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Legal Analysis of Anti-Dumping Cases Raised against Saudi Arabia's Petrochemical Products

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I. Introduction

This paper details anti-dumping cases filed against Saudi Arabia's petrochemical products in India, Turkey and the European Union (EU).[1] The petrochemical's sector has traditionally applied anti-dumping regulations in order to protect itself.[2] Anti-dumping cases can, in general, be divided into those that are raised at national or international level. The cases examined in this paper are confined to those opened at national level.

The second question put forward in this research concerns the impact of anti-dumping cases against Saudi Arabian petrochemicals products. Therefore, it is important to analyse cases levelled in depth to determine how far such cases might impact on national revenues over the long term in Saudi Arabia. Moreover, many countries have used Anti-dumping and regulations for their own aims, by enacting laws in their own interests, as mentioned here:

> it is alleged […] that sometimes, anti-dumping is being used as more than just a countermeasure to injuries. In some cases, anti-dumping duties are being imposed on imports that are being fairly traded. This allegation implies that it should be possible to cheat the anti-dumping agreement.[3]

The cases considered here, which were brought by India, Turkey and the EU against Saudi petrochemical products, are the most recent, and it is be- lieved that they could have been resolved in a very different way. In the cases discussed, the end results were either cancelling anti-dumping duty against Saudi Arabian petrochemical products or ending the investigation before resolution.[4] The termination of cases typically followed a political negotiation with the countries alleging dumping, as will be demonstrated in this paper. Termination for political reasons links to one of the key areas considered in this research, which is the role of political negotiations in anti-dumping cases.

It was a challenge for the researcher to identify the most relevant and useful cases for analysis, as around such 33 cases exist.[5] The options were reduced by applying the following criteria to the selection of appropriate cases:

1. The cases should offer are presentative sample of all anti-dumping cases against Saudi Arabian petrochemical products.
2. The cases should be recent ones, raised at the national level, against Saudi petrochemical products.
3. The cases should have been well covered by the Saudi media and the offending companies should have received good governmental support.
4. The cases should have terminated in a unique way; in some cases after anti-dumping duty was applied.
5. Some of the cases should include subsidies.

This paper will analyse the impact of the cases from a variety of different perspectives (legal, economic and political). It will also consider the positive and negative effects of these cases on the importing and exporting countries. However, first, it is important to

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[1] Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21 February 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10,

[2] Hylke Vandenbussche and Maurizio Zanardi, "What explains the proliferation of antidumping laws?",*Core Discussion Paper* 2007/66.

[3] Doreen Bekker, "The strategic use of anti-dumping in international trade", (2006) *South African Journal of Economics*, 74: 3, 501.

[4] Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21 February 2014.

[5] The Global Anti-dumping Database under the World Bank, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html, accessed on 21 February 2014.

distinguish between what is meant by national and international level cases. As will be seen in this paper, India, Turkey and EU have all used anti-dumping regulations frequently against imported Saudi petrochemical products and some of these countries make con- siderable use of these regulations.[6]

II. Background

Before proceeding to analyse the cases that took place between Saudi Arabia and India, Turkey and EU, it is important to mention that the copies referred to in this thesis are the non-confidential copies, as these were the only copies available. There are alternative copies, which have remained confidential between the au- thorities and interested parties and it was impossible to access these.

It is necessary to stress the importance of knowing the statistics for anti-dumping cases as they divided into cases at the national and international levels. National cases are those raised by the Dispute Settlement Understanding (DSU)[7] with the involvement of the World Trade Organization (WTO).International level cases are those where the dispute is referred to the WTO; this typically occurs when one of the parties disagrees with the domestic processes of the country making the allegations.

A further division in cases made by, some scholars is to distinguish between traditional users of anti-dumping laws and new users:

> In 1980 the list of the top AD users was quite short; the four traditional users accounted for all but two of worldwide AD cases. In 2002 the list of top AD users looked quite different: India (80 cases), United States (35), Thailand (21), EU (20), Australia (14), Peru (13) and PR China (11).[8]

Based on the information put forward in the materials pertaining to the cases between Saudi Arabia and India, Turkey and the EU, it is possible to know the extent of the direct impact, which this paper will have on the Saudi petrochemicals sector on one side and the national economy on the other. The Saudi Arabian petrochemicals sector one of the most important industries in Saudi Arabia.[9] Therefore, the next step is to introduce the statistics relating to these cases from a range of sources.

III. Cases Against Saudi Arabia at the National Level

It is difficult to obtain accurate figures for the number of anti-dumping cases at national level around the world. This is despite the fact that all contracting parties need to inform the WTO committee on antidumping of any actions they take at the national level under the Anti-dumping Agreement.[10] Thus, in this section, anti-dumping cases from many sources will be clarified. Moreover, on the Saudi government's side, there are no clear statistics detailing the anti-dumping cases being applied against Saudi Arabia; when the researcher requested this data via official department channels in Saudi Arabia, the request was refused the request on the grounds of confidentiality.[11]

It was difficult to obtain this information from official Saudi Arabian departments, as the officials in these relevant departments consider the information about anti-dumping cases to be top secret information; although this should not be the case. Many attempts were made to contact these departments and many requests were sent to have this information, but they were all denied. The anti-dumping cases, like other similar cases, include confidential and non-confidential trial copies, and the non-confidential ones should be available for interested people such as researchers and interested organisations, but this is not understood by the Saudi authorities who specialise in these kinds of cases.

According to the WTO statistics regarding antidumping cases,[12] there were 879anti-dumping initiations out of 4358 cases on the products from chemical and allied industries;[13] this represents 20.16% of total anti-dumping initiations. In addition, in relation to anti-dumping measures in this area there were just 597 cases out of 2795 cases,[14] which represents 21.35% of

[6] There are two groups of Anti-dumping Users: traditional and new Users. Before the 1980s, the traditional users were Australia, Canada, EU and USA. However, since then, they have been joined by other countries, classified as "new users", which like Brazil, China, India and Mexico. Thomas J. Prusa, *Anti-dumping: A Growing Problem in International Trade*, (Blackwell Publishing Ltd, 2005).

[7] DSU, Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 354 (1999), 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994).

[8] Thomas J. Prusa, *Anti-dumping: A Growing Problem in International Trade*, (Blackwell Publishing Ltd, 2005), 690.

[9] Fawaz Hamad Al-Fawaz, "The importance of the petrochemical industry", online, http://www.aleqt.com/2006/05/23/article_5297.html, accessed on 21 February 2014.

[10] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 16.4.

[11] I have tried many times to contact the Saudi official department in order to obtain non-confidential copies of the anti-dumping cases between them and other countries. My contact was first with SABIC and then the Ministry of Commerce. Both refused to give me a copy of these cases. I tried again by approaching the committee for anti-dumping negotiations, directed by HRH Prince Abdul-Aziz bin Salman, but they refused as well. There is a misunderstanding of these cases in Saudi Arabia, as there is not adequate distinction between confidential and non-confidential copies.

[12] These cases were between 1 January 1995 and 3o June 2013.

[13] The Anti-dumping Initiations by the sector, World Trade Organisation, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, accessed on 21 February 2014.

[14] The Anti-dumping Initiations by measures, World Trade Organisation, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, accessed on 21 February 2014.

all anti-dumping measures in the world. By referring to these numbers and percentages, it is apparent that there are many cases in which the petrochemicals sector is the subject of anti-dumping investigations and measures. These percentages show how important it is to identify another solution, as a means to reduce the high number of anti-dumping investigations and cases raised globally; however, "The increase in use of anti-dumping measures by non-traditional users, however, will inevitably lead to an increase of WTO anti-dumping litigation, and maybe to changes in traditional users' practices regarding Article 2".[15]

In addition, this high number of cases against the petrochemicals sector must be analysed in depth and given great consideration, by both researchers and contracting parties. The reason for this is that the petrochemicals sector is one of the most important industries in the world, and petrochemical products are directly or indirectly involved in hundreds of other industries worldwide. Yet, any impact on this sector can have a direct effect on those other industries also. In this research it is evident that the petrochemicals sector is an important one, directly and indirectly affecting the entire global population.

