

**MINISTRY OF DEVELOPMENT, INDUSTRY AND FOREIGN TRADE**

**SECRETARIAT OF FOREIGN TRADE**

**DEPARTMENT OF TRADE REMEDIES**

# **INJURY AND CAUSATION DETERMINATION**

**NEW DELHI / April 2015**

# INJURY DETERMINATION

- **Domestic Industry Definition**
- **Cumulative Assessment of Imports**
- **Injury**
- **Causal Link**
- **Non-Attribution**

# Domestic Industry - AD - Decree 8.058/2013

Article 34. For the purposes of this Decree, the term "domestic industry" shall be interpreted as referring to the **totality** of producers of the domestic like product.

Sole Paragraph. Where consideration of the domestic producers as a whole, as referred to in the chapeau, is **not possible and where duly justified**, the term shall be interpreted as referring to those domestic producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of such product.

# Domestic Industry - AD - Decree 8.058/2013

Article 35. At the discretion of DECOM, the following may be excluded from the concept of domestic industry:

- I. domestic producers associated or related to foreign producers, exporters, or importers;
- II. those producers whose collective **share of imports** of the product allegedly sold at dumped prices **is significant** in comparison with their production of the like product.

# Domestic Industry - AD - Decree 8.058/2013

## ➤ Subnational Domestic Industry

- Art. 36 of Decree 8.058/2013
- “Exceptional Circumstances”
- Requirements:
  - I. the producers within such market sell all or almost all of their production of the like product in that market; and
  - II. the demand in that market is not to any substantial degree supplied by producers of the like product located outside such market.



# Domestic Industry - AD - Decree 8.058/2013

## ➤ Subnational Domestic Industry

- Requirements to the determination of injury
  - there is a concentration of dumped imports into that isolated market; and
  - the dumped imports are causing injury to the producers as whole or to a substantial portion of the producers located in such isolated market.
- Specific Example: **Portland Cement** from Mexico and Venezuela → the term “domestic industry” was defined as the Brazilian producers of such product located in the North Region of Brazil.

# Domestic Industry - AD - Decree 8.058/2013

Article 36. In exceptional circumstances in which the Brazilian territory may be divided into two or more competitive markets, the term "domestic industry" may be interpreted as referring to the group of domestic producers of each one of those markets separately.

Paragraph 1. The group of domestic producers of each of the markets referred to above may be considered an isolated market if:

- I. the producers within such market sell all or almost all of their production of the like product in that market; and
- II. the demand in that market is not to any substantial degree supplied by producers of the like product located outside such market.

Paragraph 2. In the case set forth in paragraph 1 above, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into an isolated market and provided further that the dumped imports are causing injury to such isolated market.

# Cumulative Assessment of Imports

## Requirements:

- More than one country (simultaneous investigations)
- Periods of dumping coincide

## Conditions:

I. the margin of dumping established in relation to the imports from each country is not de minimis

$$\frac{NV - EP}{EP} < 2\%$$

II. the volume of imports from each country is not negligible

< 3% of total Brazilian imports of the product under investigation and of the like product

III. the cumulative assessment of the effects of those imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product

**The determination of a negligible import volume shall be based on the data related to the period of dumping investigation.**



# Cumulative Assessment of Imports

Article 31. When imports of a product from more than one country are simultaneously subject to antidumping investigations whose periods of dumping investigation coincide, the effects of such imports may be assessed cumulatively if it is demonstrated that:

- I. the margin of dumping established in relation to the imports from each country is not de minimis;
- II. the volume of imports from each country is not negligible; and
- III. the cumulative assessment of the effects of those imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

Paragraph 1. The margin of dumping shall be considered to be de minimis if this margin is less than two percent (2%) when expressed as a percentage of the export price.

Paragraph 2. The volume of the imports subject to investigation or the volume of dumped imports from a particular country shall be regarded as negligible if such volume is found to account for less than three percent (3%) of total Brazilian imports of the product under investigation and of the like product.

Paragraph 3. If the countries which individually account for less than three percent (3%) of total Brazilian imports of the product under investigation and of the like product collectively account for more than seven percent (7%) of total Brazilian imports of the product under investigation and of the like product, the volume of the imports under investigation or the volume of dumped imports from each country shall not be considered negligible.

