

Anti-Dumping Agreement: Overview I

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Anti-dumping action: Legal basis

- Specific action against dumping is required to be taken in accordance with Article VI of GATT 1994 and the Anti-Dumping Agreement

GATT, Article VI

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country ***at less than the normal value of the*** products, is *to be condemned 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. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another
- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
 - (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

Anti-dumping Agreement:

Essential Features

- | Deals with the price behaviour of exporters and not the exporting country as a whole
- | Dumping exists when Export Price is less than the Normal Value
- | Injury to domestic industry & Causal link are required to be proved
- | Can have separate anti-dumping duty for each exporter

What is dumping

- If the export price of the product from the country of export is less than its normal value in the ordinary course of trade
- Dumping *per se* is not objectionable
- Injurious dumping has been condemned
- Dumping Margin = $(\text{Normal Value} - \text{Export Price}) / \text{Export Price}$

Initiation of investigation

- Objective- to determine the existence, degree and effect of alleged dumping
- Usually initiated at the written request by or on behalf of the domestic industry
- Application can be made by associations
- In special circumstances suo moto initiation possible without written request from domestic industry
- If there is insufficient prima facie evidence that injurious dumping has taken place, application rejected, otherwise investigation initiated against the specified product

Initiation- obligations on investigating authority I

- Standing requirement – Article 5.4
 - 25 % test and 50% test
 - Those supporting the petition must account for at least 25% of the total domestic production of the product concerned
 - Those supporting the petition must account for at least 50 % of the production in respect of those expressing an opinion on the petition
- Suo moto initiation also possible.

Initiation- obligations on investigating authority II

Examine accuracy and adequacy of evidence to determine whether there is **sufficient** evidence to justify initiation

- Sufficiency standard has not been defined
- Findings of panel in *Softwood Lumber* dispute – “*Quantum and quality of evidence to be required ...prior to initiation ... would necessarily have to be less than that required at the time of making final determination*”

Initiation- obligations on domestic industry

- To meet standing requirement (Art 5.4)
- To present sufficient evidence in the application on dumping injury and causal link – mere assertion, conjecture or allegation not adequate (Art 5.2)

Petition Proforma – Domestic Industry

- Description of product under consideration (PUC)
- Details of the imports of PUC
- Details of the exporters and importers of the product
- Indian industry profile
- Evidence of dumping
- Evidence of injury
 - Changes in market share
 - Decline in production of petitioners
 - Decline in capacity utilization
 - Evidence of price erosion, price under cutting
 - Details of profitability

Initiation of investigation

- Notify the exporting country before initiation (Art 5.5)
- **Provide** full text of the written application to the **known exporters** and to the authorities of the exporting Member *as soon as the investigation has been initiated (Art 6.1.3)*
- Upon request, the text of the application must be **made available** to other interested parties (*Art 6.1.3*)
- Questionnaires sent to exporters, importers, domestic industry and other interested parties. Exporters or foreign producers must be given at least 30 days to reply (*Art 6.1.1*)
- NCV of submissions to be made available to interested parties (*Art 6.5*)

Questionnaire response- exporters

- Domestic sales and its price structure
- Customer-wise export sales to India
- Sales price structure for exports to India
- Sales price structure for exports to other countries
- Statement of raw material consumption
- Allocation and apportionment of expenditure
- Statement of cost of production

Rights of interested parties

- Throughout the investigation all interested parties shall have a full opportunity for the defence of their interests
- NCV of written submissions to be made available
- Entitled to be heard
- Entitled to have access to public file
- May submit comments

Data Analysis by IA

- Exporters' data analysed to determine whether dumping exists
 - Determining export price
 - Determining normal value
- Domestic industry data analysed to determine whether injury caused due to dumping

Dumping Margin Calculation

□ Dumping Margin = (Adjusted Normal Value – Adjusted Export Price)/Ad. Export Price X 100

Normal Value	Export Price
<ul style="list-style-type: none"> - Home Market Price - Constructed Normal Value <div style="margin-left: 20px;">Production Cost + Administrative Cost + Profit (-Loss)</div> <div style="margin-left: 40px;">or</div> - Export price to third country 	<ul style="list-style-type: none"> - Export prices to an unaffiliated importer - Constructed Export Price <div style="margin-left: 20px;">Price to the first unaffiliated customer</div> <div style="margin-left: 40px;">or</div> - Price determined on a reasonable basis by investigating authority

□ Price Adjustments (to obtain “ex-factory prices”)

Determination of export price

- Generally on the basis of books of the exporter.
- If export price unreliable because of association or compensatory arrangement between exporter and importer then resort to constructed export price at which imported products are first resold to an independent buyer.
- Any other reasonable basis.

Determination of normal value

- Generally the comparable sale price of the like product in the exporting country **in ordinary course of trade**.
- Domestic sales may be rejected if
 - Inadequate **quantity** of domestic sales (5% test – Fn 2); or
 - No OCT sales; or
 - Particular market situation
- Then resort to constructed normal value or comparable price when exported to appropriate third country.

