

FAQ

Frequently
Asked
Questions

Agreement on **Anti Dumping**



Centre for WTO Studies
Indian Institute of Foreign Trade

Foreword



The General Agreement on Tariffs and Trade lays down the principles to be followed by the member countries for imposition of anti-dumping duties, countervailing duties and safeguard measures. Detailed guidelines and disciplines have been prescribed under the specific WTO agreements which have also been incorporated in the national legislation of the member countries of the WTO.

It is well known that while temporary gains may accrue to consumers, dumping can harm the domestic industry by reducing its sales volume, , market shares and revenues. This in turn can result in decline in profitability, job losses and, in the worst case, the domestic industry going out of business. It is said to occur when the goods are exported by a country to another country at a price lower than its normal value. Evidently, there is a need for effective trade-defence measure to counter such threats to domestic industry. Hence, the need for Anti-dumping measures.

This volume of FAQs on Anti-dumping gives a bird's eye view of the various provisions of the subject matter of Anti-dumping in order to introduce the subject to readers in a simplified and easy to understand manner. I hope readers will find this publication useful. Views and comments of readers are welcome and may be sent at editor_wtocentre@iift.ac.in.

A handwritten signature in black ink, appearing to read 'K. T. Chacko'.

New Delhi
Dated: 6.06.2011

K. T. Chacko
Director, IIFT

Acknowledgements

Shri Mukesh Bhatnagar, Additional DGFT, Trade Policy Division, Department of Commerce, has prepared the FAQ with inputs from the officers of the Directorate General of Anti Dumping and Allied Duties (DGAD) in the Department of Commerce.

Shri Shashank Priya, Professor, Centre for WTO Studies, coordinated the preparation and publication of this FAQ.

Shri Abhijit Das, Professor & Head, Centre for WTO Studies, gave valuable suggestions to improve the contents and design of FAQ.

I. Anti dumping – Meaning and Concept

Q1. What is anti dumping duty? What is its purpose in international trade?

A1. Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value and this causes injury to domestic industry. This is an unfair trade practice which can have a distortive effect on international trade as it keeps competitors out of a particular market. Anti dumping measures rectify the situation arising out of the dumping of goods and its trade distortive effect. The use of anti dumping measure as an instrument of fair competition is permitted by the WTO. Anti dumping duty is recognised as an instrument for ensuring fair trade and is not a measure of protection *per se* for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping.

Q2. Does dumping mean cheap or low priced imports?

A2. Often, dumping is mistaken and simplified to mean cheap or low priced imports. However, it is a misunderstanding of the term. Dumping, in its legal sense, means export of goods by a country to another country at a price lower than its normal value. Thus, dumping implies low priced imports only in the relative sense (relative to the normal value), and not in absolute sense. In simple parlance, the normal value is the selling price of the product in the exporting country.

Import of undervalued products to evade customs duty or through illegal trade channels like smuggling does not fall within the purview of anti-dumping measures.

Q3. What is the difference between anti dumping duty and Normal Customs duty? Is the anti dumping duty over and above the Normal Customs duty chargeable on the import of an item?

A3. Although anti dumping duty is levied and collected by the Customs Authorities, it is entirely different from the Customs duties not only in concept and substance, but also in purpose and operation. The following are the main differences between the two: -

- Conceptually, anti dumping and the like measures in their essence are linked to the notion of fair trade. The object of these duties is to guard against the situation arising out of unfair trade practices while customs duties are levied as a means of raising revenue and for overall development of the economy.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti dumping measures are trade remedial measures.
- The object of anti dumping is to offset the injurious effect of international price discrimination while customs duties have implications for the government revenue and for overall development of the economy.
- Anti dumping duties are not necessarily in the nature of a tax measure inasmuch as the Authority is empowered to suspend these duties in case of an exporter offering a price undertaking. Thus such measures are not always in the form of duties/tax.
- Anti dumping duties are levied against exporter / country inasmuch as they are country specific and exporter specific as against the customs duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.

The anti dumping duty is levied over and above the normal customs duty chargeable on the import of goods in question.

II. WTO Agreement and legal framework in India for Anti dumping investigations

Q4. Is there a WTO Agreement on anti dumping?

