text assiduously avoids the expression 'Public International Law'. The closest it comes to this expression is in Article 3.2 of the DSU, which provides that the WTO text shall be interpreted "in accordance with customary rules of interpretation of public international law". Practically every panel report ritualistically quotes this provision and refers to Article 31 of the Vienna Convention on the Law of Treaties as the expression of customary rules of interpretation of Public International Law.

In many cases, such as the *Beef-Hormone Case* between the USA and the EC,[6] the question was raised whether the WTO is bound by the general principles of International Law, such as the precautionary principle. The panels dodged the issue, but were categorical that the so-called general principles of Public International Law cannot override the specific provisions of the WTO.[7] In brief, they take the position that WTO agreements are *lex*

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5 This is based on information given by Indian lawyers engaged in practice in this area.

6 EC: Measures Concerning Meat and Meat Products WT/DS 26/R/1997.

7 *Ibid*, at para. 8.158.

specialis within whose framework the disputes have to be decided. No specific provision of the WTO can be overridden by reference to the general principles of International Law.

Article 31 of the Vienna Convention, which has been repeatedly relied upon by the panels, also contains paragraph 3(c), which provides that while interpreting a treaty:

> There shall be taken into account, together with the context: any relevant rules of international law applicable in the relations between the parties.

Exhaustion of local remedies is definitely a fundamental rule applicable in relations between states and all MTAs forming part of the WTO must be interpreted keeping this fact in mind. Of course, it is well recognized that states can waive the requirement of exhaustion of local remedies if they so choose. For example, under International Convention on Settlement of Investment Disputes (ICSID) arbitrations, the local remedies rule will not apply unless the host state makes it an express condition of its consent while adhering to the Convention. This is so because of Article 26 of the Convention. In the context of the ADA, the relevant question is whether member states have specifically waived the requirements of exhaustion of local remedies and whether Art. 17.4 can be so interpreted.

III. EXHAUSTION OF LOCAL REMEDIES

A state would incur international responsibility if there is a denial of justice to foreigners and this denial of justice takes place if it administers justice to aliens in a fundamentally unfair manner. In other words, a state is under an international obligation to create and maintain a system of justice which ensures that unfairness to a foreigner either does not happen, or is corrected. It is the whole system of legal protection as provided by the municipal law which will be put to test when the denial of justice is alleged.[8] The exhaustion of local remedies is a precondition for denial of justice in the sense that a foreigner is equally duty-bound to avail all the remedies provided under the municipal system to get justice. If the foreigner concerned fails to

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[8] Jan Paulson, DENIAL OF JUSTICE IN INTERNATIONAL LAW 4-10 (2007).

get justice even after exhausting local remedies, he may appeal to his home state to take up his case with the host state at international level. Relying upon the international legal maxim: "injury to its national is finally injury to the state", the state concerned can take up the matter in exercise of its right of diplomatic protection.

Given the complex governing structure and the process of decision-making of any given state, a wrong committed by an official cannot be attributed to the state, unless the government is given an opportunity to deliberate on it and take appropriate action. In other words, to attribute a wrong of an official to the state, it is necessary for the victim of the wrong to exhaust the available local remedies. As the International Court of Justice put in the *Interhandel Case*:

> "The rule that the local remedies must be exhausted is a well-established rule of customary international law. The rule has been generally observed in cases in which a State has adopted the cause of national, whose rights are claimed to have been disregarded in another state in violation of International Law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means within the framework of its domestic legal system."[9]

Under any constitutional system of governance, these local remedies are provided by judicial institutions independent of executive branch responsible for causing the injury. If the judiciary fails to deliver justice, there would be "denial of justice" by the State. This is so, since from international point of view, the judiciary is a constituent of the State; its failure to deliver justice will thus be attributed to the State. Given the hierarchical structure of the judiciary designed to avoid the possibility of miscarriage of justice by human frailty, the judgment, to be attributable to the State, must be that of the final court. As Judge Jiminez de Archega put it:

> "An essential condition of a State being held responsible for a judicial decision in breach of municipal law is that the decision must be the decision of court of last resort, all remedies having been exhausted."[10]

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9 *U.S.A* v. *Switzerland*, ICJ Reports (1959) 6.