However, the reported number of anti-dumping initiations and investigations varies between sources, as will be analysed. Research by the World Bank Global anti-dumping Database[16] shows that there were 6325 anti-dumping initiations and investigations in the world between 1979 and 2012.[17] However, this number does not include cases of user countries with minimal information, which would then add to the total. There are a huge number of cases, more than reported by WTO statistics; in addition, many details of each case remain unrecorded in official documents. As mentioned, the data referred to here was collected from each country very carefully, and has been used elsewhere in a variety research papers, published in a range of academic journals (e.g. Prof. Zanardi[18] has used this data in his research).

The database referred to provides accurate information to uncover the details of the cases in depth. There are two reasons for the variation in numbers between the research database mentioned above and the WTO' santi-dumping statistics. First, the data from the former extends over a greater period of time than that of the WTO, as it covers a period of time dating back to 1979. This can assist researchers to more fully explore the legal background and acquire greater knowledge cases of international trade between countries. It may also help to develop regulations in the future in accordance with changing legal circumstances. Second, in any anti-dumping case, the country making the allegations has to initiate the anti-dumping case in accordance with their membership duty, so this database includes many non-member countries, therefore returning higher figures than reported by WTO statistics.

Concerning the two databases, if we examine the WTO anti-dumping statistics, it is apparent that Saudi Arabia has faced 28 initiations and measures[19] and 20 cases as a third party under the DSU;[20] these are totally different from figures held on the Global anti-dumping Database. According to Global anti-dumping Database statistics, Saudi Arabia has faced 34 anti-dumping initiations and investigations, not including countries that applied anti-dumping regulations with minimal information cases. There were six initiations in Australia, one in Canada, three in China, four in the European Union, nine in India, one in New Zealand, two in Pakistan, three in South Africa, three also in Turkey, and finally one in the United States and Taiwan.[21] Twenty Six of these cases were against Saudi petrochemical products, accounting for 76.47% of the total anti-dumping initiations against Saudi Arabia.

The cases that have been selected for this research are those initiated by India, Turkey and the European Union, as sufficient information is available. Attempts were made to acquire cases from China also, but no English copies of these cases could be acquired from the Chinese Ministry of Commerce,[22] Chinese official newspapers or the Saudi Arabian official departments. Nonetheless, it is considered that the case selected should be suitable for analysis purposes and deliver good results. The cases are:

[15] Konstantinos Adamantopoulos and Diego De Notaris, "The future of the WTO and the reform of the anti-dumping agreement: a legal perspective", 2000-2001, *Fordham International Law Journal,* 24:30, 47.

[16] The Global Anti-dumping Database under the World Bank, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html, accessed on 21 February 2014.

[17] In this database, anti-dumping cases have been categorised by countries and each country has its cases nationally in an EXCL file, kept up-to-date to the latest case. These files have very detailed information about each case, which has been carefully collected from each state by this research centre. At the end of this database page will be found the countries of the anti-dumping users with minimum information, and without any numbers of these kinds of cases.

[18] He is a Professor in Economics at the Université Libre de Bruxelles and a specialist in statistics of economic figures. The most interesting area for him is anti-dumping and he has carried out a great deal of research in this area from the economic side.

[19] The Anti-dumping Initiations by country, World Trade Organisation, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm, accessed on 21 February 2014.

[20] Dispute by Country/Territory, Dispute Settlement under the World Trade Organisation, http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, accessed on 21 February 2014.

[21] The Global Anti-dumping Database under the World Bank, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html, accessed on 21 February 2014.

[22] Many efforts have been made to find alternative ways to locate these cases, including the Chinese official Ministries' websites. The

- Case in the European Union in 2011 for the exporting of Polyethylene that originated from Saudi Arabia.[23]
- Case in Turkey in 2008 for the exporting of Ethylene that originated from Saudi Arabia.[24]
- Case in India in 2009 for the exporting of Polypropylene that originated from Saudi Arabia.[25]

a) Analysis of cases

Before analysing the anti-dumping cases between Saudi Arabia and India, Turkey and EU, it is important to set out the main principles deemed applicable to dumping under the WTO. In order to have a dumping margin, export and normal prices must be clear. In addition, the product must be like a product produced by the domestic industry as well as being a clear injury or threat to the domestic industry. A causal link must exist between the injury and the export price. Hence, the first part of this section will analyse export and normal pricing with the dumping margin. Secondly, the like product and the domestic industry will be discussed, and finally the injury or threat and any causal link will be considered. However, it is important, as part of this research, to discover whether a subsidy led to the dumping in these cases, as this forms the final part of this section.

i. *Export price, normal value and dumping margin*

Before commencing the discussion stage of this section, regarding export price, normal value and dumping margin, it is important to remember that dumping is selling an exporting product for less than its normal value, as stated in Article VI, GATT.[26] In cases where the export price is clear, there is no concern as all prices are matched with the real information. However, a problem arises where there is no clear export price or normal value; such cases, are hard to prove, as there is no evidence"… in many cases there is no easy way to determine what a normal price is for the purposes of anti-dumping investigations".[27]

As mentioned in Article 2 of VI implementation, section 2.2 states that where there are no sales of a like product in an export country, or where there is a low volume of sales regarding the market situation, in such a situation,

> the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administration, selling and general cost and for profits.[28]

This Article shows clearly the margin of dumping can be calculated in specific circumstances. The cost will normally be calculated where it is kept in by an exporter or producer under investigation. However, the amount for administrative, selling and general costs and profits will be based on actual data, kept by the exporter or producer under investigation.[29]

> In cases where there is no export price or where the export price is "unreliable",[30] "the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.[31]

Following this brief review of dumping and relevant key elements, the cases between Saudi Arabia and India, Turkey, and the EU, will be examined in order to answer the second research question, as to whether there is an impact from such cases on Saudi Arabian petrochemicals products.

- *EU case number 2011/c 49/10*

In a case, initiated by the EU countries inanti-dumping proceeding concerning the import of certain Polyethylene Terephthalate products from Saudi Arabia and Oman to the European Union, it was declared that,

> …the allegation of dumping is based on a comparison of a constructed normal value (manufactured costs, selling, general and administration costs (SG&A) and profit) with the export price (at ex-works level) of the product under investigation when sold for export to the Union.[32]

Chinese Ministry of Commerce, which is responsible for anti-dumping cases, has not, however, translated these cases into English, so they cannot easily be found. See http://www.mofcom.gov.cn/.

[23] The EU Anti-dumping case against Saudi Arabia: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

[24] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569.

[25] The Indian Anti-dumping case against Saudi Arabia: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21February 2014.

[26] General Agreement on Tariffs and Trade (GATT), 55 UNTS 194; 61 Stat. pt. 5; TIAS 1700, Article VI.

[27] Reid M. Bolton, "Anti-dumping and Distrust Reducing Anti-dumping Duties under the W.T.O. Through Heightened Scrutiny", *Berkeley Journal of International Law*, 2011, 66, 74.

[28] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 2.2.

[29] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 2.2.1.1 & 2.2.2.

[30] "*Unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party*" Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 2.3.

[31] "*Unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party*" Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 2.3.