A4. There is a WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 which is commonly known as the Anti dumping Agreement.

Q5. What is the legal framework for Anti dumping measures in India?

A5. Sections 9A, 9B and 9C of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties in India.

III. Institutional arrangement for anti dumping measures in India

Q6.What is the institutional arrangement in India for anti dumping measures against unfair trade practices?

A6. Anti dumping (as also anti subsidies & countervailing measures) in India are administered by the Directorate General of Anti dumping and Allied Duties (DGAD)

functioning in the Department of Commerce in the Ministry of Commerce and Industry and the same is headed by the “Designated Authority”. The Designated Authority’s function, however, is only to conduct the anti dumping/anti subsidy and countervailing duty investigation and make recommendation to the Government for imposition of anti dumping or anti subsidy measures. Such duty is finally imposed/ levied by a Notification of the Ministry of Finance. Thus, while the Directorate General of Anti dumping and Allied Duties (DGAD) recommend the Anti-dumping duty, it is the Ministry of Finance, which levies such duty.

IV. Some important concepts and practices of Anti dumping Agreement

Q7. What are the parameters used to assess dumping of goods from a country?

A7. Dumping means export of goods by one country / territory to the market of another country / territory at a price lower than the normal value. If the export price is lower than the normal value, it constitutes dumping. Thus, there are two fundamental parameters used for determination of dumping, namely, the normal value and the export price. Both these elements have to be compared at the same level of trade, generally at ex-factory level, for assessment of dumping.

Q8. How are the following terms defined?

- Normal Value
- Export price and
- Dumping margin

A8. Normal Value: Normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country.

If the normal value can not be determined by means of the domestic sales, the following two alternative methods may be employed to determine the normal value: -

- Comparable representative export price to an appropriate third country.
- Constructed normal value, i.e. the cost of production in the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.

Export price: The Export price of the allegedly dumped goods means the price at which it is exported to the complaining country. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level.

Dumping Margin: The margin of dumping is the difference between the Normal value and the export price of the goods under complaint. It is generally expressed as a percentage of the export price.

Illustration: Normal value US\$ 110 per kg.

Export price US\$ 100 per kg.

There is dumping in this case as export price is lower than normal value and dumping margin in this case is US\$ 10 per kg., i.e. 10% of the export price.

Dumping is a function of two variables, namely Normal Value and Export Price, which must be compared at the same level of trade, normally at the ex-factory level.

NORMAL VALUE

- Comparable price of the like article at the same level of trade in the domestic market of the exporting country
- In the ordinary course of trade

WHAT IS DUMPING?

Difference between Normal Value and Export Price is known as 'Margin of dumping'

Q9. What is understood by the term 'domestic industry'?

A9. The term "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article. The producers who are related to the exporters or importers of the alleged dumped article or are themselves importers thereof are excluded from the purview of 'domestic industry' in certain situations.

Q10. What is the meaning of the term 'like product'?

A10. Like product means a product which is identical i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Q11. What are the methods of calculating dumping margin?

A11. The dumping margin is normally to be established :

- a) on the basis of comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions, or

-
- b) by comparison of normal value and export prices on a transaction-to-transaction basis.

A normal value established on a weighted average basis may be compared to the prices of the individual export transactions if it is found that the patterns of export prices differ significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted average-to-weighted average or transaction-to-transaction comparison.

Q12. Under what circumstances can domestic sales in the market of the exporting country be disregarded for determining normal value?

A12. In case the sales of the like product in the domestic market of the exporting country is less than 5% of the quantity of the export sale of the product under consideration to the importing country, such domestic sales in the market of the exporting country can be disregarded for determining normal value on account of being not sufficient in quantity for a proper comparison.

Q13. Under what circumstances can sales of the like product in the domestic market of the exporting country may be treated as not being in the ordinary course of trade by reason of price and disregarded in determining normal value?

A13. When the weighted average selling price of the transactions under consideration for determination of the normal value is below the weighted average per unit costs, or the volume of sales below per unit costs are 20% or more of the volume sold in transactions under

consideration, then such loss making transactions have to be disregarded for determining normal value.

Q14. What is the method of calculation of dumping margin when goods are exported from an intermediate country, i.e. from a country other than the country of manufacture?

