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## The GATT Agreement – the disadvantaged Indian Industry

India is one of the earliest signatories to the General Agreement on Tariffs and Trade in 1948, which is based on Adam Smith's theory of 'Laissez faire', that if men are left free to follow their own self-interests, production and prosperity will be forthcoming. A further objective was that trade must not only be free but also fair. Accordingly, a further Agreement<sup>1</sup> was entered into for imposition of duties, to offset dumping, that is the practice of exporting goods to countries, at prices lower than that, at which they are sold in their home country. The rationale behind such exports being, to wipe out the local industry, leaving foreign markets open for future exploitation. Pursuant to the Agreement, India has made suitable changes in the Customs Tariff Act, 1975 ('Act').

The Apex Court, while examining the provisions of the Act, in the case of GM Exports<sup>2</sup> held that where India is a signatory nation to an international treaty, and a statute is made to enforce a treaty obligation, what is sought to be achieved by the international treaty is a uniform international code of law, which is to be applied by the courts of all the signatory nations in a manner that leads to the same result in all the signatory nations. In reality, however neither the law nor its implementation in India, is similar to that in other signatory nations.

While countries like the USA, have been imposing duties on Indian exports, to the full extent of the price differential or dumping margin, the European Union follows what is referred to as the '*lesser duty rule*', that is duties less than or equal to the dumping margin, but adequate to remove the injurious effects of dumping. India is the only country in the world, who to the disadvantage of its local industry, follows what can be referred to as the '*least duty rule*'. India carries out an efficiency analysis of its own

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<sup>1</sup> AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

<sup>2</sup> GM Exports vs CC reported in (2016) 1 SCC 91

producers, determines an optimum cost of production and benchmarks the duties / tariffs on such cost. This duty is typically less than that imposed by all other signatory nations.

The fixation of a duty based on a theoretical cost of production, is not feasible, as cost is not a constant, given that technical and commercial parameters are dynamic. Even if there was a correction in prices, this would not redress the injury already suffered by local producers (losses, debt, etc.), consequent to intensified dumping over a long period of time. The duty determined by this methodology is, hence, significantly lower than that imposed in other countries.

A uniform international code of law has not been established, and exports from India attract high tariffs abroad, while quantum of duty which can be imposed on dumped imports into India, is restricted by municipal law. Reciprocity should be the guiding principle in such matters.