[32] The EU Anti-dumping case against Saudi Arabia: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

The above quotation shows that the EU applied Article 2.4 of the implementation of Article VI, GATT, which can be held compatible with this article. However, the information remains unclear, as this is an initiation without examination by the authority. Usually, in such an initiation, the authority does not apply the Articles to the facts; it usually just offers brief information in order to commence anti-dumping proceedings, by sending out questionnaires and receiving them back from interested parties. However, in this initiation, it was mentioned that the complaint provided the necessary evidence of the negative impact of the dumped product on the EU:

> The prima facie evidence provided by the complainant shows that the volume and price of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of the prices changed and the market share held by the Union industry... [33]

The prices of the complainant, i.e. the EU industries has been affected negatively, which triggered the anti-dumping investigation.

Thus, this examination is not clear for our case, but it can be seen that the authority used the same Articles as those set out in the WTO regulations on anti-dumping. However, as the complainant withdrew the case, the examination cannot be completed about this particular point. [34]

- *Turkish case number 2008/40*

This case was issued with regard to the export of Mono ethylene Glycol from Saudi Arabia, Kuwait and Bulgaria in 2008. As mentioned determination of the normal value in this initiation in Article 4 (1) was, "due to the production costs of the domestic market, prices reached [which are] directly determined by adding a reasonable profit generated value [are] taken as the normal value for each of the three countries." [35]

In relation to Article 4 (1), the Turkish authority identified the exporting price in this initiation. However, the decision of the Turkish authority in the anti-dumping determinations regarding the same case (number 2010/11), which referred to the domestic selling price in Saudi Arabia and Kuwait, after the authority had received completed questionnaires from the interested parties,

> [was] based on costs and export price. However, in these countries, which [provide] the basic raw materials used in the production of MEG, "Ethane" is only produced by state-owned companies and the price of the supply/ emand conditions are identified and announced by the authorities. [36]

It was mentioned that these countries supplied very cheap raw materials, which could result in lack offair competition between other industries and similar products abroad.

In addition, in reference to the same point, it was stated that Saudi Arabia fixes prices internally, that means there is no competition inside Saudi Arabia between the industries for the similar products "….[a] price fixing mechanism for the review of the terms of these prices [to] reflect the market..". [37] Nonetheless, "the total cost provided by these importing companies does not reflect market conditions and the cost of labour and other overhead costs, raw materials…". [38] Therefore, although Saudi Arabia has issued a competition law for competitions between products, the conditions for gnuine competition inside Saudi Arabia are not fulfilled.

Another related point is that, in a report issued by the Saudi American Bank in Saudi Arabia (SAMBA), it was stated that Saudi Arabia is subsidising its petrochemicals sector through cheap feedstock:

> Ethane has been the feedstock of choice for Saudi products for one simple reason: the cost advantage is substantial. Owing to the Kingdom's substantial gas resources, ethane is supported by Saudi Aramco to petrochemicals producers at $0.75 per million BTUs. This compares with a current market price of $ 3.5 per million BTUs for most producers in the US, who also tend to use ethane (the price was approaching $14 per million BTUs around a year ago). [39]

This statement shows the involvement by the Saudi government through Saudi Aramco in petro-chemicals pricing; it sells raw materials below the global market price.

In the above quotations from the Turkish anti-dumping case, two important issues were raised: one regarding the Saudi domestic market conditions and other in relation to the involvement of the state in the domestic market, both of which affect the export price. Regarding the first point, the two states, Saudi Arabia and Kuwait, did not create the necessary market conditions in their domestic markets, which was a form

[33] The EU Anti-dumping case against Saudi Arabia: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

[34] Case number 2011/835/EU, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union 330/45.

[35] Case number 2008/40 brought by the Turkish anti-dumping authority against the Saudi petrochemicals products.

[36] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 4.

[37] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 3.

[38] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 3.

[39] Saudi American Bank in Saudi Arabia (SAMBA), Report Series August 2009, http://www.samba.com/, accessed on 29 November 2013.

of unfair competition. As the price was fixed, as mentioned in the Turkish decision, this led to unfair competition, contravening the WTO agreement. In relation to Saudi Arabia, all the market conditions in the domestic markets were made available, although not mentioned in the decision, as were the rules for fair competition and the opportunity for domestic and foreign investors to invest in Saudi Arabia in this sector.[40] It might be that foreign investors do not want to invest in this particular area in Saudi Arabia due to associated economic benefits and priorities; however, ultimately a competitive market is available as is the entire investment atmosphere. Despite this, the Saudi petrochemicals sector is owned mostly by the government through SABIC; this means that the prices are usually fixed, or at the very least there is governmental interference, as only government owned companies operate in this sector.

Secondly, with regard to raw materials; this should not be an issue, as long as the government does not become involved in markets and prices; thus, raw materials should be sold to domestic petrochemicals industries at the global price. However, it is well known that Saudi Arabia is well endowed with oil and gas and so it has low cost materials to supply to any industries manufacturing products comprised of these elements. Nonetheless, the state must open its market to these types of industry and supply all the industries (whether government owned or otherwise) equally, and in fact the option of an open market might not be available in Saudi Arabia, as mentioned above. However, if there is any involvement by the government in the market price it should be regarded as a price support, i.e. a kind of subsidy. [41]

Regarding normal value, the Turkish authority applied the following provision "where the normal value was based on sales in the domestic market, the domestic market of the country of origin for similar products within the framework of normal commercial transactions or to pay the prices paid by buyers on the basis of an independent calculation". [42] Clearly, the raw materials in Saudi Arabia do not reflect market conditions, from a Turkish point of view. In fact, the normal value was based on the Western Europe market conditions: "…with a much higher profit by using investment returns (hence this higher profit will be in the normal value) in favour of Saudi Arabia and Kuwait". [43] It can be seen in this research, that to apply this to the case concerned is not right, as Western Europe is entirely different from Saudi Arabia and Kuwait in many aspects; i.e. economically, legally, and in terms of development and technology. Moreover, Western Europe does not have the same oil and gas resources as these two countries, and so similar market conditions are not possible. The comparison should be at the same level of trade as market and ex-factory, as mentioned in Article 2.4 of the implementations of Article VI of GATT, [44] which is not applicable here. The Turkish authority should try to find another country as an appropriate comparison for Saudi Arabia and Kuwait, such as Venezuela.

In relation to the above statement, the Turkish authority calculated the dumping margin for Saudi Arabia (SABIC) as 30.1% for firms that were not co-operative, which must be reconsidered, as the application is not compatible with the GATT in regard to Article VI and its implementation.

- *Indian case number14/5/2009-DGAD*

In the case of India, the initiation of an anti-dumping procedure was in response to imports of Polypropylene from Saudi Arabia, Oman and Singapore into India. There are more details available for this case than for the previous cases, as the entire anti-dumping investigation process in India continued until completion and the anti-dumping duty was applied in the final finding. This case raises the same issue as the Turkish case with regard to normal value:

> they were not able to obtain any documentary evidence or reliable information with regard to domestic price in the subject countries……The applicant has also stated that the raw materials are based on the market conditions and are being sourced from state-owned enterprises. [45]

[40] In 2006, the Saudi General Investment Authority established the National Competitiveness Centre, which is responsible for advising the various Saudi investment authorities and departments in order to improve competition inside the Saudi market to the international standards required. This centre has frequently organised international conferences in Saudi Arabia in this legal/economic area, so that experts can discuss how to achieve the best standards. There is evidence that the Saudi government is doing its best to create a good competitive atmosphere inside the Saudi market and not as mentioned in the anti-dumping statement against the Saudi companies. For more information about this centre, see the website http://www.saudincc.org.sa/, accessed 1 December 2012.

[41] The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14., Article 1, para 1.1 (a) (2)

[42] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 4.

[43] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 4.

[44] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201. Article 2.4.

[45] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, 2 para 7.

These allegations against Saudi companies and others are further detailed later in the Preliminary and Final Findings of this case.

