https://doi.org/10.52131/ctls.2024.0401.0042

Current Trends in Law and Society

Volume 4, Number 1, 2024, Pages 153 - 162

Journal Homepage:
https://journals.internationalrasd.org/index.php/clts

Examining the Doctrine of Causation in Anti-Dumping Investigations: An Analysis of the EU Court of Justice Interpretations in Case C-638/11

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ARTICLE INFO

Article History:

Received: April 10, 2024
Revised: June 20, 2024
Accepted: June 22, 2024
Available Online: June 23, 2024

Keywords:

Case C-638/11
Generalized System of Preferences (GSP+)
European Union Anti-Dumping Duties
EU Court

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

ABSTRACT

This research paper assesses the interpretations of Article 3(7) of the basic regulation by the General Court and the EU Court of Justice in Case C-638/11. The study highlights that the broad and non-exhaustive nature of Article 3(7) has led to divergent interpretations by the two courts. The General Court's approach, applying the 'Mischief Rule' of interpretation, suggests that institutions should distinguish between the injury caused by dumped imports and that caused by other known factors. The court further posits that the list of factors in Article 3(7) should be considered illustrative rather than definitive, thus necessitating an evaluation of all relevant factors, which can vary with each case. Conversely, the EU Court of Justice rejected the inclusion of legislative amendments, such as the grant of GSP status, as other known factors affecting the Union industry, arguing they should be assessed only in their impact on the dumped imports. The paper challenges this stance by asserting that legislative changes and GSP status should be recognized as significant factors under Article 3(7) because they directly impact the Union market. It is argued that the EU institutions should have conducted a non-attribution analysis considering these factors, given their known effect on trade dynamics. The findings reveal that the vague and broad language of Article 3(7) has led to inconsistent applications and interpretations. The paper concludes with a recommendation for a more detailed and comprehensive list of factors to enhance clarity and consistency in causal link analyses.

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Citation: Bilal, M. (2024). Examining the Doctrine of Causation in Anti-Dumping Investigations: An Analysis of the EU Court of Justice Interpretations in Case C-638/11. *Current Trends in Law and Society*, *4*(1), 153–162. https://doi.org/10.52131/ctls.2024.0401.0042

1. Brief Facts of The Case

Case C-638/11 concerned Gul Ahmed Textile Mills Ltd., a Pakistani textile manufacturer and exporter. The case involved the imposition of anti-dumping duties by the European Union on textile imports from Gul Ahmed. The EU authorities had determined that these imports were being sold at prices below their normal value, which they believed was harming the European textile industry. Gul Ahmed Textile Mills Ltd. exported textiles to the EU. The EU's anti-dumping measures were implemented to address concerns that these imports were being sold at unfairly low prices, a practice known as dumping. The EU authorities-imposed duties to counteract the effect of these low prices on the EU market.

Gul Ahmed contested these anti-dumping duties, arguing that the EU's decision was inconsistent with both EU regulations and international trade rules. The company claimed that the duties were unfair and that the EU's investigation did not adequately reflect the market conditions or their pricing practices. A significant aspect of the case was whether the EU

authorities had properly established a causal link between the alleged dumping and the harm suffered by the EU textile industry. Gul Ahmed argued that the authorities had failed to demonstrate that their pricing practices were the actual cause of the injury to the EU industry. They contended that other factors, such as market conditions or other external influences, might have contributed to the industry's difficulties.

The Court of Justice of the European Union (CJEU) was tasked with examining whether the EU's imposition of anti-dumping duties adhered to legal standards, including:

- **The Adequacy of Evidence**: Whether the EU authorities had gathered sufficient and accurate evidence to justify the duties.
- **The Causation Analysis**: Whether the connection between the dumping and the injury to the EU industry was adequately demonstrated.

The CJEU's review focused on whether the procedural and substantive aspects of the anti-dumping investigation were consistent with EU regulations and international trade obligations, particularly regarding the accurate assessment of causation and the fairness of the imposed duties.