A14. Normally the export price of the product from the country of export is to be compared with the comparable domestic price of the product in the country of export for arriving at the dumping margin. However if the product is not produced in the country of export, then comparison of export price may be made with the price in the country of origin.

Q.15. What is meant by zeroing?

A15. While making comparison of normal value and export price either on a weighted average basis or on a transaction-to-transaction basis, some comparisons at intermediate stage may result in negative dumping margin i.e. where export price is more than the normal value. In the final calculation of dumping margin if such negative dumping margins are not taken into account, such practice is called zeroing.

Q16. How is dumping margin determined from exports from countries which are characterised as Non-Market Economy?

A16. The term 'non-market economy' country means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph

(3) of paragraph 8 of Annexure I of the Anti dumping Rules of India.

Paragraph 7 and 8 of Annexure I of Anti dumping Rules of India lays down the procedure for determination of normal value in case of imports from non-market economy countries.

Q17. What are the types of injury to the domestic industry in an Anti dumping investigation?

A17. The WTO Agreement on implementation of Article VI of GATT (Anti dumping Agreement) lays down that injury can be material injury to a domestic industry, threat of material injury or material retardation of the establishment of such an industry.

Q18. What are the parameters of material injury to the domestic industry?

A18. Broadly, injury may be analysed in terms of the volume effect and price effect of the dumped imports.
The volume effect of dumping relates to the market share of the domestic industry vis-à-vis the dumped imports from the subject country/ies while with regard to the price effect, the Designated Authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of the like product in the domestic market, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

INJURY EVALUATION OF ECONOMIC INDICATORS

ACTUAL/POTENTIAL DECLINE IN

Sales
Output
Profits
Market share
Productivity
Return on Investment
Capacity Utilization

Factors affecting domestic prices;
Employment
Inventory/Stocks
Wages, effects on cash flow, growth
Ability to raise capital or investment etc.

The parameters by which injury to the domestic industry is to be assessed in the anti dumping proceedings are such economic indicators having a bearing upon the state of industry as the magnitude of dumping, and the decline in sales, selling price, profits, market share, production, utilisation of capacity etc.

Q19. On what basis is threat of material injury established?

A19. A determination of a threat of material injury has to be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority has to consider, *inter alia*, such factors as:

- (a) a significant rate of increase of dumped imports into domestic market indicating the likelihood of substantially increased importation;

-
- (b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to domestic markets, taking into account the availability of other export markets to absorb any additional exports;
 - (c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
 - (d) inventories of the article being investigated.

Q20. How is causal link established between dumping and injury to the domestic industry?

A20. In the anti dumping proceedings, it is imperative to prove that the dumping has caused injury to the domestic industry. No anti dumping duty shall be recommended without a finding of this causal relationship. That is to say, dumping should lead to Injury

The causal link is to be established in terms of the volume and price effects of dumped imports ; and the effect of the dumped imports on the relevant economic factors and indices having a bearing on the state of the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Designated Authority. The Authority is also required to examine any known factors other than the dumped imports which may be injuring the domestic industry at the same time. The injury caused by other known factors

must not be attributed to the dumped imports. Some illustrative 'other factors' are:

- (i) Volume and price of undumped imported goods;
- (ii) Contraction in demand or changes in the patterns of consumption;
- (iii) Trade- restrictive practices of and competition between the foreign and domestic producers;
- (iv) Developments in technology; and
- (v) The export performance and productivity of the domestic industry.

Q21. In case anti dumping duty is warranted after the investigation, what is the extent of such duty to be recommended/imposed?

A21. The WTO Agreement allows the National Authorities to impose duties upto the margin of dumping i.e. the difference between the normal value and the export price. However, the Agreement also provides that the Authorities can impose anti-dumping duty that is less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry. The Indian law also provides that the anti dumping duty to be recommended/levied shall not exceed the dumping margin.

Q22 What is Lesser Duty? Does India practice Lesser Duty Rule?

A22. The WTO Anti dumping Agreement provides that it is desirable that the Authorities may impose anti dumping duty less than the full dumping margin if such lesser duty would be adequate to remove the injury to the

domestic industry. The Authorities compare the dumping margin and injury margin and where the injury margin is lesser than the dumping margin, then a duty equal to injury margin is imposed. India practices Lesser Duty Rule.