With regard to normal value, the Indian authorities applied the same method as the Turkish, i.e. referring to GATT. It is mentioned in the Preliminary Findings:

> …whether the domestic sales of the subject goods by the responding exporters in their home markets were representative and viable permitting determinations of normal value on the basis of domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by respondents, [is] subject to verification… [46]

However, the authority notes, regarding the Supreme Court of India case of M/s Reliance Industries Ltd., that the single weighted average for normal value should be separated for each of the subject countries: "…then determine a separate single weighted average Normal value for each of the subject countries as a whole and the same is compared with the ex-factory export realisation of each cooperating respondent". [47] Based on the above information, the normal value for each Saudi industry was given separately as follows:

- With regard to M/s Advanced Polypropylene Co. : " …Considering the fact that the prices of petroleum in general and as well as of the subject goods fell significantly during this period…….the authority has proceeded to construct the normal value on the basis of the unit cost [to] make and sell …". [48] The authority aimed to find in this statement a way to protect its domestic industries by applying anti-dumping duty to exported products, especially from Saudi Arabia. However, there is no relationship between the price of petroleum and the normal value, as the price of petroleum is globally priced. This means, the authority has not professionally determined the normal value correctly.
- With regard to the M/s Saudi Polyolefins Company, the authority determined the normal value based on total domestic sales, as it was provided with the details of the selling price, which is agreed to be legally acceptable. [49]
- With regard to M/s Saudi Basic Industries Corporation (SABIC), the authority was described as non-co-operative, because it did not provide any details as required. However, in this exanimation, there is no mention of what basis the authority used to calculate the normal value and the other elements related to it. [50]
- With regard to M/s Exxon Mobil Chemical Asia Pacific - Saudi Arabia, the same statement was made as for SABIC; namely, that the company did not co-operate with the Indian authority in this matter. [51] Here too there was no method shown to explain how the authority would determine normal value.

In the Indian case, the dumping margin was clearer than in the Turkish and EU cases. After the authority considered the exporting price and normal value, as discussed above, a dumping margin was applied to the Saudi petrochemical Industries. The margin was 53.59% for the Advanced Polypropylene Co., 1.89% for the M/s Saudi Polyolefins Company, and 185.68% for the non-cooperative producers and exporters. The only comment made in regard to the dumping margins was in relation to M/s Saudi Polyolefins Company as well as M/s Advanced Polypropylene Co. The first company's percentage was regarded as de minimis, [52] and the authority did not apply any anti-dumping duty on the goods exported by this company. The second one could not understand how the authority linked the price of petroleum and normal value. This price would be expected to have no effect on normal value as it is globally price and there is no interference by government.

ii. *Like product and the domestic industry*

In order to apply anti-dumping provisions, it is important to identify like products, as well as the domestic industry for similar products. According to the GATT and the implementation of Article VI, the like product must be identical in all respects in order for anti-

[46] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014,(page 6 of these Preliminary Findings).

[47] The Indian Anti-dumping case against Saudi Arabia: 14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014,(page 6 of these Preliminary Findings).

[48] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 7 of the Preliminary Findings).

[49] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 7 of the Preliminary Findings).

[50] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 7 of the Preliminary Findings).

[51] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 7 of the Preliminary Findings).

[52] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 5.8.

dumping regulations to be applied.[53] However, in the case of the domestic industry, reference must be to domestic producers of like products, unless there is a relationship between the exporting and domestic industries.[54] Nonetheless, in practice, domestic industries must deliver more than 50% of the total [55] for like products in anti-dumping cases. Therefore, on this particular point, there were no issues related to identifying like products within the domestic industry, as like products were identical in all three cases and clearly domestic industries were also producing alike products. In some cases, however, the definition of "like product" could be raised as an issue between parties: "Since the definition of 'like product' has not been settled in the anti-dumping context, administering authorities enjoy much discretion in determin[ing] the product scope of anti-dumping investigations".[56] However, in some cases, as in the footwear case between China and Indonesia, it was not easy to distinguish between slippers and outdoor shoes, and the court "…had to be satisfied in order to consider slippers and outdoor shoes as one product".[57] The case failed because these were not deemed identical products: "The test failed in the other direction (i.e., the Commission could not determine that outdoor shoes could be replaced by slippers for outdoor use, due to slippers' 'usual flimsiness'".[58] Even though both can be regarded as shoes, the use of shoes was the deciding factor, suggesting a difference in products.

- *EU case number 2011/c 49/10*

Returning to the EU case against Saudi Arabia and Oman, the product was Polyethylene Terephthalate. This product was identical in all respects to the domestic product as clarified in the intuition: "The product subject to this investigation is Polyethylene Terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5".[59] However, the Committee of Polyethylene Terephthalate (PET) industries filled this case on behalf of the union industries,"...by the Committee of Polyethylene Terephthalate (PET) Manufactures in Europe (CPME)...on behalf of the producers representing a major proportion, in this case more than 50% of the total Union production of certain polyethylene terephthalate".[60]

Before examining another case, however, it is important to mention the process of "Sampling". A huge number of Union producers are involved in the anti-dumping cases, in order to end these cases on time the commission typically selects one producer as a representative of Union producers; i.e. "The commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sample is carried out in accordance with Article 17 of the basic Regulation".[61] This statement shows no conflict between this Article and the anti-dumping regulations in the GATT agreement. It is a kind of process and an acceptable way of organising the allegations between interested parties.

- *Turkish case number2008/40*

The same applied in the Turkish case, concerning Monoethylene Glycol, which referred to the product under the Turkish Custom Tariff Authority. Moreover, it was clarified further; i.e."...the formula (CH2OH) 2, which MEG, glycols is the smallest compound to colour less, odorless, clear and very hygroscopic syrup liquid".[62] In addition, the legal percentage under the WTO in the anti-dumping cases referring to domestic similar producers was clearly mentioned in the initiation.

- *Indian case number14/5/2009-DGAD*

In the Indian case, the product name was mentioned clearly:

> The product under consideration is 'Polypropylene (i.e., homopolymers of propylene and copolymers of propylene and ethylene)'. This subject goods are classified under Custom Headings 39021000 and 39023000.[63]

Moreover, the initiation pointed out the different uses of the subject product "...The subject goods are used as woven sacks for cement, food-grains, sugar, fertilizer, bags for fruits & vegetables, TQ & BOPP films, containers etc.".[64] As a consequence of these two

[53] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 2.6.

[54] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 4.1 (i) and footnote 11 of this Article.

[55] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 5.4.

[56] Konstantinos Adamantopoulos and Diego De Notaris, "The future of the WTO and the reform of the anti-dumping agreement: a legal perspective", 2000-2001, *Fordham International Law Journal,* 24:30, 63.

[57] Konstantinos Adamantopoulos and Diego De Notaris, "The future of the WTO and the reform of the anti-dumping agreement: a legal perspective", 2000-2001, *Fordham International Law Journal,* 24:30, 37.

[58] Konstantinos Adamantopoulos and Diego De Notaris, "The future of the WTO and the reform of the anti-dumping agreement: a legal perspective", 2000-2001, *Fordham International Law Journal,* 24:30, 37.

[59] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/16.

[60] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/16.

[61] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/18.

[62] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569, 1.

[63] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 1of the Initiation Notification).

[64] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009]

statements, the initiation clearly addressed the identical nature of the two products, thus.