10 Jiminiz de Archya, *International Law in Part III of the Century* 1 RECUEIL DES COURS 159 (1978) 282.

The idea of justice signifies that a person must get what is due to him. Therefore, denial of justice to a foreigner means the deprivation of his entitlements as a result of an action attributable to the State. These entitlements are recognized and enforced as rights under a functional legal system. These rights may have their origin either in municipal law or in International Law. But, insofar as these rights have their origin in International Law, it is necessary that such rights are incorporated in national legal system administered by local courts. The local remedies rule has no application if these rights are not transformed into municipal law rights; in such cases, the executive branch of the government has to account for any breach thereof at the international level.[11]

IV. THE WTO AND THE RIGHTS OF FOREIGNERS

The basic premise of the GATT/WTO is that international commercial transactions are essentially carried out by private individuals or entities. Tariff concessions have no meaning if governments carry on all import-export transactions. Viewed from this angle, one can argue that the WTO has sought to establish and ensure "right to trade" on the part of private individuals under International Law; this right may be considered as the realization of the economic rights recognized by International Covenant on Economic, Social and Cultural Rights, 1966. Whenever this right (as defined by the constituent agreements of the WTO) is violated by an action attributable to a foreign state (i.e. the state other than home state of the private party concerned), it can give rise to an international cause of action under the WTO. Insofar as such violations can be properly redressed by the domestic legal system, the foreigner concerned is expected to exhaust the available local remedies. But, most of the time, and probably in most cases, the violation of the right to trade may be the result of the policy decisions taken at the highest level and local remedies may not be available or appropriate under those circumstances. The DSU provides the mechanism to settle such disputes at the international level.

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[11] There are very few countries in the world wherein municipal courts can directly enforce rights derived from International Law. In such cases, the affected foreigners have to exhaust local remedies.

Most of the MTAs of the WTO require the member states to take necessary legislative actions to implement their obligations in their territories. Especially in the context of trade remedies, namely, anti-dumping, countervailing and safeguard measures, the agreements lay down elaborate procedures which have to be incorporated in the domestic legal system. The result is that national institutions, while applying their own laws, are implementing international obligations as well. It is reasonable to assume, in light of the above analysis, that all available domestic remedies must be exhausted before resorting to the WTO's dispute settlement mechanism. In brief, all member states of the WTO are obligated to protect the right to trade of foreign traders as per the provisions of the MTAs.

The first anti-dumping statute was passed by Canada in 1904 to counteract dumping of steel by the U.S. This was followed by New Zealand (1905), Australia (1906) and South Africa (1914). In the beginning, the USA treated anti-dumping as part of its anti-trust law, but it adopted the proper Anti-dumping Act in 1921.[12] All these national legislations vested power in administrative authorities without leaving any scope for affected foreign traders to challenge their decisions. As pointed out above, International Law on anti-dumping, initiated by the GATT in 1947, sought to regulate national discretion in this regard. The Kennedy Round and Tokyo Round Codes prescribed the procedures to be followed by administrative authorities and the Uruguay Round Code, for the first time, provided for judicial review of administrative decisions. The local remedies rule hardly had any application till the Kennedy Round Code, since there was no local remedy at all. We have full-fledged local remedy provisions for the first time under the Uruguay Round Code.

V. THE ANTI-DUMPING AGREEMENT

A literal reading of Art. 17.4 of the ADA may lead to the conclusion that the home state of the exporter may approach the DSB once "the final action has been taken by the administrative authorities" without testing the legality of such administrative actions before a court of law. It may be noted that Art.

12 GATT Doc. L/712 (1957) 45.

17.4 is substantially analogous to Art. 15.3 of the Tokyo Round Code. Apparently, like so many other provisions of the Tokyo Round Code, Art. 15.3 also found its way into the WTO Code with a few appropriate changes necessitated by the new institutional framework. The drafters failed to adequately appreciate the significance of the introduction of Art. 13, for the first time providing for judicial review of administrative action in international anti-dumping law, which had been evolving over a period of time. It must be noted that allowing the home state of an exporter to challenge an administrative action before the WTO, bypassing the national judicial review provided under Art. 13 amounts to defeating the *raison d'etre* of momentous change ushered in by Art. 13.

Art. 31.1 of the Vienna Convention on the Law Treaties, often quoted by the panels, reads:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

The clause in Art. 17.4, "if final action has been taken by administering authorities of importing countries…", must be interpreted in the context of the newly introduced Art. 13, keeping in mind the objects and purposes of the WTO Agreement. This is perfectly in consonance with Art. 31.3 (C) of the Vienna Convention, which requires that the relevant principles of International Law applicable between the parties must also be taken into account while interpreting treaty provisions.