Q23. What is the Non-injurious Price and injury margin? How these are worked out?

A23. Non-Injurious Price (NIP) is that level of price, which the industry is expected to have charged under normal circumstances in the Indian market during the Period defined. This price would have enabled reasonable recovery of cost of production and profit. Besides the calculation of the margin of dumping, the Designated Authority also calculates the Injury Margin for the Domestic Industry. The Injury Margin is the difference between the Non-Injurious Price due to the Domestic Industry and the Landed Value of the dumped imports.

Landed Value for this purpose is taken as the assessable value under the Customs Act and the applicable basic Customs duties but excluding Additional customs duty, Special Additional Duty and special duties.

For calculating Non-Injurious Price, the Authority calls for costing information from the domestic industry in the prescribed proforma for the period of investigation and for three previous years. Accounting records maintained on the basis of Generally Accepted Accounting Principle (GAAP) form the basis for estimating Non-Injurious Price. In the estimation of Non-Injurious Price for the Domestic Industry, the Authority makes appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption etc. and the actual expenses during the Period of Investigation including

the investments, the capacity utilisation etc. The Non-Injurious Price for Domestic Industry is determined considering the reasonable return on the capital employed.

INJURY MARGIN

- Difference between the Non-Injurious Price and the Landed Value of imports
- Landed Value is:
 - Assessable Value under Customs Act plus
 - Basic Customs Duty

Q24. What is the minimum level of imports (de-minimis margins) from a country and from an individual exporter below which such exporter or country is to be excluded from the scope of Anti Dumping investigation/duties?

A24. *Individual exporter:* Any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of anti-dumping duties even if the existence of dumping, injury as well as the causal link is established.

Country: Investigation against any country is required to be terminated if the volume of the dumped imports, actual or potential, from a particular country accounts for less than 3% of the total imports of the like product.

However, in such a case, the cumulative imports of the like product from all those countries who individually account for less than 3%, should not exceed 7% of the import of the like product.

Q25. What is the relief/remedy to the Domestic Industry under the Anti Dumping mechanism. Is it always in the form of Anti-dumping duty?

A25. The relief to the domestic industry against dumping of goods from a particular country is in the form of anti dumping duty imposed against that country/ies, which could go upto the dumping margin. Such duties are exporter specific and country specific. However, the remedy against dumping is not always in the form of anti dumping duty. The Authority may terminate or suspend investigation after the preliminary findings if the exporter concerned furnishes an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No anti dumping duty is imposed on such exporters from whom a minimum price undertaking that eliminates injury has been accepted.

V. Anti - Dumping Investigation Procedure in India

Q26. What are the essential requisites for initiating an anti dumping investigation?

A26. The following are essential for initiating an anti dumping investigation:

- Sufficient evidence to the effect that ;
 - there is dumping;
 - there is injury to the domestic industry; and
 - there is a causal link between the dumping and the injury, that is to say, that the dumped imports have caused the alleged injury.

-
- a. The domestic producers expressly supporting the anti dumping application must account for not less than 25% of the total production of the like article by the domestic industry.
 - b. In addition, the application would be considered to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.

Q27. Who can make an application for initiation of Anti Dumping investigation and imposition of AD duty?

A27. Applications can be made by or on behalf of the concerned domestic industry to the Designated Authority in the Department of Commerce for an investigation into alleged dumping of a product into India. Under the Rules a valid application can be made only by those petitioners/domestic producers who expressly support the application, and account for more than 25% of total domestic production of the like article in question.

The application is deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.

However, such domestic producers may be excluded who are related to the exporters or importers of the

alleged dumped article or are themselves importers thereof. In other words, a domestic producer who is related to the exporter or importer of the dumped article or is himself an importer thereof, may not be treated as part of the domestic industry.

Q28. Can the Designated Authority initiate Anti Dumping investigation *suo moto*, i.e. on its own, without a petition being filed by the domestic industry?