> There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject goods and the product under consideration manufactured by the applicant. The two are technically and commercially substitutable and hence should be treated as 'like article' under the anti-dumping Rules. [65]

However, the case was raised by one of the domestic producers on behalf of the domestic similar industries "The application has been filed by M/s Reliance Industry Ltd. on behalf of the domestic industry". The total number of industries and similar producers reached the legal percentage to continue an anti-dumping cases"...the total domestic production of the like article and is more than 50% of Indian production of the like article". [66]

Accordingly, it can be seen that the authorities in the anti-dumping cases against Saudi products applied the anti-dumping regulations in the right way and the domestic regulations relating to GATT on anti dumping were applicable. However, the Indian case was legally clearer in regard to identification of the like product, as it mentioned the diversity of uses of the like product, which can be considered the correct legal written formula and procedure on this particular point.

iii. *Injury and causal link*

This section is one of the most important and difficult in relation to application of anti-dumping regulations. Without these two elements, anti-dumping provisions could not be applied. However, dumping itself is not illegal but is penalised if it causes or threatens material or other injury to an established industry or one that is planned. Before examining the cases, it is important to consider both these elements in relation to the implementation of Article VI of GATT.

With regard to injury, Article VI states that dumping can cause injury or threat to a domestic industry: "...if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry...". [67] Thus, it must be based on positive evidence and involve an objection in order to examine the volume of dumped imports and the effect of pricing on domestic producers. [68] The authority should check two points: increases in quantities dumped and the price undercutting of like products in the domestic market. However, the causal link must be between the low price for importing the product and the injury or threat as known at this point. It is agreed that the cause of dumping is the importing of the product, but not the product itself, otherwise this might mean that any imported product could be regarded as dumped, which is not the case. It is the low price of the imported product that causes injury.

- *EU case number 2011/c 49/10*

This initiation details the identified injuryas

> Injury means material injury to the union industry or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective determination of the volume of dumped imports, their effect on prices on the Union market and the consequent impact of those imports on the Union industry.... [69]

However, the initiation mentioned an increase in the imported product in terms of market share:"The Complainant has provided evidence that impacts of the product under investigations from the countries concerned have increased overall in absolute terms and have increased in terms market share".[70] Consequently, this caused a negative impact on the dumped Saudi Arabian product, which"…had a negative impact on quantities sold, the level of the prices charged and market share held by Union industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Union industry". [71]

In this initiation, and as provided by the Union's complainant industry, the injury could be classified into three particular points, quantities sold, price charged and market share by union industries. Yet, this must be linked to the low price of an imported similar product, if anti-dumping duty is to be applied. However, this case was withdrawn by the complainant after the initiation, so it will be difficult to examine the three points of injuries and find a casual link.

www.commerce.nic.in, accessed on 21 February 2014, (page 1& 2 of the Initiation Notification).

[65] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 2 of the Initiation Notification).

[66] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 1 of the Initiation Notification).

[67] General Agreement on Tariffs and Trade (GATT), 55 UNTS 194; 61 Stat. pt. 5; TIAS 1700, Article VI.

[68] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 3.1.

[69] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/18.

[70] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/16.

[71] Case number 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union C 49/16.

- *Turkish case number 2008/40*

Referring back to the Turkish case; the authority examined if there was an increase in the volume of Saudi exported products. It demonstrated that there was an increase during the period of time under examination, and also that the dumped imports effected the prices of domestic producers. It was stated that the value increased in this period affecting Turkish domestic producers. Moreover, the Turkish authority examined the economic indicators for domestic production: sales, exports, market share, inventories, capacity, employment, fees, productivity, domestic price, costs, cash flow, growth, capital increase and increase in investment; all were evidence of the effect of dumping on the domestic industry although not evidence of dumping itself. [72]

- *Indian case number 14/5/2009-DGAD*

In this case, the initiation stated that the applicant had put forward all the related evidence regarding the injury

> The applicant has furnished evidence regarding the injury having taken place as a result of the alleged dumping in the form of increased volume of dumped imports, price underselling, price suppression, and substantial decline in profitability, return and cash flow for the domestic industries. [73]

However, in the Preliminary Findings, and after the authority had examined all the evidence, it found an increase in imports from 100 (in 2005-06) to 164 in the period under investigation.[74] With regard to demand and market share, the imports from these countries continued in the range of 5% to 6%, and the market share of the domestic industry improved. [75]

Thus, capacity fell in the period of investigation compared to previous years, and the sales volumes of both importing and domestic industries were enhanced. [76] There was also an increase concerning landed value from subject countries as well as heavy discounts post shipment from exported countries. [77] There was also positive price underselling in each of the subject countries. These elements can all be considered as evidence of the effect of dumping inside India's market, as referred to in the GATT agreement in relation to Article VI and its implementation.

iv. *Whether there is any "subsidising" for Saudi products as well as for the domestic products of the importing countries*

It is important to examine whether there are any kinds of subsidies from the Saudi government for the products in the three anti-dumping cases. Usually as there are two different implementation processes for anti-dumping and anti-subsidy under the GATT agreement, in practice cases have to be dealt with separately, even if in some circumstances they are related. By checking the WTO reports with regard to subsidy cases, there was no case found against Saudi Arabia dealing with anti-subsidy regulations. Nonetheless, this does not mean there is no any allegation with regard to this point, because it may be integrated within the anti-dumping cases.

Thus, if we look back at the Turkish case mentioned above, two issues were reported in this case. One in regard to market conditions and the other in relation to the involvement of the state (Saudi Arabia) in its domestic market, which affects the export price. As shown in the definitions of subsidy regulation, a subsidy is deemed to exist, among other conditions, if: "… there is any form of income or price support in the sense of Article XVI of GATT 1994…". [78] Thus, this expressed the involvement of the Saudi government in the domestic market to affect the export price as a kind of subsidy.

Having examined many of the WTO members' legal actions with regard to anti-dumping and anti-subsidy, the research shows more attention is generally paid to the former than the latter. The anti-subsidy cases under the DSU numbered only 102 cases. [79] Thus, it is recommended that the WTO takes more action on this point and activates the Agreement on Subsidy and Countervailing Measures more fully.

v. *Termination of these anti-dumping*

At the end of this section on analysing anti-dumping cases against Saudi Arabia, it seems that the

[72] The Turkish Anti-dumping case against Saudi Arabia: 2008/40 and 2010/11, Turkey v Saudi Arabia, Kuwait and Bulgaria [2008] Turkish Gazette 27 092 – 27 569.

[73] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 2 of the Initiation Notification).

[74] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 17 of the Preliminary Findings).

[75] The Indian Anti-dumping case against Saudi Arabia: 14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 17 of the Preliminary Findings).

[76] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 17 of the Preliminary Findings).

[77] The Indian Anti-dumping case against Saudi Arabia: 14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21 February 2014, (page 17 of the Preliminary Findings).

[78] The Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations 231 (1999), 1869 U.N.T.S. 14. Article 1.1 (a) (2).

[79] See the official WTO website in regard to disputes related to Anti-Subsidy, http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A20, accessed 23 February 2014.

European Union commission has been very careful in making its decisions with regard to anti-dumping regulations, more so than the authorities in the other cases (the Indian authority in particular). The argument and use of language in the European case was very strong and more specific in terms of details than in the Indian case. The European Union's authority used an element considered evidence of the dumping itself, unlike the Indian case. Thus, it can be seen that the Indian case was abusive in its application of the regulation, meaning that it might not have been wholly in compliance with the GATT regulation and Article VI implementation.

However, these cases were terminated with many different reasons; however, after this the Saudi Arabian government put political pressure on these countries in a different way. As was clear in the termination of each case. In the EU case, the complainant withdrew from allegations on 12th of October, 2011. [80] In regard to the Turkish case, the Saudi Government expressed its thanks and appreciation to the Turkish government after termination of anti-dumping duty against the Saudi petrochemical products mentioned in the case. [81] This was achieved through the regular weekly council of ministries, which met on 26th of March, 2012.From the Turkish side, there were no official document demonstrating the reason for terminating anti-dumping duty against the Saudi petrochemical product.