1.1. Council's Arguments

The Council contends that the General Court incorrectly interpreted the term 'other factors' as outlined in Article 3(7) of Regulation No 384/96, thus breaching the regulation. While the Council admits that Article 3(7) generally mandates a distinction between harm from dumped imports and damage from other known factors, it argues that the General Court mistakenly categorized the GSP+ scheme and the lifting of previous anti-dumping duties as 'other factors' under this article. The Council maintains that these two factors are intrinsically linked to the dumped imports, rather than being separate issues. They argue that any damage caused by an increase in dumped imports should be attributed to the imports themselves, rather than to the factors that might facilitate their increase. This viewpoint is supported by a WTO report from October 28, 2011, which addresses the EU's anti-dumping measures on certain Chinese footwear.

Furthermore, the Council argues that while Article 3(7) does not provide an exhaustive list of 'other known factors', legislative changes should only be considered under this article if they have a direct effect on the EU market. In this situation, the factors in question impact only the dumped imports and do not affect the broader EU market.

1.2. GUL AHMED'S ARGUMENTS

Gul Ahmed argues that there is no valid reason to arbitrarily restrict the factors considered for their potential to cause harm, as Article 3(7) is designed to ensure that any injury attributed to dumped imports is not due to other influences. According to Gul Ahmed, the Council is improperly limiting the scope and interpretation of Article 3(7), which should account for all relevant factors, except the dumped imports themselves, that could contribute to market injury. Such a restriction lacks justification.

Gul Ahmed points out that the European Union's correction of the erroneous anti-dumping measures imposed in 1997, which included the removal of these duties, had no connection to the dumped imports during or before the investigation period. The special tariff concessions granted to Pakistan starting January 1, 2002, were not exclusive to bed linen imports. These legislative changes were not closely tied to the actions of producers from other countries but were implemented by the European Union independently. Gul Ahmed Textile Mills argues that these factors affected import prices from Pakistan by reducing the overall duty burden on bed linen imports. Therefore, characterizing these tariff adjustments as simply facilitating an increase in dumped imports is clearly misguided.

Additionally, Gul Ahmed observes that EU producers faced imports at significantly lower prices due to these legislative changes, without a corresponding drop in prices from Pakistani producers. Thus, the legislative changes directly influenced the price dynamics in the market, impacting the assessment of injury and the relationship between injury and dumping.

2. Judgements of the Eu Court of Justice Case C-638/11

It is clear that the EU institutions did not look at two specific measures when figuring out the link between dumped imports and the damage done to Union businesses: getting rid of standard customs duties under the generalized tariff preferences scheme and getting rid of anti-dumping duties that were in place before (Vermulst, 2012). It is apparent that reducing import duties—from 12% to 6.7%—might have facilitated and encouraged the importation of the affected products, but this impact was directly related to the dumped imports themselves.

The Court ruled that, per Article 3(7) of the Regulation, only those factors that directly inflict market injury qualify as "other known factors." Consequently, the measures in question cannot be deemed as such, as they merely indirectly aided and encouraged imports. The Court determined that changes in the legislative framework affecting dumped imports do not directly cause injury; rather, the injury is due to the dumped imports themselves, with the legislative changes being closely linked to these imports.

This interpretation is consistent with the WTO Panel's report from October 28, 2011, titled 'European Union - AD Measures on Certain Footwear from China,' which examined the causal links between the removal of import quotas and injury under Article 3.5 of the 1994 AD Code. The report concluded that the removal of an import quota, which leads to an increase in dumped imports, does not itself cause injury. Therefore, the General Court was incorrect in classifying these two measures as 'other factors' under Article 3(7) of the basic regulation.

3. Opinion of the Advocate General

Advocate General Sharpston's opinion, delivered on April 25, 2013, is particularly relevant in this context. Sharpston asserted that the impact of import duties—whether they are increased or decreased—is irrelevant to the domestic industry unless actual imports are present (Kuplewatzky, 2018). Similarly, reducing or removing a duty cannot harm the domestic industry without corresponding imports. The effect of such duty changes is inherently linked to their influence on the prices of imports, regardless of whether those imports are dumped. Thus, when evaluating the effects of all imports, both dumped and non-dumped, the impact of duty changes on these imports is inherently considered.