A28. Normally, the Designated Authority initiates the proceedings for anti dumping action on the basis of a petition received from the domestic industry alleging dumping of certain goods and the injury caused to it by such dumping. However, Rule 5(4) of the Anti Dumping Rules provides for *suo moto* initiation of anti dumping proceedings by the Designated Authority on the basis of information received from the Commissioner of Customs or from any other source. In such circumstances, the Authority initiates the anti dumping investigation on its own without any complaint/petition filed in this regard, provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury. It is further clarified that after initiation, the *suo moto* investigation follows the same procedure as the one based on a petition as mentioned in the Anti Dumping Rules.

Q29. What is the information required to be submitted by the Domestic Industry for Anti Dumping proceedings?

A29. An application for investigation into any alleged dumping filed by the aggrieved domestic industry must contain sufficient evidence as to the existence of dumping in relation to the goods imported from the

subject country/ies and the fact that such dumped imports are causing or threatening to cause material injury to the Indian Industry producing the like goods or are materially retarding the establishment of an industry. Further, the information relating to the standing of the petitioner/s as domestic industry (Please see the answer to Q. 26) must be contained in the anti dumping application. The application containing the requisite information for the proceedings must be made in the prescribed format devised by the Directorate General of Anti Dumping and Allied Duties and available in the said Directorate. Guidelines for filling in the application proforma and for completing the prescribed questionnaire are formulated and incorporated in a user-friendly manner in the application proforma itself.

Q30. What is the period to which the information will relate; that is to say what is Period of Investigation in anti-dumping cases?

A30. All the information and evidence furnished in the application in relation to dumping, injury and causal link must pertain to a definite period which is called the Period of Investigation. Broadly, there are indications that such period should not be, in any case, less than six months and not more than eighteen months. It is, however, important that the period taken into consideration for detailed investigation into dumping and injury should be as representative and as recent as possible. The most desirable period of investigation is a financial year provided there is reasonable proximity between the end of the financial year and the filing of the application.

However, for the purposes of injury analysis, the domestic industry has to furnish the relevant data for the past three years.

Q31. What are the various stages of the investigation process?

A31. An application received by the Designated Authority is dealt with in the following manner:

A. Preliminary Screening:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. If the evidence is not adequate, then a deficiency letter is issued. Unless the deficiencies are rectified, the submission made before the Authority can not be construed as an application pending before the Authority.

B. Initiation:

Designated Authority determines that the application has been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the evidence provided in the application and when satisfied that there is sufficient evidence regarding dumping, injury and causal link, a public notice is issued initiating an investigation.

The Initiation notice will be issued normally within 7 days from the date of receipt of a properly documented application.

C. Access to Information:

The Authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection

to all interested parties on request after receipt of the responses.

D. Preliminary Findings:

The Designated Authority will proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, make a preliminary finding containing the detailed information on the main reasons behind the determination. The preliminary finding will normally be made within 60-70 days from the date of initiation.

E. Provisional Duty:

A provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the Designated Authority.

The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

F. Oral Evidence & Public Hearing:

Interested parties who participate in the investigations can request the Designated Authority for an opportunity to present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Authority may grant oral hearing anytime during the course of the investigation.

Besides the above, the Authority holds a public hearing inviting all interested parties to make their submissions before it. All oral submissions made during the hearing

need to be reproduced in writing for the Authority to take the same on board.

G. Disclosure of information:

Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final findings. However, the Designated Authority will inform all interested parties of the essential facts, which form the basis for its decision before the final finding is made.

H. Final Determination:

The interested parties submit their response to the disclosure and the final position of the Authority taken therein. The Authority examines these final submissions of the parties and comes out with final findings.

I. Time-limit for Investigation Process

Normal time allowed by the statute for conclusion of investigation and submission of final findings is one year from the date of initiation of the investigation. The above period may be extended by the Central Government by 6 months.

Q32. Who are the interested parties to an anti dumping investigation?

A32. The interested parties to an anti dumping investigation include:

- i. the domestic producers of the like product in the importing country or a trade or business association where a majority of its members are producers of the like product;

-
- ii. The exporters or the foreign producers of the product subject to investigation or their trade or business associations;
 - iii. The importers of the product under investigation;
 - iv. The Government of the exporting country/ countries.