Moreover, the Indian case included a very unique termination. The Indian anti-dumping decision for the case was dated 9th of August, 2012; the Indian authority retained the anti-dumping duty on Oman and Singapore and dropped it from the Saudi petrochemical products. It was mentioned in this decision, that:"On December 30, 2011 the Central Government has withdrawn the duties imposed on the imports from Saudi Arabia by Notification 130/2011...". [82] Thus, based on the previous statement and the close of dates between the termination of these cases, it can be seen clearly that Saudi Arabia put political pressure on the committee assessing theanti-dumping. This may have led to increased priority to negotiatein future anti-dumping cases against the Saudi products. Finally, all three cases have a direct impact, whether to the alleging countries or to Saudi Arabia, as will be seen later in this paper.

[80] Case number 2011/835/EU, *EU v Oman and Saudi Arabia* [2011], official Journal of the European Union L 330/45.

[81] See the Report by the Saudi Council of Ministers in the official Saudi Press Agency website, http://www.spa.gov.sa/minister_of_concil.php?cid=29&pg=1, accessed 23 February 2014.

[82] The Indian Anti-dumping case against Saudi Arabia:14/5/2009-DGAD, India v Oman, Saudi Arabia and Singapore [2009] www.commerce.nic.in, accessed on 21st of February, 2014,(page 6 of the Indian Anti-dumping decision date 9 August 2012).

IV. Cases Against Saudi Arabia at the International Level

In the dispute settlement report on anti-dumping cases, [83] no disputes were found against Saudi Arabia. However, Saudi Arabia has been involved in a total of 20 cases under the Dispute Settlement Understanding (DSU) as a third party.[84] Thus, anti-dumping cases against Saudi Arabia have continued to further the DSU level under the WTO agreement. By examining the previous statistics from the anti-dumping Global Database about anti-dumping cases against Saudi Arabia, [85] it is evident that there are against Saudi Arabia, but at the national level only, so they did not take any further actions. In this research, the reasons for not pursuing such cases against Saudi Arabia at the international level under the WTO may be as follows:

a) WTO Membership

The majority of the anti-dumping cases against Saudi Arabia were established before Saudi Arabia joined the WTO. According to the statistics from the Global anti-dumping Database, 11 cases out of 34 occurred before Saudi Arabia joined the World Trade Organisation at the end of 2005 (that equates to 32.35%).[86]

In addition, Saudi Arabia fought for about ten years to become a member of the WTO, [87] and these cases were not considered a negotiation priority. The priority was to fulfil the conditions and requirements of being a member of the WTO, while membership was still not achieved, and more steps were required. Thus, most Saudi companies faced these cases without any real support from the Saudi government, as Saudi Arabia did not regard anti-dumping actions as a threat to its industries.

However, the Saudi Arabian government acted by appointing a committee (under the Ministry of Petroleum), [88] to address and negotiate in these cases. This committee aimed to terminate anti-dumping cases

[83] WTO Dispute Settlement: One-Page Case Summaries, 1995-2011, 2012 Edition. See the WTO official website, http://wto.org/english/res_e/publications_e/dispu_settlement_e.htm, accessed 23 February 2014.

[84] Dispute Settlement by Country, the WTO official website, http://wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, accessed 23 February 2014.

[85]The Global Anti-dumping Database under the World Bank, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html, accessed on 21 February 2014.

[86]The Global Anti-dumping Database under the World Bank, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574930~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html, accessed on 21 February 2014.

[87]Ministry of Commerce and Industry, http://www.mci.gov.sa/, accessed on 23 February 2014.

[88] The committee was headed by HRH Prince Abdul-Aziz bin Salman, who is the Assistant Minister of Petroleum and Mineral Resources for Petroleum.

against Saudi Arabian products overseas, where they involved petro chemicals product. However, protecting Saudi industries domestically, was the responsibility of another department, under the Ministry of Commerce. [89] It can be seen in this research, that whether an anti-dumping dispute is inside or outside Saudi Arabia it should be dealt with by the same department in order to establish knowledge and understanding in such cases.

b) Experience

Saudi Arabia is still a new member of the WTO and has limited experience of how to deal with anti-dumping cases, whether locally or overseas. Even in regard to cases of anti-dumping against its products after the joining the WTO in 2005, it has minimal experience of how to deal with such cases. As a result of this, Saudi Arabia was not involved in any anti-dumping cases at DUS level. On the other hand, in some of the anti-dumping cases mentioned above, the Saudi petrochemical companies did not follow up matters seriously, or participate in a trial in the country where the allegation was made [90]. In general, Saudi companies preferred an alternative way to resolve anti-dumping cases.

c) Saudi Arabia's interest in the oil sector

Saudi Arabia had no interest in focusing on industries in general or petrochemical industries in particular, to enable these industries to receive government support in cases of dumping. Their entire focus was on the oil sector, as it generates the primary important income in the country. However, Saudi Arabia realised the importance of diverting national revenuesin order to manage fluctuations in the oil price and insure stability in national revenues without focusing on oil profits. [91] Moreover, the Saudi government planned to extend and develop the production of petrochemicals, [92] although these cases can be an obstacle to free trade and the movement of goods between countries.

d) Saudi Arabia's special policy

Some of the Anti-dumping cases against Saudi Arabia were connected with political actions, even relative to legal matters at. For this reason, Saudi Arabia has a special political approach that differs entirely from that of other countries. [93] Its political view is that in order to achieve a successful outcome internationally, the political approach must be very quiet and the focus needs to be on the larger political issues only. For this reason Saudi Arabia has not paid substantial attention to anti-dumping cases, as these have generally been small issues related to Saudi industries, when compared to the major political issues that were deemed to be more important. On the other hand, Saudi political policy does not support international escalation, such as with anti-dumping cases, because it prefers to maintain a good relationship with countries worldwide as much as possible. Thus, Saudi industries, which faces cases like these, must address such matters alone, and in some cases without any kind of government support.

e) Alternative solutions

As mentioned above, the Saudi government has not been interested in anti-dumping legal matters, meaning that those Saudi industries facing these cases have dealt with them independently. For this reason some alternative solutions to resolving such cases have developed. One of these solutions is exiting the importing country's market or at least stopping exports to that country for a short period of time until a legal alternative is found. Another solution is to form a union or coalition with local industries in the importing country, or to establish a Saudi industry in that country, owned by the Saudi industries. Typically, this has involved buying the entire shareholdings of companies inside the importing market. [94] This means that it would be difficult for the importing country to then apply anti-dumping regulations against Saudi companies as they would then be in conflict with Article 4 of the implementation of Article VI, GATT. [95]

For the above reasons, it is logical not to engage in anti-dumping cases at DSU level against Saudi Arabia, and instead just to inform the WTO. Saudi industries cannot support their actions in the WTO

[89] Ministry of Commerce and Industry, http://www.mci.gov.sa/, accessed on 23 February 2014.

[90] The Anti-dumping cases between Saudi Arabia and EU, Turkey and EU. Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21st of February, 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

[91] Dr. Eid Al-Juhani,*The Kingdom of Saudi Arabia after one hundred years*,Dara King Abdul-Aziz, v 14, 257.

[92] The National Industrial Strategic for Industry 2020. See the Saudi Industrial Development Funds website, http://www.sidf.gov.sa/, accessed 23 February 2014.

[93] The Saudi foreign policy, The Ministry of Foreign Affiance official website,http://www.mofa.gov.sa/sites/mofaen/KingdomForeignPolicy/Pages/KingdomPolicy34645.aspx, accessed 23 February 2014.