In this case, the institutions reviewed imports from Pakistan, which were deemed dumped, and also considered subsidized imports from India, Union industry imports, and imports from other third countries. Gul Ahmed did not argue for the consideration of any additional imports. As a result, there was no justification for the institutions to treat the removal of previous duties as a distinct factor affecting the Union industry independently. Sharpston also highlighted that anti-dumping duties are corrective measures rather than punitive, intended to address unfair market imbalances. Therefore, the removal of previous duties, which is unrelated to the conduct of dumping exporters, should not be separately evaluated in relation to the impact of dumped imports.

In brief, Sharpston reached the conclusion that the elimination of prior tariffs had an impact on the pricing of both imported goods that were dumped and those that were not. An error was made by the General Court in treating the elimination of prior tariffs as a distinct element under Article 3(7) of the fundamental rule, since only the dumped imports were determined to cause damage, while the non-dumped imports did not (Le Lan, 2021). As to the Advocate General, consideration should be given solely to those 'other known variables' that have a direct impact on the damage caused by imported goods being dumped. Therefore, the removal of previous anti-dumping duties directly impacts the dumped imports rather than the Union industry. The Advocate General's views will be further analyzed in the following section.

4. Comment

The Commission is duty bound to analyse the injurious impact of 'other known factors'. However the commission acquired wide discretion about it, as the phrase 'other known

factors' attracts multiple interpretations. The onus of proof is on parties concerned to prove that other factors apart from dumped imports are also causing injury to local industry. The author suggests that the lists of other known factors as provided by Article 3(7) of the basic Regulation and Article 3(6) of GATT Agreement are as vague and general as to have only a guiding and exemplary impact. It does not mean that factors other than those mentioned in those lists cannot be considered. After setting the principal forms of other known factors, the applicable legislations left it upon the concerned institutions of the States' which factors come within the scope of Article 3(7) (Vermulst, 2012).

The EU institutions' practices reveals that in majority of the cases, the concerned parties' arguments about breaking of causal link among dumped imports and injury due to 'other known factors' has been rejected. Some of the key examples where these factors were not considered within the scope of 'other known factors' are as follows; Community producers self-inflicted injury by importing from countries concerned; the injury originated from inefficiency of Union producers; the Union market suffered due to increase in labour costs; the market growth is misjudged by Union industry and they invested at wrong time.

Some other examples include; the injury was caused by non-cooperating Union producers who were selling at lower prices; Union industry suffered due to increase in raw material cost; the injury originates from fluctuation of exchange rates; the Union industry suffered due to competition among Union producers and the injury is caused due to weak export performance of the Union industry. The grant of preferential arrangements and withdrawal of previous ADDs can also be added to the list of factors which were not considered inside the scope of Article 3(7).

However, as far as the Council's interpretation is concerned, that only those other known factors are obliged to be considered which directly affect the Union market, therefore as the legislative amendments are indirectly affecting the Union, thus it is not necessary to be considered. Otherwise Article 3(7) of the basic Regulation does not draw any distinction between other known factors directly affecting local market and other known factors indirectly affecting the Union market. It just states as follows:

Known factors other than the dumped imports injuring the Union industry contemporarily shall also be inspected to confirm that injury instigated by these other factors is not credited to the dumped imports (Crowley et al., 2009). Moreover, if one goes beyond the objective behind the said provision, such classification of directly affecting and indirectly affecting other known factors does not get any basis from Article 3(7) of Regulation (EC) 1225/2009.

The paper by Aspan, Setiawan, Wahyuni, Prabowo, and Zahara (2023), delves into the legal framework for assessing causation in anti-dumping cases, focusing specifically on the Indonesian market for uncoated writing and printing paper. The authors discuss the importance of proving a direct causal relationship between the influx of dumped paper products and the injury sustained by local manufacturers. However, Indonesian regulations necessitate detailed and convincing evidence to link the adverse effects on the domestic industry with the practices of dumping (Blonigen & Prusa, 2016). This rigorous approach aims to ensure that anti-dumping duties are only imposed when a solid causal connection is demonstrated, aligning with both national and international trade standards

In T-190/08 (2013) and C-13/12 (2011), the EU Courts clarified that causation analysis does not have to be conducted at the level of the entire Union industry; it is permissible to consider injury to individual Union producers caused by factors other than dumped imports. The Court emphasized the importance of non-attribution analysis, noting that if only a single Union producer is impacted by other known factors, this impact must be separated from the injury caused by the dumped imports (Miranda, 2010). The purpose of Article 3(7) of the basic regulation is to prevent investigative bodies from penalizing foreign exporters for issues they did not cause.