Paragraph 4. The determination of a negligible import volume shall be based on the data related to the period of dumping investigation.

# Injury Determination – AD Decree 8.058/2013

## Concept of “Injury“:

- material injury to the domestic industry
- threat of material injury to the domestic industry
- material retardation of the establishment of the domestic industry

## Determination of Injury:

- Based on evidence
- Objective examination of:
  - the volume of the dumped imports
  - the effects of the dumped imports on the prices of the like product in the Brazilian market
  - the consequent impact of these dumped imports on the domestic industry

# Injury Determination – AD Decree 8.058/2013

## Period of Investigation

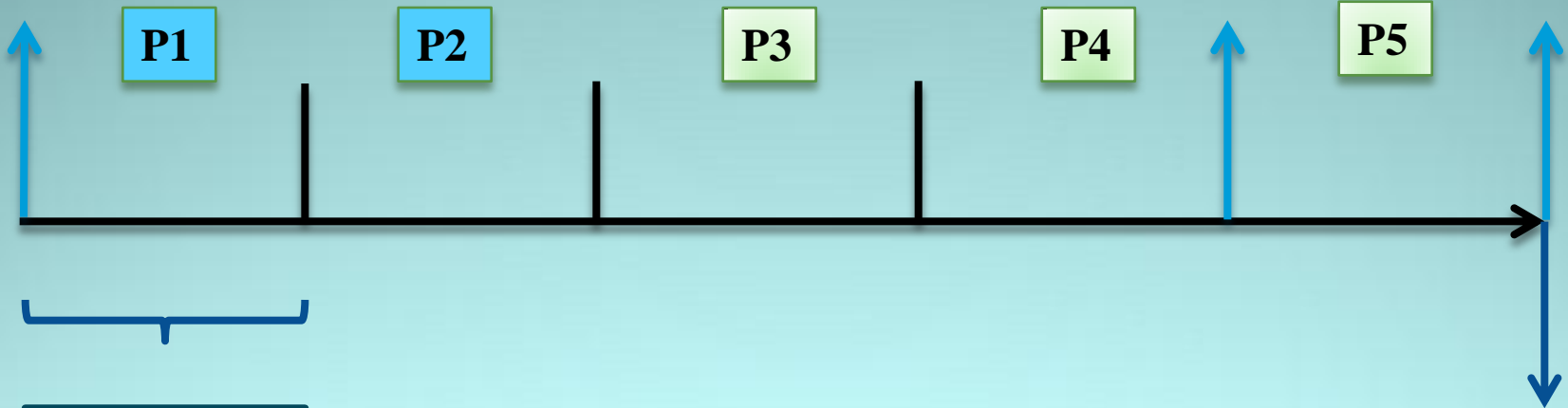
- normally a 5-year period (or 60 months)
- exceptional circumstances: minimum of 3 years (or 36 months)
- the last month of each period shall coincide with the last month of a quarter of the calendar year
- the last period of injury coincides with the period of dumping
- application shall be lodged within 4 months after the period of dumping is over

# Injury Determination – AD - Decree 8.058/2013

Period of Injury  
BEGINNING

Period of Dumping  
BEGINNING

Period of Dumping  
and Injury - END



12 months

- March
- June
- September
- December

# Injury Determination – AD Decree 8.058/2013

- The determination of injury shall be based on evidence and involve an objective examination of:
  - the volume of the dumped imports
  - the effects of the dumped imports on the prices of the like product in the Brazilian market
  - the consequent impact of these dumped imports on the domestic industry
- Volume of the dumped imports: has there been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Brazil?