[94] SABIC has purchased many petrochemical industries in China, the EU and other regions of the world. It plans to further develop this industry in Saudi Arabia as a means of obtaining considerable income and benefits, as well as to escape from the imposition of anti-dumping allegations in cases such as the ones under discussion. Moreover, on the TV programme "Special Interview" on the Al Arabya news channel, on 4 December 2012, Mr Yang Fo Tshang, the then Chinese Deputy Foreign Minister and former adviser to the Centre for the Chinese-Arab Cooperation Forum, stated that Saudi Arabia had invested a considerable amount in the petrochemical sector in China and that the exchange rate between Saudi Arabia and China was around 65 billion US Dollars last year. See SABIC official website, www.sabic.com, accessed 23 February 2014.

[95] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201.Article 4.1 (i) and footnote 11 of this Article.

setting without assistance from the government, which has not been available.

IV. The Impact of the Anti-Dumping Cases

Anti-dumping has an impact on both sides (importers and exporters), and for this reason, the contracting parties have agreed to the prohibition of illegal actions as they result in unfair competition. However, the impact on the importing and exporting countries share similarities on some points and differ on others; however, how anti-dumping cases will impacton the Saudi petrochemical industries is under discussion here. The following section clarifies the impact legal actions on Saudi Arabia. It considers that, just as there is an impact from dumping, the applying of anti-dumping duty on exporting countries can have a direct impact on domestic industries as well. Therefore, the impact is on both sides, not only on the importing countries. However, these regulations should be applied with careful consideration.

a) The impact from the legal side

Repeated use of anti-dumping action, without legal justification or strong proof of necessity, undermines the credibility of the legislation and the legitimate aims for which it was created. It is therefore essential that its use be in accordance with correct legal procedures and standards set under the WTO agreement. The aim of the legislation is to ensure fair competition between products in the international markets, which helps to accelerate the pace of trade between nations and foster it. However, the frequent use of such legislation to give the best opportunities to local producers or to monopolise the local markets ahead of international producers, renders regulations valueless.

It can be seen in this research that the frequent use of anti-dumping processes is to allow unfair competition, albeit in a new way and with legal cover. Due to the increasing frequency of legal issues of this nature between contracting parties and since the global economic crisis, it has become necessary for countries, which are parties to GATT to review texts in accordance with their new economic circumstances and to investigate the abuse of laws. In reviewing these laws, therefore, it is necessary to impose sanctions, or at least achieve a legal right against a state that is using these legal actions in an abusive way or in bad faith. This course would promote the use of such laws in accordance with the aims for which they were developed, as legal safeguards exist in practice; i.e. to complain to the WTO as well as to the investigator and decision-maker in such cases. In other words, these are not sufficient to achieve a legal trial with results that will satisfy all parties concerned.

These anti-dumping cases have a direct impact legally on Saudi Arabia. Saudi Arabia directly established a negotiation committee to find a legal solution to allegations through direct negotiations. [96] This is a major step on the part of the Saudi government, as there is currently no governmental involvement in such cases. Saudi Arabia has realised the negative direct impact of anti-dumping cases on its industries, particularly the petrochemicals sector. For that reason, it is now applying a technique of using a negotiation committee to discuss this legal matter with other parties. The importance of this negotiation committee to the government, is evident as one of the governmental officials responsible for the committee succeeding in its duty is a Royal Prince. [97] Moreover, Saudi Arabia has seen the importance of making an amendment to the legal anti-dumping system under the GCC, as this was done on 28 January 2013. [98] This change was to make the regulation more compatible with the WTO, and to strengthen the protection of similar domestic products inside Saudi Arabia from competition.

b) The impact from the economic side

It is important also to examine the impact of this from thee conomic side in order to understand the scope of the legal issues and to discover how far they might affect the economies of the countries concerned. The law protects rights and regulates people's lives in many different areas, and in this section there will be a discussion of the impact of legal action from different perspectives: price, competition, sales quantities, production, development and national plans, employment, and finally, impact on the national income.

i. *Price and profit*

The first impact to consider is that on price, which is the main element or tool of dumping. Thus, the first element to examine is whether we are considering export price, normal price or domestic price, so as to be able to calculate the dumping margin. In order to understand the impact of dumping on price and profits, three hypothesis points will be considered:

- In cases where the price of an exported product is lower than the cost of a similar domestic product, the latter will beaffected and will be considered as dumping if it comes with injury and a causal link. This is similar to the guidelines in the anti-dumping cases against Saudi Arabia mentioned above. However, this price should have a direct impact on the profit and other economic elements related to it. Moreover, it will not represent proper competition between the products. Conversely, the exporter will

[96] A Royal Decree was issued to establish this committee on 13 April 2011.

[97] The committee was headed by HRH Prince Abdul-Aziz bin Salman, who is the Assistant Minister of Petroleum and Mineral Resources for Petroleum.

[98] The Saudi Press Agency, http://www.spa.gov.sa/, accessed 23 February 2014.

accrue more profit as well as strengthening the presence of products in the importing market.

- In cases where the price of an exported product is similar or a little lower than the cost of a similar domestic product, it will be difficult to allege dumping, as it might be a case of deminimisor negligence. [99] However, the domestic industry for a similar product will not be able to attain a profit as well as develop its industries as a whole. On the other hand, there will be no difference as they are both close to each other, although the exporter might have greater opportunity to be more accepted in the domestic market of the import country.
- In cases where the price of an exported product is similar or a little higher than the cost of a similar product, the domestic industry for that similar product will be able to make a profit and develop its industry as soon as the selling quantity moves in the right direction. However, the competition between the domestic product and the exported product will be high, as well as meeting the aim of the GATT agreement, which will favour the consumer.

Nonetheless, in the previous hypothesis, there were few changes to prices. Most importing countries, which complained about Saudi products, had a suitable level of pricing inside their domestic markets, and so were able to continue making a profit. However, Saudi Arabia was effected by these anti-dumping cases targeting its petrochemical product, and suffered an anti-dumping duty. It has been reported that Saudi Arabia lost around 5 Billion Saudi Riyals in 2013 because of anti-dumping cases against its petrochemicals products. [100] Consequently, the price has been raised, which will have a direct effect on competitive ability of competition and sales volumes.

ii. *Competition*

There is a direct impact proceeding from competition between these products. This will have an immediate effect on domestic industries, because they are targeted by the exporting producer. The competition would then not be as good as it should to be. Initially, the domestic producer will try to compute as much as possible using such tools as pricing or offers, but it will not then be able to continue competing. In contrast, the exporting producer in the importing country will find it easier to exert their influence to their own benefit.

In regard to the anti-dumping cases against Saudi Arabian petrochemical products, the competition continues at the same level, as all have the ability to compete inside the complainant's markets. It can be seen that competition has not really changed, yet, there has been an effect exerted by some elements from the domestic Saudi market. Fixing prices and cheap raw materials have been the two most important elements domestically inside Saudi Arabia; these have a direct effect on the competition and other products in the international markets. Thus, even with the ability to compete with Saudi products, this was not in the right legal way under the WTO agreement.

iii. *Selling quantities*

The selling quantities are in an inverse relationship between the domestic industry and exporting producers. While the exporting producer's selling quantities increase in a dumping situation, the selling quantities of the importing country decrease. However, this will not be the situation in every dumping case, only when there is a high level of dumping.