Removing below cost sales: 80:20 test

❑ Sales below per unit production costs are excluded from normal value calculation if sales meet 3 conditions:

- * Made in substantial quantities (vol of below cost sales > 20% of vol. of all domestic sales)
- * Made within an extended period (> 6 months)
- * At prices not providing for recovery of costs within a reasonable period (SP of a below cost sale < weighted average per unit cost of all sales)

Constructed normal value

- Based on exporter's cost of production in the country of origin plus actual amount for administrative, selling and general costs and profits for the like product (Art 2.2.2) – may be restricted to OCT data
- Else actual amounts incurred and realised by the exporter in respect of production and domestic sales of same general category of products- cannot reject loss-making sales (Art 2.2.2(i))
- Else weighted average of actual amounts incurred and realised by other exporters in respect of production and sales of like product in domestic market- products- cannot reject loss-making sales (Art 2.2.2(ii))

Comparison of export price and normal value (Art 2.4)

□ Fair comparison must be made

- ❖ At the same level of trade- downstream sales involve additional functions
- ❖ In respect of sales made at nearly as possible the same time

□ Due allowance to be made for differences which affect price comparability

- ❖ Terms & conditions of sale
- ❖ Taxation
- ❖ Level of trade
- ❖ Physical characteristics
- ❖ Other differences demonstrated to affect price comparability

Adjustments: Illustrations

- Ex- factory price for NV = Gross selling price – (freight and insurance + selling expenses + discounts and rebates + taxes not borne by exports + credit expenses)
- Ex-factory Export price = Gross export price – (freight and insurance + selling expenses + discounts and rebates + credit expenses) + export subsidies
- Some adjustments can be made on either NV or EP

De minimis provisions

- Anti-dumping investigations to be terminated if
 - ❖ Dumping margin is less than 2% or
 - ❖ Volume of dumped imports from particular country is less than 3% subject to 7% cumulation.

Injury determination

- Effect of the dumped imports on prices in the domestic market for the like product
 - **Price under-cutting**
 - **Price depression**
 - **Prevent price increases**
- Consequent impact of the dumped imports on domestic producers of such products
 - Evaluation of 15 factors

Injury factors to be considered

- 15 factors have been specified
- All these factors to be evaluated including
 - Having a bearing on state of industry- actual and potential decline in sales, profits, output, market share, productivity, ROI etc
 - Affecting domestic prices
 - Magnitude of margin of dumping
 - Actual and potential negative effects on cash flows, stock, employment, wages etc.

Causal link between dumping and injury

- Dumped imports are causing injury
- The causal link to be demonstrated
- Any injury caused by **known** factors other than dumping must not be attributed to dumped imports
- Relevant factors:
 - Contraction in demand
 - Developments in technology
 - Export performance

Provisional Measures

- Applied if preliminary affirmative determination has been made of dumping and consequent causal injury to a domestic industry
- Necessary to prevent injury being caused during investigations
- Not applied sooner than 60 days after initiation of investigation
- Publication of a notice required

Price undertakings

- Proceedings may be suspended or terminated without imposition of provisional measures or anti-dumping duties
- Exporter has to give voluntary undertaking to revise its prices or to cease exports at dumped prices.
- Authorities must be satisfied that injurious effect of the dumping is eliminated.

Verification visits

- On-the-spot verification of exporters and domestic industry normally undertaken
- Objective is to verify the information submitted or to obtain further details
- Explicit agreement of the firms in exporting country needed prior to verification visit
- Prior to visit firm should be informed of the general nature of information to be verified and any further information to be provided

Disclosure

- Before a final determination is made the investigating authority is required to inform all the interested parties of the essential facts under consideration which the basis of the final decision
- Interested parties must be given sufficient time to defend their interests
- Analysis of comments by interested parties necessary

Imposition and collection of anti-dumping duties

- Anti-dumping duties to be imposed shall be to the full margin of dumping or less if it is adequate to remove injury.
- Duties imposed and collected on non-discriminatory basis on such product from all sources found to be dumped and causing injury (exception undertaking)
- Duty levied mainly on prospective basis

Public Notice and Explanation

- All relevant information which have led to imposition of the measure
 - on matters of fact and law
 - reasons
- Reasons for acceptance/ rejection of relevant arguments
- Basis for decisions

Duration and Review of measures

- Duty in force only as long as necessary to counteract dumping causing injury
- Review after a reasonable period of time
- Duties to terminate before 5 years unless in the sunset review a conclusion that expiry of duty would lead to continuation or recurrence of dumping and injury

Misuse/ abuse of anti-dumping duty: Remedies available

- Requirement of a mechanism for judicial review of final anti-dumping duty in the importing country
- Possibility of raising a dispute under WTO's Dispute Settlement Mechanism

Different systems of duty assessment

- Prospective system: easier to administer
- Retrospective system: more effective in addressing dumping

WTO Committee on A D practices

- Meets twice a year
- All preliminary and final action to be notified to the committee
- Members to submit six monthly reports on anti dumping action

Thank you