# Injury Determination – AD Decree 8.058/2013

## ➤ Volume of the dumped imports

- production in Brazil – total production in Brazil, not limited to the production of the domestic industry
- consumption in Brazil (2 meanings)
  - Brazilian market (tradable products)
  - National apparent consumption (including captive consumption)

# Injury Determination – AD Decree 8.058/2013

- **Effects of the dumped imports on the prices of the like product in the Brazilian market**
  - **Undercutting** – comparison between the price of the like product produced and sold by the domestic industry in the Brazilian market and the CIF inland price of the dumped imports
  - **Depression** – price decrease of the like product produced and sold by the domestic industry in the Brazilian market
    - horizontal analysis
  - **Suppression** – prevents price increase of the like product produced and sold by the domestic industry in the Brazilian market
    - increase of costs > increase of prices

# Injury Determination

Economic Factors and Indices	Dumping	Subsidies
Sales	✓	✓
Market share	✓	✓
Output and utilization of capacity	✓	✓
Inventories	✓	✓
Employment, wages and productivity	✓	✓
Profits	✓	✓
Factors affecting domestic prices (cost of production, cost and price ratio, price comparison – Brazilian like product x product under consideration)	✓	✓
Magnitude of the margin of dumping	✓	x
Cash flow	✓	✓
Return on investments	✓	✓
Ability to raise capital or investments	✓	✓
Growth of the domestic industry	✓	✓
Increase burden on government programmes	x	✓



# CAUSAL LINK

It must be demonstrated that the dumped imports, through the effects of dumping, have significantly contributed to the injury affecting the domestic industry.

The demonstration of the causal link shall be based on an examination of:

- all relevant evidence submitted;
- any known factors other than the dumped imports which at the same time might be injuring the domestic industry. The injury caused by these other factors must not be attributed to the dumped imports.

# CAUSAL LINK

- **Two main pillars**

**Price (Profitability) x Quantity (Volume and Market Share)**

- **Is there a correlation between the deterioration of the injury indicators and the behaviour of imports?**
- **May the policy adopted by the domestic industry be understood when a joint analysis of the injury factors is conducted?**

# NON-ATTRIBUTION

- It is necessary to separate and distinguish the effects of dumped imports from the effects of other possible factors causing injury to the domestic industry.
- Other possible causes are those specifically brought to the attention of DECOM by interested parties, provided that they are accompanied by reasonable justification and relevant evidence, and any other causes known by DECOM.

# NON-ATTRIBUTION

## ➤ Factors which may be relevant for the purposes of the examination include:

- the volume and prices of imports not sold at dumping prices
- contraction in demand or changes in the patterns of consumption
- trade-restrictive practices of foreign and domestic producers
- competition between foreign and domestic producers
- developments in technology
- export performance
- the productivity of the domestic industry
- the impact of possible import liberalization processes on domestic prices
- captive consumption
- the imports or resale of the imported product by the domestic industry

# NON-ATTRIBUTION

- Volume and prices of imports not sold at dumped prices
  - As a general rule, the analysis considers these imports as a whole
  - Was the volume of non-investigated imports higher or lower than the volume of dumped imports?
  - Was there an increase or a decrease of this volume in absolute terms during the 5-year period?
  - If an increase such imports was observed, did it result in an expansion of their market share?
  - How did the prices of non-investigated imports behave?
  - Did they enter into the Brazilian territory at prices lower than those of the dumped imports?

# NON-ATTRIBUTION

## ➤ Export performance

- Has the domestic industry favoured exports at the expense of domestic sales?
- What was the production level? Was there idle capacity?
- When the exports have declined, the analysis shall include the impact on:
  - production level
  - utilization of capacity
  - employment
  - profitability

# NON-ATTRIBUTION

- Impact of possible import liberalization processes on domestic prices
  - The CIF inland import price before and after a tariff preference / reduction was granted to any trade partner
  - The price of the like product produced and sold by the domestic industry in the Brazilian market before and after a tariff preference / reduction was granted to any trade partner

# NON-ATTRIBUTION

## ➤ Captive consumption

- Has the domestic industry favoured captive consumption at the expense of domestic sales?
- What was the production level? Was there idle capacity?
- When the captive consumption has declined, the analysis shall include the impact on:
  - production level
  - utilization of capacity
  - employment
  - profitability



# NON-ATTRIBUTION

- Imports or resale of the imported product by the domestic industry
  - Has the domestic industry imported the subject merchandise?
  - Were the imports made by the domestic industry a defensive move?
  - Was the volume of imports made by the domestic industry relevant vis-à-vis its production or home sales?
  - Was the volume of imports made by the domestic industry relevant vis-à-vis the total volume of dumped imports?

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**THANK YOU!**

Ministério do  
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