Article 3(7) does not mandate that the examination be restricted to injury affecting the entire Union industry. Instead, the provision aims to ensure that the harmful effects of dumped imports are distinguished from those caused by other factors. Consequently, in some cases, it may be necessary to consider the injury suffered by an individual Union producer

due to factors other than dumped imports, provided this injury contributes to the overall harm observed in the Union industry. The critique of the EU Commission's participation through case studies vividly illustrates the ongoing issue of anti-dumping procedures. The Commission's justifications for the origins of harm are contradictory, and its computation techniques frequently display biases (Abuseridze, 2021).

Nishimura (2024), also explores potential solutions to these challenges, suggesting that a nuanced understanding of "unforeseen" developments could offer new perspectives. The paper proposes that re-evaluating how causation is interpreted, especially in light of unforeseen economic changes, might provide more clarity and fairness in safeguard investigations. Nishimura (2024), argues that addressing these issues could lead to a more balanced application of safeguard measures, improving both their effectiveness and the transparency of their implementation in protecting domestic industries.

However, in the author’s opinion, there is a cause-and-effect relationship between legislative amendments and alleged dumping. If the EU Council had not withdrawn its previous AD duties imposed on Pakistan and had not granted preferential tariff arrangements to Pakistan, then definitely the export magnitude from Pakistan to EU had not been increased. Thus the Union market would not have suffered material injury. Both factors are inter-related and inter-dependent, therefore this dissertation suggests that it would be in appropriate to analyse any of the above-mentioned factors separately while focusing on one and ignoring the other altogether (Hindely, 1997).

In T-410/06 (2014), the General Court determined that when quantitative restrictions are lifted and the Commission observes an increase in imports that were previously restricted, this factor can be considered when evaluating the injury to the domestic industry. Similarly, in Case C-535/06, it was ruled that other known factors, aside from subsidized imports, must also be reviewed to ensure that any harm caused by these factors is not wrongly attributed to the subsidized imports. The purpose of this rule is to prevent providing the Union industry with more protection than is necessary.

Likewise, the EU institutions (Commission and Council) were familiar with the effect of the withdrawal of previous AD duties and grant of preferential treatment to Pakistan: that it will result in increase in export magnitude from Pakistan, and thus it may exert pressure on local manufacturers in terms of price competition and cause material injury to the Union. In other words the alleged dumping was foreseen by EU institutions while making legislative amendments in their laws (Mickus, 2002). Hence, as the consequences were foreseen and predetermined, so it was better they did not grant preferential tariff arrangements to Pakistan in the first place.

In Case T-58/99 and Case T-633/11, the General Court acknowledged that determining whether a Union industry has suffered injury, and whether this injury is due to dumped or subsidized imports, involves complex economic evaluations where institutions have considerable discretion. However, it can be argued that there should be a system in place to ensure that these discretionary powers are exercised fairly and consistently, as unchecked power can lead to corruption. It is essential that there be judicial oversight to verify that procedural rules are followed and to check for any significant errors in the assessment of facts or misuse of authority (Vermulst, 2012).

Judicial review and scope of the discretionary powers of the council and commission are to be considered as part of the principles of institutional balance. The competence of the other institutions in a specific subject matter should be recognized while exercising the judicial review. Advocate General Tizzano is of the view that, assessment of the competent authorities (institutionally responsible for that purpose) should not be substituted with the assessments made by the courts. The rule of separation of power does not allow courts to substitute the findings of the commission.