In the cases involving Saudi Arabia, the selling quantity between the Saudi producers and importing countries was unpredictable, sometimes it increased and at other times not.

iv. *Industrial producing*

In the case of dumping, domestic industrial producers are typically unable to increase production and might either decrease or cease to produce a particular kind of product. Conversely, the exporting producer may choose to make more of a similar product, as it would be expected to sell better inside the importing country, or continue to sell at the same level. However, the domestic industrial producer might not be significantly affected, and in such a case the effects then relate to the amount of dumping. The impact of dumping might not relate to industrial production at all, as stated in the dumping definition in Article VI: "…or materially retards the establishment of a domestic industry…". [101] In fact, most cases against Saudi products have not mentioned that the establishment of their domestic industry was materially retarded as a result, and they were still able to continuing with the similar products.

v. *Development and national plans*

There is clearly a direct impact on the development of the domestic industry as well as on national strategy plans in regard to industries of this kind, especially if the particular industry is important to the importing nation. The dumping will retard the future plans for both the industry and the country itself. However, anti-dumping duty has an effect on export industries as well as on the national strategy plans.

Regarding Saudi Arabian cases, these may directly affect a company's plans, especially the

[99] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), 1868 U.N.T.S. 201. Article 5.8.

[100] Alsharq Alawsat Newspaper, Report about the Anti-dumping cases against the Saudi Petrochemicals products, http://classic.aawsat.com/details.asp?section=6&article=724839&issueno=12558#.Uy8zz55_suc, accessed 23 February 2014.

[101] General Agreement on Tariffs and Trade (GATT), 55 UNTS 194; 61 Stat. pt. 5; TIAS 1700, Article VI.

strategic plan for 2020. [102] The aim of this plan is to increase the production ability, which can be done by entering new international markets to sell these petrochemical products. Thus, anti-dumping cases against these products will weaken their ability to compete in international markets, hindering the plan.

vi. *Employment*

In the cases considered above, it was mentioned that dumping by Saudi producers had not affected the employment processes undertaken by these industries or the importing countries. However, they might affect the Saudi supply side, due to the producers not hiring additional employees in the absence of future plans. The effects in this regard, however, are limited and not so well recognised as those applying to other areas.

In addition, as mentioned above, the strategic plan for 2020 aims to have more capacity of hiring more employing to this sector in Saudi Arabia. However, if this anti-dumping duty has continued in the Saudi petrochemicals product, it will effect negatively in thee xpansion of recruitment in this sector as it is planned. For that, the Saudi government has taken all necessary steps to stop terminating anti-dumping actions against Saudi petrochemical products.

vii. *National income*

There is an indirect effect from dumping cases that effects both exporting and importing countries, especially where the industries involved are important. Petrochemicals production is not an easy kind of industry to manage, and costs a great deal, whether is it run by the private or public sector. Overall, dumping has an indirect effect on national income for both exporters and importers. First, dumping may reduce the selling quantity in the importing country or threaten the development of the sector, which will in turn affect taxes being collected, and so the national income.

In the case of Saudi Arabia, national income might be affected by the application of duty, as petrochemicals are an important source of national income, after income from selling oil and gas. It is evident, therefore, that there will be an indirect impact from anti-dumping regulations on both the exporting and importing countries.

c) *The impact from the political side*

There is no particular anti-dumping case that has a direct or indirect impact on political relations between both exporting and importing countries. However, it is not impossible that this can happen; potentially leading to political conflict:

> For example, when the United States recently announced that it was placing tariffs on Chinese automobile tires under the WTO's safeguard provision (7), China announced only two days later that it would be initiating an anti-dumping investigation into whether exporters in the United States were dumping automobile and chicken products into China (8). [103]

This statement shows the extent to which politics can effect anti-dumping cases between WTO contracting parties, which can then lead to political issues arising between the conflicting parties.

In the case of Saudi Arabia, the country's media reported the anti-dumping case with India as a high profile disagreement; some sections of the media were asking that the Indian workforce be expelled from Saudi Arabia as a way to defend Saudi petrochemicals. This there forehad some potential to affect international relations between Saudi Arabia and India. However, both parties agreed to start negotiations between themselves, pursuing diplomatic approaches to find a solution.

The GATT refers to negotiation between countries or "contracting parties", as an important tool that can have a considerable effect. It may result in the parties being ordered to close the case without investigation or even after anti-dumping duty has been applied, as arose in the seanti-dumping cases. [104] Political pressure means direct political negotiation between governments to apply diplomatic methods to end the conflict or dispute. Some countries, [105] prefer to negotiate in these cases, and negotiation can be done by appointing a committee of experts with real authority and experience in finding a solution to such cases.

However, negotiation might not be with a government directly; it might be with the domestic industries themselves, through their representatives. This is generally easier than negotiating with a government, which may need to consider governmental policy and procedures, lengthening the time spent in negotiation. However, in some circumstances, it might be necessarily for a negotiation to be with the government itself, ultimately depending on the facts of the cases and the political atmosphere.

In these cases, the negotiations between Saudi Arabia and EU, Turkey and India on anti-dumping investigation resulted in the termination of all

[102]The National Industrial Strategic for Industry 2020. See the Saudi Industrial Development Funds website, http://www.sidf.gov.sa/, accessed 23 February 2014.

[103]Reid M. Bolton, "Anti-dumping and Distrust Reducing Anti-dumping Duties under the W.T.O. Through Heightened Scrutiny", *Berkeley Journal of International Law*, 2011, 66, p.67.

[104] The Cases between EU, Turkey, India and Saudi Arabia. Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21st of February, 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.

[105] e.g. Japan.

investigations and duties.[106] This result was positive, and so negotiation is suggested as an important step to be followed prior to investigation or trial. This step can help limit the increasing numbers of anti-dumping cases among the WTO members and also makes it possible to find alternative solutions. This approach should be legalised under the GATT agreement.

V. Conclusion

This paper has shown that there have been many anti-dumping cases against the Saudi Arabian petrochemical products at the national level. Some of these cases were analysed to answer the question on the effect of these cases in Saudi Arabia. The responsibility for compatibility is on the domestic legal systems of the countries making allegations, who should check the applicability of the regulations. In this analysis, all the countries concerned observed the WTO agreement and its implementation in terms of anti-dumping regulations. However, in applying these regulations to facts, it was apparent that on some points the parties did not follow the WTO provisions, giving more space to domestic producers inside the market ahead of the exporting producer. This kind of action is referred to in this research as new unfair competition, but it falls within the law and the WTO umbrella. The problem lies not in the regulations, but in their application to the facts, as some contracting parties have sought to apply them in a way that abuses of the exporting producer. Thus, it is argued that contracting parties should reform anti-dumping and anti-subsidy regulations to avoid this kind of misuse of these regulations.

In addition, it should be noted, that although cases against Saudi Arabian products are few, they are important as they often relate to the petrochemicals sector, which is one of the most significant industry sectors in Saudi Arabia after oil. Until recently, however, the WTO has not distinguished between a country like Saudi Arabia, which has considerable resources in regard to petrochemical elements and raw materials, and other countries; this an important point to address with regard to these cases. In general, the petrochemicals sector around the world has faced many cases of this kind, and alternative solutions to prosecution need to be found, to move the global economy forward.

This paper has also considered the impact of anti-dumping allegations on countries. The anti-dumping action can have a direct effect on all parties, which can harm the economy of the conflicting parties. If such regulations are applied against the exporting country, this can affect the industries of that country, and also harm the importing county and its industries. As mentioned, anti-dumping cases could become an obstacle to the free movement of goods and products between nations, which means that there needs to be further reform in the regulations between contracting parties or replacement with another set of regulations.

[106] The Cases between Saudi Arabia and EU, Turkey and India. Indian case: 14/5/2009-DGAD, *India v Oman, Saudi Arabia and Singapore* [2009] www.commerce.nic.in, accessed on 21st of February, 2014. Turkish case: 2008/40 and 2010/11, *Turkey v Saudi Arabia, Kuwait and Bulgaria* [2008] Turkish Gazette 27 092 – 27 569. EU case: 2011/c 49/10, *EU v Oman and Saudi Arabia* [2011], Official Journal of European Union c 49/16.