
NON-MARKET ECONOMY TREATMENT IN THE INDIAN ANTI-DUMPING LAW

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ABSTRACT

This article examines the decision in *Shenyang Mastsushita S. Battery Co. Ltd. v. M/s. Exide Industries Ltd.*, showcasing how exporters from non-market economy (NME) countries can claim a specific provision under the Indian antidumping law. The dispute arose from antidumping duties imposed on lead-acid battery imports from China. The core issue before the Supreme Court of India was whether the appellant could rebut the presumption of NME status by proving it operated on market economy principles.

The article also analyzes the statutory framework under Section 9A of the Customs Tariff Act, 1975, and the Antidumping Rules of 1995, including the 1999 and 2001 amendments. It discusses the Designated Authority's order and the judicial reasoning applied to determine compliance with procedural safeguards. This case reinforces the individualized approach for firms in NMEs and the requirement for procedural fairness in trade remedy investigations.

INTRODUCTION

According to the Merriam-Webster dictionary, Antidumping duties are designed to discourage the import and sale of foreign goods at prices set below the domestic price of those goods. [1] The government imposes antidumping duties on imports when it believes that the goods are being "dumped" – through the low pricing – in the domestic market. Antidumping duty is imposed to protect local businesses and markets from unfair competition by imports. [2]

In India, Section 9A of the Customs Tariff Act, 1975 [3] empowers the government to impose such duties when a product is exported at less than its "normal value" and causes injury to local producers. The manner of determining "normal value," "export price," and "dumping margin" is laid out in the **Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995**. [4]

India amended its domestic rules governing antidumping investigations to comply with its international obligations as a signatory to the **Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Antidumping Agreement)** [5]. The **Customs Tariff Rules, 1995** [6] were amended in 1999 and 2001 to provide special procedures for imports from non-market economy (NME) countries. Under **Paragraph 7 of Annexure I**, when a country is classified as an NME, the normal value of its exports is determined based on third-country prices or other reasonable methods. However, **Paragraph 8** offers individual exporters from such countries an opportunity to rebut the NME presumption by demonstrating that they operate under market economy conditions, including price-setting based on supply and demand, minimal state interference, sound legal frameworks, and market-driven exchange rates.

Facts of the Case

The dispute in *Shenyang Matsushita S. Battery Co. Ltd. v. M/s. Exide Industries Ltd* [7] involved lead-acid batteries from China, manufactured by the appellant's Chinese subsidiary. The Designated Authority (DA) initially relied on cost data from Indian producers, imposed provisional duties, and questioned the appellant's data. Following verification, however, it accepted the appellant's submissions and applied Paras. 1–6, found a negative dumping margin, and recommended an exemption.

However, the Customs Excise and Gold (Control) Appellate Tribunal reversed it. The Tribunal criticized the verification, claiming the Authority failed to apply Paras. 7–8 held that all Chinese firms must be treated uniformly. The Supreme Court, upon appeal, in this judgment, examined whether the Tribunal's conclusion was justified within the statutes mentioned below. It was found that the Authority had correctly verified the appellant's data and applied Paras. 7–8, and reached a reasoned conclusion. The Tribunal had overruled without sufficient basis or following the appropriate procedure, straying from its role.

APPLICABLE STATUTES

1. Section 9A(1)(c) & 9A(1) of the Customs Tariff Act, 1975 [\[8\]](#)
2. Annexure I, Paragraphs 7 and 8 of Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 [\[9\]](#)

ANALYSIS

The judgment in *Shenyang Mastushita S. Battery Co. Ltd. v. M/s. Exide Industries Ltd.* showcases the procedural treatment of exporters from non-market economies. The Supreme Court was confronted with the classification of the appellant's Chinese subsidiary and whether it could rebut the presumption of non-market status by satisfying the tests laid out in paragraph 8 of Annexure I.

Initially, the Designated Authority (DA) had imposed antidumping provisions; however, the appellant submitted additional material during the investigation, and the DA carried out a site verification. The DA concluded that the appellant's data satisfied the criteria in paragraph 8 and hence determined a negative dumping margin, leading to exclusion from final antidumping duties.

Despite this, the domestic industry challenged the decision to dump before the CEGAT. The Tribunal overturned the DA's findings on the ground that verification was insufficient, holding that the appellant failed to establish its adherence to market principles. It required physical re-verification of the data and rejected the DA's final report. However, the Tribunal failed to appreciate that the verification process had already been conducted on-site, and the DA had duly considered the submitted evidence.

The Supreme Court rectified this error, emphasizing that procedural fairness had been followed and the statutory mandate under the 2001 Notification had been fulfilled. The Court ruled that the DA's reliance on verified information and its application of paragraphs 7 and 8 of Annexure I were in accordance with law. The Court also criticized the Tribunal for reversing its own directions: having earlier asked the DA to consider paragraph 8, the Tribunal could not invalidate that process's outcome on procedural grounds alone.

An important principle underpinned in this case is that while countries may be categorized as NMEs, individual firms may, after furnishing such evidence, can seek individual treatment based on market behaviour. This promotes a nuanced approach over a blanket presumption. The Court mentioned a clear distinction from the earlier ruling in *Designated Authority v. Haldor Topsoe A/S*, [9] which had not dealt with the amended rules allowing such exemption. Furthermore, the Court recognized that the DA is a specialized statutory body whose determinations, when grounded with reason and procedural compliance, deserve judicial deference, with accordance to the principles of administrative law.

CONCLUSION

This judgment underscores India's alignment with WTO norms, granting individual treatment in antidumping matters for firms in NMEs that demonstrate market-dumping behavior, which shall ensure both fairness to exporters and protection for the domestic industry. The Court emphasized that statutory procedures and government notifications must be followed strictly but also held that technical objections cannot override substantive compliance where procedural fairness has been duly observed.

Recognizing the appellant's market-oriented operations demonstrates that Indian trade remedy law accommodates evolving global economy, especially in transitioning economies such as China. The analysis suggests that the decision is balanced, it protects domestic industry interests while offering foreign exporters a fair opportunity to rebut presumptions tied to their country of origin. Ultimately, this ruling ensures that antidumping law in India remains procedurally robust and allows India to uphold its commitments under the WTO while maintaining domestic economic safeguards.

ENDNOTES:

- [1] *Definition of ANTIDUMPING*, Merriam-Webster <https://www.merriam-webster.com/ANTIDUMPINGantidumping>.
- [2] CFI Team, *Antidumping Duty*, Overview, Characteristics, and Regulation, [hAntidumpingoratefinanceinstitute.com/resources/economics/anti-dumping-duty/](https://www.antidumping.org/financeinstitute.com/resources/economics/anti-dumping-duty/).
- [3] Customs Tariff Act, No. 51 of 1975, § 9A (India).
- [4] Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Antidumping, 1995, G.S.R. 37(E), Gazette of India, Pt. II Sec. 3(i) (4 February 1995) (India).
- [5] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 201, 33 I.L.M. 1125.
- [6] Ed Cite 4
- [7] *Shenyang Matsushita S. Battery Co. Ltd. v. M/s. Exide Indus. Ltd. & Ors.*, (2005) INSC 98.
- [8] Customs Tariff Act, No. 51 of 1975, § 9A(1)(c) (India).
- [9] *Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995*, Annex. I, ¶¶ 7–8, G.S.R. 1(E), Jan. 1, 1995, <https://www.dgtr.gov.in>.
- [10] *Designated Auth. v. Haldor Topsoe A/S*, (2000) 6 SCC 626