This paper however contends that, with reference to active judicial review, the concerns about substitution of powers by the courts are excessive. Under active judicial review, the courts are only expected to assess that, if the investigative authorities are acting upon the letter and spirit of the basic regulation? Is there any profound breach of right of any

interested party? Instead of interpretation of the ambiguous provisions of the basic regulation done by the commission, judicial review renders an opportunity, to get the interpretation done by the courts, which are more competent in it. It also provides an opportunity to get it verified and to acquire the second opinion upon interpretations of ambiguous parts of law, as done by the institutions.

In the Tetra Laval case, the Court of Justice affirmed that while the Commission has discretionary powers, this does not preclude the General Court from reviewing the Commission's decisions. The Union courts are tasked not only with evaluating the validity and consistency of the facts used by the Commission but also with ensuring that the evidence is both adequate and reliable for assessing complex economic situations and justifying the conclusions drawn.

Cooke argues that linking judicial review to the use of discretionary powers and the principle of institutional balance implies that judicial review should be examined within a legal framework. He disagrees with other scholars who advocate for a more pragmatic approach to judicial review, suggesting that judges should adapt their review methods based on the specifics of each case.

Be Vesterdorf (the former President of the CFI) has suggested the appropriate standards and nature of judicial review and according to his standard it should be "extensive and intense". The General Court should check whether the commission has disregarded, miscalculated or inflated the relevant economic data, adopted an erroneous approach to relevant facts or drawn unconvincing conclusion on the basis of incomplete facts. In the absence of such errors, the court should uphold the findings and conclusion of the commission.

Furthermore Brosman (1930) argue that, Commission's discretionary powers are not unlimited instead they are subject to the appraisal of certain paradigms- in this case the basic regulation. More confined and tightly structured are the legal requirements e.g. about construction of normal value, export price or calculation of dumping margin, more limited are the arbitrary powers of the commission. As far as limitation of judicial review of administrative actions is concerned; the courts should not intervene as such but they should cross check the appropriate application of legal requirements by authorities.

In Case T-107/04, the General Court emphasized that while the Council has considerable discretion in determining the causal link between dumped imports and the alleged injury to the Union industry in anti-dumping proceedings, it must still adhere to the basic Anti-Dumping Regulation No 384/96, specifically Articles 3(3), (6), and (7) (Natens, De Knop, & Willems, 2020). The Court ruled that the Council would violate these provisions if it made clear errors in assessing the impact of factors such as reduced demand on the Union industry's sales volume or the effect of an increased market share and sales volume on pricing. The General Court reaffirmed that Article 3(7) requires that all known factors causing injury, whether regulatory changes or market conditions, must be distinguished from the injury caused by dumped imports. The regulation does not differentiate between the nature of these factors.

Bael et al., (2011), found that, analyses of injurious impact caused by 'other known factors' is a difficult task, as it involves appraisal of complex economic analyses. However, if the institutions could not properly segregate the injury effect of other known factors, the injury would be credited to alleged dumped imports. The absence of a specific criteria for such segregation makes this process more complicated, as Muller *et al* noted that, although, the basic regulation and the WTO Agreement provides for analyses of injury caused by other factors however, they do not provide a certain standard for such segregation.

Similarly, Simon Lester contends that, threshold of substantial and genuine has never been defined by the WTO Agreement (Leitner & Lester, 2012). The lack of clarity thus leads to lot of uncertainty. This put an extra burden on investigative bodies in their investigation. While, this paper contends that, it also used to render extensive arbitrary powers to the national investigative authorities resultantly, it tends to conclude controversial decisions.

In Le Lan (2021), analysis, the complexities of demonstrating causation in U.S. anti-dumping investigations are thoroughly explored. The paper highlights that the process of linking dumped imports to adverse effects on domestic industries is fraught with difficulties, often leading to contentious debates. Le Lan discusses how U.S. anti-dumping regulations mandate a rigorous causal analysis to justify the imposition of trade remedies. This emphasis on a well-documented causal relationship aims to balance the protection of domestic industries with adherence to fair trade principles, addressing both legal requirements and practical challenges in the application of anti-dumping measures.