As was pointed out already, before attributing an act committed at a relatively lower level of official hierarchy to the State, the State must be given adequate opportunity to apply its mind and redress the grievance. It is only at that stage that such an act can be properly attributed to the State and that is the very purpose of the doctrine of exhaustion of local remedies. Applying the same logic, the expression "final action by administering authorities" must be understood in the light of Art. 13 i.e. only after the final administrative decision has been subjected to judicial scrutiny and upheld by the judiciary can the act be considered an act of the State. It is submitted that focusing only on "final action" in Art. 17.4, ignoring the context, would be a violation of Art. 31 of the Vienna Convention.

There is an authority for the above approach in international investment jurisprudence. As was pointed out earlier, under Art. 26 of the Convention on the Settlement of Investment Disputes (ICSID), the local remedies rule is not a condition precedent for resorting to international arbitration, unless the host state specifically demands it. In an ICSID award of 2003, namely, *Generation Ukraine, Inc. Vs. Ukrain,*[13] the scope of Art. 26 was considered in detail. In this case, there was a bilateral investment treaty (BIT) between the USA and Ukraine and the treaty was silent about the requirement of local remedies. This was considered as the waiver of the local remedies rule. In this case, Generation Ukraine Inc. was a subsidiary of a US Construction company and was engaged in several construction works in Kyiv City. In the course of its work, it had to face several administrative and regulatory hurdles created by Kyiv City Administration. Generation Ukraine, Inc. treated this as indirect expropriation and invoked the international arbitration clause straight away, without availing of the local judicial remedies. The Tribunal ruled:

> The claimant did not attempt to compel Kyiv City State Administration to rectify the alleged omissions in its administrative management by instituting proceedings in Ukranian courts. This Tribunal does not exercise the function of an administrative review body to ensure that municipal agencies perform their tasks diligently, conscientiously and efficiently. That function is within the proper domain of domestic courts and tribunals that are cognizant of the minutiae of the applicable regulatory regime. There is of course no formal obligation upon the claimant to exhaust local remedies before resorting to ICSID arbitration pursuant to the BIT between the USA and Ukraine. Nevertheless, in the absence of any per se violation of the BIT discernible from the conduct of Kyiv City State Administration, only possibility in this case for the series of complaints relating to highly technical matters of Ukranian planning law to be transformed into a BIT violation would have been for the claimant to be denied justice before Ukranian courts in a bonafide attempt to resolve those technical matters.[14]

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13 (2005) 44 INTERNATIONAL LEGAL MATERIALS 404.

14 *Ibid.* paras. 20, 33

VI. THE ANTI-DUMPING AGREEMENT AND EXHAUSTION OF LOCAL REMEDIES

Article VI of the GATT, 1947 for the first time sought to standardize national anti-dumping laws by reference to international standards. The Kennedy Round and Tokyo Round Codes on anti-dumping further refined the concepts and provided procedural safeguards so as to curb the arbitrariness of national administrative authorities. The Uruguay Round produced a comprehensive anti-dumping code providing for judicial review of administrative action imposing anti-dumping duties on imported goods. But it is noticed that exporting countries often resort to the dispute settlement body of the WTO without exhausting judicial remedies provided by the legal system of the importing countries. This article argues that this bypassing of judicial remedies in violation of Public International Law.

Under the ADA, the administrative authorities investigate the complaints relating to dumping and take decisions in accordance with national anti-dumping laws which are expected to be in conformity with the ADA. These decisions are not taken at such a high level as to be attributable to the State directly. The purpose of Art. 13 of the ADA is to ensure that these administrative decisions are in conformity with the law. Given the complexity of anti-dumping law, these administrative decisions cannot be *prima facie* considered as violations of the ADA. Following the logic of of the *Generation Ukraine Case*, the denial of justice cannot be presumed in the absence of judicial review of administrative decisions. In brief, "final action to levy anti-dumping duties", envisaged in Art. 17.4, can materialize only after the "final determination" of administrative authorities have been upheld by the judiciary under Art. 13. The distinction between "final determination" under Art. 13 and "final action" which would follow "final determination" after the approval of the "final determination" by the judiciary under Art. 17.4 emphasises the need for exhaustion of local remedies.

The judgment of the International Court of Justice (ICJ) in the case concerning *Electronica Sincula S.P.A.*[15] supports the above conclusion. In

[15] *U.S.A.* v. *Italy*, ICJ Reports (1989) 1.

this case, which, incidentally, deals with the issue of the exhaustion of local remedies, the U.S.A. brought an action against Italy on the basis of the Friendship, Commerce and Navigation Treaty concluded between them in 1948. The relevant provision of the Treaty, relied upon to support the jurisdiction of the ICJ, reads as follows:

> Any dispute between the High Contracting Parties as to interpretation or application of this Treaty which the High Contracting Parties shall not satisfactorily adjust by diplomacy shall be submitted to the ICJ, unless the High Contracting Parties shall agree to settlement by some other specific means.