In addition, industrial users of the product, though not strictly considered as interested parties, are provided opportunities for submitting information which is relevant to the investigation.

Q33. Who all can appear in Anti-dumping cases to represent the parties?

A33. Any representative duly authorised by the petitioner/ interested parties/ Association etc. can appear in the Anti-dumping cases to represent the concerned parties.

Q34. Are the interested parties to the investigation given sufficient opportunity to represent their case before the Authority?

A34. The anti dumping proceedings being quasi judicial in nature, the Designated Authority meticulously follows the norms of natural justice before making the final recommendation of duty.

- The interested parties to the investigation are given adequate opportunity to represent their case at several stages of investigation.
- The first opportunity is provided after the initiation of proceedings. The Authority duly considers the submissions of all interested parties in response to the initiation while giving its Preliminary findings.

-
- After the imposition of provisional duty, the interested parties file their responses to the Preliminary findings and opportunity is provided to them to submit the facts and figures to the Authority at the stage of verification of their information if the same has been already filed in response to the initiation.
 - A formal Public hearing is held providing opportunities to all interested parties to make their submissions before it. All oral submissions made during the hearing need to be reproduced in writing for the Authority to take the same on board.
 - All these submissions of the different interested parties are given due consideration and on that basis the Authority issues a disclosure of essential facts which are proposed to form the basis of final findings.
 - The parties to the investigation are also given the final opportunity to respond to the disclosure and represent their case before the final findings are notified.

Q35. Is all the information furnished to the Designated Authority made public?

A35. Any interested party who furnishes information, which it claims as business confidential, has to show good cause for claiming such information as confidential. Confidential information furnished to the Designated Authority is not disclosed to other interested parties. An interested party furnishing confidential information is required to furnish non-confidential summary of such information which should be in sufficient detail to

permit a reasonable understanding of the substance of the confidential information.

Q36. Can there be interim relief to the domestic industry pending levy of final anti dumping duty? In how many days such interim relief can be expected?

A36. Yes, the Designated Authority can recommend an interim relief which is provided to the affected domestic industry in the form of provisional anti dumping duty pending the finalisation of investigation proceedings. The provisional anti dumping duty is recommended by the Authority in its preliminary findings and the same is levied by the Ministry of Finance, Department of Revenue. This serves as immediate relief to the domestic industry against the injury caused to it by the dumping of goods. As per the legal provisions, the provisional anti dumping duty cannot be levied earlier than 60 days from the date of initiation of proceedings. The Designated Authority can recommend provisional duty immediately after the expiry of the mandatory period of 60 days.

Q37. Can the anti dumping duty be levied on a retrospective basis?

A37. Anti dumping duty can be levied on a retrospective basis in case it is found that –

- a. there is a history of dumping which caused injury or that the importer was, or should have been aware that the exporter practices dumping and that such dumping would cause injury; and
- b. the injury caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article

dumped and other circumstances is likely to seriously undermine the remedial effect of the anti dumping duty liable to be levied.

However, the anti dumping duty cannot be levied retrospectively beyond 90 days from the date of issue of Notification imposing provisional duty and also subject to condition that no retrospective duty can be imposed prior to the date of initiation of investigation.

Q38. What are the implications for the importers who are liable to pay anti-dumping duty? if

- a. the final duty is less than the provisional duty;
- b. the final duty is more than the provisional duty;

A38. Anti dumping duty can be recommended and levied at two stages, provisional and final. If the final duty levied is less than the provisional duty which has already been levied and collected, the differential amount already collected as provisional duty shall be refunded.

If the final duty imposed is more than the provisional duty already imposed and collected, the difference shall not be collected.

If the provisional duty is withdrawn based on the final findings of the Designated Authority, then the provisional duty already collected shall be refunded.

Q39. Can the Anti-Dumping investigation, once initiated, be terminated? If so, what are the circumstances?

A39. The Designated Authority may suspend or terminate the investigation in the following cases :

-
- i. if there is a request in writing from the domestic industry at whose instance the investigation was initiated.
 - ii. when there is no sufficient evidence of dumping or injury.
 - iii. if the margin of dumping is less than 2% of the export price.
 - iv. the volume of dumped imports from a country is less than 3% of the total imports of the like article into India or the volume of dumped imports collectively from all such countries is less than 7% of the total imports.
 - v. If injury is negligible.