The Advocate General has tried to make the point that withdrawal or reduction of AD duty does not have any impact on the Union's industry unless it entered in the EU market, and the impact of approval of GSP status is on dumped imports itself instead of the Union's market. But it is submitted that another perspective is if the EU does not lift the previous protective measure imposed on Pakistan. And if the EU Council had not given GSP status to Pakistan, there would neither be any dumped imports nor any injury caused to the Union industry. Pakistani exporters should not be penalised for the actions and decisions taken by the European Union. They should also not be penalised for the policy shift of EU towards Pakistan.

Moreover, the Advocate General has also overlooked the fact that before the grant of preferential tariff arrangement to Pakistan and the lifting of previous AD duties on Pakistani textile products, there was no complaint of injury caused to the Union industry. The applicant launched its application after the EU's policy shift regarding application if its protective measures on Pakistan. The magnitude of textile imports from Pakistan rapidly increased after grant of preferential access to Pakistan (Frederick, Daly, & Center, 2019). It is further submitted that supposedly the export price of Pakistani bed linen was £100/bundle before the lifting of previous AD duty, as Pakistani exporters were paying £15/bundle as a dumping duty. Therefore, as the previous AD lifted they started to export the same product at £85/bundle. Thus they were able to offer a cheaper and competitive price in EU market due to the relaxation and benefit given by the EU Council by its majority vote.

The researcher contends that if EU institutions do not change their AD policy regarding Pakistan with specific reference to import of bed linen, then Pakistani exporters will have to sell at their previous rate of £100/bundle instead of the new rate of £85/bundle due to the special tariff arrangement from the EU. Moreover, imposition of AD duty was the decision of the EU Commission and EU Council. Similarly, withdrawal of those duties with special market access arrangements was also the decision of EU institutions. EU institutions approved the GSP status knowing that it would make it possible for Pakistani exporters to sell their products at lower prices and thus may result in the form of injury to the Union industry.

This analyses corroborates with Patrick (2015), 'but for' test theory. This theory advocates that, while assessing the substantiality and seriousness of injury caused to the local industry, the investigators should try to find out the root cause of the injury. He submitted that, in some cases, dumped imports are the root cause of the injury but mathematically and technically it could not be considered as substantial. 'But for' test does not look for a genuine and substantial link; instead, it makes investigative authorities to explore the other causes of injury caused to the local industry, in the absence of increased dumped imports.

The paper by Ngobeni (2021), critically assesses how South Africa's anti-dumping legislation addresses the causal relationship between dumped imports and the damage inflicted on domestic industries. It underscores the importance of proving that the injury sustained by local industries directly results from unfair trade practices, as stipulated by the WTO Anti-Dumping Agreement (Müller, 2017). Ngobeni (2021), discusses how the South African legal system's approach to causation must be rigorous and transparent to meet international compliance, thus safeguarding against arbitrary or unjustified trade measures. This alignment with WTO standards is crucial for maintaining fair trade practices and ensuring that anti-dumping measures are effectively applied (Bael et al., 2011).

Tayal explains his theory with the help of following hypothesis. Supposedly, local market of country A is suffered by 2% due to the increased dumped imports from country Y.

The local industry of country Y revolted against tis upsurge, which led to the political instability which led to further decline of the local industry by 10% (Sapir, 2015). Mathematically, the injury caused by the dumped imports cannot be considered as substantial within the meaning of Article 3.5 of the WTO Agreement but as a matter of fact it is the root cause of further 10% injury caused to the local industry (Prost & Berthelot, 2008). In such situation it is imperative to allow the country to put safeguard measures in order to protect its local industry from further deterioration. However, within the meaning of current causation analysis requirement, the local investigative authorities could not do anything to save their local industry (Shin & Ahn, 2019).

Although, his analyses are in support of far reaching and open-ended definition of injury caused by dumped imports but it gives a very helpful starting point about understanding the root cause of the injury. Based upon the same principle; the EU institutions should have investigated the root cause of the injury caused to the Union industry i.e. grant of preferential tariff arrangements to Pakistan and lapse of previously imposed ADD on Pakistan which led to the increased import of textiles from Pakistan.