The cause of action in this case arose out of the actions of the Italian Government, injuring the investments of American company Electronica Sincula in Italy. When Italy raised the preliminary objection that the American investor had not exhausted local remedies, the U.S.A. took the stand that the treaty provision quoted above dispensed with such a requirement. In other words, if the dispute could not be settled by diplomacy, there was no need for resorting to local remedies; the above provision must be taken as a waiver clause.

The ICJ, while agreeing that the local remedies rule can be waived by the agreement, refused to treat the above provision as waiver. On this point, it ruled:

> The Chamber finds it unable to accept that an important principle of customary international law should be held to have been tacitly dispensed with in the absence of any words making clear an intention to do so.[16]

Applying the same logic, it is clear that Article 17.4 cannot be interpreted as a waiver clause in the absence of categorical expressions to that effect.

One omission in Art. 13, when it is compared with Art. 17.4, is that Art. 13 does not specifically provide for the review of provisional measures as well. Normally, judicial review follows final administrative decisions; the

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16 *Ibid.* para. 50.

drafters probably followed this general principle, overlooking the possibility of review of provisional measures. Following the arguments developed above, once the national legislation provides for judicial review of provisional measures, exhaustion of local remedy would cover the review of provisional measures by the judiciary as well.

VII. STANDARD OF REVIEW

The ADA is the only MTA of the WTO containing a distinct standard of review to be used by panels while settling disputes. Art. 17.6 paragraphs (i) and (ii) lay down this distinct standard in relation to facts and law respectively. It may be noted that Part V of the Agreement on Subsidies and Countervailing Measures, laying down the investigation procedure in the context of countervailing duties, contains more or less identical provisions as that of the ADA. But it does not contain provisions similar to Art. 17.6 (i) and (ii). A Ministerial Decision taken on the eve of the conclusion of the Uruguay Round provided for the review of Art. 17.6 of the ADA "with a view to considering the question of whether it is capable of general application". Apparently, such a review failed to yield any result. This further underscores the importance of Art. 17.6.

Under Art. 17.6 (i), the panel will accept the findings of facts by the national authority, provided the establishment of the facts was proper and the evaluation of the facts was unbiased and objective. Similarly, the panel will accept the interpretation of legal provisions by the national authorities provided such an interpretation is permissible as per the customary rules of interpretation. In either of the cases, national determinations will be accepted, even if the panel would have reached different conclusions on questions of fact or law. Though this distinct standard is confined to the ADA, in practice, the panels have extended the same approach to Part V of the Agreement on Subsidies and Countervailing Measures.[17]

The reason for this distinct standard of review is that the ADA itself has laid down elaborate rules which have to be complied with by the administering

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[17] Jan Bohanes and Nicolas Lockhood, *Standard of Review in WTO Law* in Bethlehem stat (ed.) THE OXFORD HANDBOOK OF INTERNATIONAL TRADE LAW 395-6 (2009).

authorities; judicial review would ensure this compliance. It may be noted that there are quite a few other MTAs which lay down elaborate procedure to be followed by administrative authorities, such as the Agreement on Customs Evaluation, Technical Barriers to Trade, but these agreements do not contain the provisions analogous to Art. 17.6 of the ADA. One plausible reason could be the absence of judicial review under these Agreements. On the other hand, the presence of judicial review in the Agreement on countervailing measures could have been the reason for the panels to follow the special standards of review in those cases.

VIII. CONCLUSION

Evolution of international anti-dumping law has been by way of introducing more and more conceptual clarity and procedural safeguards with a view to preventing the abuses thereof. The GATT, 1947 laid down only the basic rules and the Kennedy Round and Tokyo Round Codes clarified the concepts such as material injury, causal link etc. and elaborated procedural safeguards to be followed by the domestic authorities in charge of anti-dumping administration. The WTO contains the comprehensive anti-dumping code. In the absence of adequate domestic legal safeguards, national courts could not have played any kind of significant role prior to the WTO Agreement, and the WTO for the first time provided for the judicial review of anti-dumping administration.

Art. 17.4 of the ADA literally carried forward Art. 15.3 of the Tokyo Round Code. Apparently the significance of Art. 13, providing for judicial review, was not adequately appreciated while drafting Art. 17.4. However, a contextual interpretation in light of the purpose and object concerned requires that the home state of the exporter ensure that available judicial remedies must be exhausted before resorting to the WTO dispute settlement mechanism. "Final action" under Art. 17.4 requires the approval of the "final determination" by the judiciary under Art. 13. This interpretation is consistent with the principles of Public International Law.