Q40. What is the arrangement made to notify the recommendations of the Designated Authority?

- A40.**
- The Designated Authority notifies its recommendations with respect to Initiation / Preliminary Findings/Final Findings etc. through Government of India Gazette.
 - Press Information Bureau, Ministry of Commerce & Industry also issues a Press Release on the subject from time to time.
 - The Department of Commerce, Ministry of Commerce and Industry makes available the details of the anti-dumping investigations of the Designated Authority on its web-site <http://www.commerce.nic.in>
 - On receipt of recommendations from the Designated Authority, the Central Government (i.e. Ministry of

Finance, Department of Revenue) notifies the imposition of Anti-dumping Duties through Customs Notifications which are published in the official Gazette and also made available on the website of the Central Board of Excise and Customs : <http://cbec.gov.in>

VI. Judicial Review of Anti dumping orders

Q41. Is the order of determination of anti-dumping duty appealable? If so, which is the appellate Authority?

A41. The law provides that an order of determination of existence, degree and effect of dumping is appealable before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). However, as per the judicial view, only the final findings/order of the Designated Authority/Ministry of Finance can be appealed against before the CESTAT.

No appeal will lie against the Preliminary findings of the Authority and the provisional duty imposed on the basis thereof. The Appeal to the CESTAT should be filed within 90 days from the date of issue of the notification by the Central Government imposing anti dumping duty.

VII. Review of Anti dumping Measures

Q42. What is the period of validity of the Anti Dumping duty imposed? Can such duty, once imposed, be reviewed before and after the expiry of its full term?

A42. The anti dumping duty shall remain in force for a period

of five years from the date of imposition of duty. However, such duty can be reviewed by the Designated Authority anytime before the expiry of the said period.

- The Authority has the power to review the need for continuation of anti dumping duty. Such a review can be done on the basis of a request received from an interested party in view of the changed circumstances.
- The review may result in the withdrawal of the duty or in the variation of the duty level depending upon the new circumstances. Generally speaking, an interested party can file a request for review only after a year from the imposition of duty.
- The Designated Authority may also initiate a sunset review on its own initiative or based upon a duly substantiated request made by the domestic industry to determine whether the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.
- The sunset review is generally initiated in the fifth year of the anti dumping measure and the existing anti-dumping duty remains in force till the completion of the sunset review.

VIII. Other Miscellaneous issues

Q43. Are Anti Dumping measures injurious to the interests of the consumers?

A43. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of fair

competition in the Indian market, which is in the general interest of the country.

- The imposition of anti dumping duty might affect the price levels of the products manufactured using the subject goods. However, fair competition in the Indian market will not be reduced by the anti dumping measures.
- On the contrary, imposition of anti dumping duty would remove the unfair advantage gained by the overseas exporters through their dumping practices, would prevent the decline of the domestic industry and would create conditions for fair trade.
- The imposition of anti dumping measures would not restrict imports from the subject country in any way and therefore, would not hinder the consumers' access to the imported goods.

Q44. Does the levy of Anti Dumping duty on a particular product extend to all imports of that product? Which imports are exempt from such duty?

A44. The levy of anti dumping duty is both exporter specific and country specific.

- It extends to the imports from only those countries in respect of which dumping has been alleged and the complaint have been filed and duty recommended. Different exporters from the named country may face different amounts of anti-dumping duty depending on the margin of dumping.
- Such duty will not apply to the imports from other countries in respect of which the domestic industry has not alleged dumping.

-
- However, the anti dumping duty is not payable on imports against the Advance Authorization scheme or on imports by the 100% EOUs /SEZ units, even if such imports are from the countries under complaint.

Q45. Can the Anti-Dumping and Anti-Subsidy measures be applied simultaneously?

A45. GATT Agreement as well as the Indian laws provide that the injured domestic industry is permitted to file for relief under the anti-dumping as well as countervailing duties. However, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

Q46. How many Anti Dumping cases have been investigated by India and in how many cases anti dumping duty imposed?