Moreover, the researcher disagrees with the Advocate General's assertion that the analysis remains unchanged even if there is a dramatic decrease in transportation costs or the removal of a previously imposed levy. It is submitted that two aforementioned factors are not comparable, as reduction in shipping cost has a different origin and different significance. Unlike of the removal of previously applied duty and approval of preferential access, it is not sanctioned by the EU institutions. Neither has it represented the EU's AD policy for Pakistan.

However, GSP status approved with the majority vote of the Council has an altogether different impact on mutual trade of EU and Pakistan. Similarly, unlike removal of previous AD duty, it does not convey a message to the Pakistani government and Pakistani exporters that you will be facilitated by preferential access arrangements and your export of cotton-type bed linen is welcomed in EU.

As for the Advocate General's opinion that legislative amendments are not a separate independent factor and its impact is on dumped imports instead of the EU's market, it could be argued that it is a separate and independent factor indeed, as to unfairly dump on the Union's market is the decision and action of foreign exporters, but to safeguard or allow foreign dumped imports in larger Community interest or to grant preferential arrangements to foreign exporters is the decision of the EU's institutions. They are not the same; instead they are altogether separate and independent factors being controlled by different authorities (Leys, 2014). Moreover, if it is admitted that the impact of approval of GSP status is on dumped imports themselves, then it means that the EU institutions facilitated foreign exporters to dump on their market.

5. Conclusion

This paper has evaluated the judgements of the General Court and the EU Court of Justice in (C-638/11, 2013). It is concluded that, generality of Article 3(7) of basic regulation, and absence of exhaustive list of 'other known factors' in the said Article, led to the inconsistent interpretations, as drawn by the both courts. However, the interpretation of the Article 3(7), as drawn by the application of the 'Mischief Rule' of interpretation reveals that, the institutions must segregate the injurious effect of all other known factors from the injury caused by the dumped imports.

The institutions however, should not stick to the list of 'other known factors' provided in the Article 3(7), as this list is exemplary instead of being conclusive. However, they should evaluate the injurious impact of all possible other factors, as these factors may vary depending upon the changing circumstances of each case; same was established by the General Court. On the other hand, the verdict of the EU Court of Justice, claiming that, legislative amendments could not be considered as 'other known factor' within the meaning of the Article 3(7) has been challenged (in this paper) within the context of other case laws.

It was found that the General Court and the EU Court of Justice interpreted Article 3(7) of the basic regulation differently. The General Court held that grant of GSP status to

Pakistan and removal of previous AD duty were the other known factors within the meaning of Article 3(7). Thus, the EU Commission must separate the injury caused due to the other known factors (in this case grant of GSP status) from injury being caused due to dumped imports from Pakistan. The Court further established that the list of other known factors provided in Article 3(7) is suggestive and explanatory thus should be used for guidance purpose only.

However, the EU Court of Justice established that legislative amendments or grant of GSP status cannot be considered other known factor having any direct link with the conduct of the Union industry. The EU institutions are, however, required to analyse only those other known factors having a direct effect on the conduct of the Union market. In this case, however, the effect of legislative amendment and grant of GSP status should be considered on the dumped imports themselves. However, the researcher found that within the meaning of Article 3(7) of the basic regulation, the legislative amendments is a separate known factor which was directly affecting the Union market; hence EU institutions were expected to conduct non-attribution analysis in this regard.

As both grant of GSP status to Pakistan and withdrawal of previously imposed AD duty on Pakistan originated from EU institutions, therefore it could not be argued that it could not affect the conduct of the Union market. Instead, the consequences of preferential tariff access to Pakistan were already known by the EU Commission, that it will significantly help to increase trade flow from Pakistan. However, concluding it could be argued that the generality and vague scope of Article 3(7) leads to the multiple interpretations drawn by the institutions. Thus it is recommended that it should provide a comprehensive list of other known factors which need to be considered during causal link analysis.

Authors Contribution:
Muhammad Bilal: Conceived and designed the analysis; Collected the legal cases and other necessary data; Performed the analysis; Wrote the paper.

Conflict of Interests/Disclosures
The authors declared no potential conflicts of interest w.r.t the research, authorship and/or publication of this article.

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