A46. As per the WTO report (available on the website www.wto.org) for the period 1.1.1995 to 30.6.2010, India had initiated investigation in 613 cases and India had imposed 436 anti dumping measures.

Q47. On what main product sectors India imposed anti dumping duty?

A47. India's anti dumping measures were mainly on chemical and allied products (185), resins, plastics and rubber articles (71), textiles (58), machinery and electrical equipment (51) and base metal and articles (37) (available on the website www.wto.org).

Q48. In how many cases anti dumping duties were imposed against India?

A48. During the period 1.1.1995 to 30.6.2010, 90 anti dumping measures were imposed against India by other countries (available on the website www.wto.org).

Q49. In what main product sectors, anti dumping duty has been imposed against India?

A49. Anti dumping duty has been imposed against India mainly on base metal and articles (26), chemical and allied products (22), resins, plastic and rubber articles (19) and textile (11) (available on the website www.wto.org).

Useful Web Links

- www.commerce.nic.in
- www.wto.org
- www.unctad.org
- www.worldbank.org
- www.wipo.int
- www.fao.org
- www.unescap.org
- www.artnetontrade.org
- www.ictsd.org

Other Publications of the Centre for WTO Studies

- ▣ FAQ on WTO Negotiations in Agriculture
- ▣ FAQ on WTO Negotiations in Non Agriculture Market Access (NAMA)
- ▣ FAQ on WTO Negotiations in Services
- ▣ FAQ on Geographical Indications
- ▣ FAQ on WTO Agreement on Subsidies and Countervailing Measures
- ▣ FAQ on WTO Agreement on Safeguards
- ▣ FAQ on WTO Compatibility of Border Trade Measures for Environmental Protection
- ▣ FAQ on Transfer of Technology in Environmentally Sound Technologies
- ▣ FAQ on Anti Counterfeiting and Trade Agreement (ACTA)
- ▣ Review of Trade Policies of India's Major Trading Partners
- ▣ WTO Dispute Watch – Disputes of 2009
- ▣ *Discussion Paper 1:* India's Duty Free Tariff Preference Scheme: Case Study for Select LDCs
- ▣ *Discussion Paper 2:* Cotton Production, Exports and Price: A Comparative Analysis of India and USA
- ▣ *Discussion Paper 3:* Study on Identification of Select Textile and Wool and Woollen Products Having Export Potential to Chile, Colombia and Peru
- ▣ *Discussion Paper 4:* Trade Facilitation in WTO and Beyond
- ▣ *Discussion Paper 5:* Agriculture under WTO Regime: Cross Country Analysis of Select Issues
- ▣ *Discussion Paper 6:* WTO Negotiations on Market Access on Environmental Goods: Identification of Existing NTMs on Proposed Items
- ▣ *Discussion Paper 7:* Implications of Fishery Sector Subsidies: A Review of Issues in Light of WTO Negotiations
- ▣ *Discussion Paper 8:* Doha Development Agenda for Developed Nations: Carve Outs in Recent Agriculture Negotiations
- ▣ Bimonthly newsmagazine titled 'India, WTO and Trade Issues'

*All the above publications are available on the website of the Centre for WTO Studies,
<http://wtocentre.iift.ac.in>*

About the WTO Centre

The Centre for WTO Studies was set up in 1999. It is situated in IIFT since November, 2002. The objectives of the Centre are:

- To be a permanent repository of WTO negotiations related knowledge and documentation
- To conduct research on WTO and trade issues
- To interface with industry and Government through Outreach and Capacity Building programmes
- To act as a platform for consensus building between stakeholders and policy makers

The Centre is currently engaged research on following WTO related subjects:

- Agriculture
- Intellectual Property Rights
- Agreement on Sanitary and Phytosanitary Measures
- Agreement on Technical Barriers to Trade
- Trade Facilitation
- Environment and Trade
- Subsidies including Fishery Subsidies
- Anti-dumping
- Regional Trade Agreements

More information about the Centre and its activities can be accessed on its website: <http://wtocentre.iift.ac.in>



Centre for WTO Studies

Indian Institute of Foreign Trade

IIFT Bhawan, B-21, Qutab Institutional Area, New Delhi-110016

Tel: 011-26564409

E-mail: editor_wtocentre@iift.ac.in