

Causal Link Analysis in Antidumping Investigations: Exporters' Perspective

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Causal Link Analysis

- **Disclosure is the Starting Point, and Most Important Aspect of the Injury Investigation Process**
 - **Quantity and values of sales of imports, domestic like products and third countries**
 - Preferably by model,
 - Authority may not create causation based on changes in product mix, weighted average for a longer period;
 - **Economic data of the domestic industry**
 - All data demonstrating economic state of the domestic industry must be disclosed
 - Where the domestic industry is consisted of 3 or more domestic producers:
 - Full disclosure of actual data
 - Where the domestic industry is consisted of less than 3 domestic producers:
 - Indexed numbers, setting the first year as 100

Causal Link Analysis

- **The authority must first find competition in the market between imports and domestic like products.**
 - **Facts of competition:**
 - customers' preference; switch of procurement sources from the domestic like products to imports; bidding etc.
 - **Price Comparability:**
 - When the authority compares imports and domestic like products: the comparison must be made at the same level of trade, same physical characteristics, and, if a group of products will be compared, consistent product mix.
 - Assess the data in the entire period of investigation, not part thereof.

Causal Link Analysis

□ To Find the Competition, Price Correlation is Highly Important:

- The Appellate Body in *China – GOES* (WT/DS414/AB/R), para. 226
 - [A]lthough China underscores the importance of the increase in subject import volume to MOFCOM's finding of significant price depression and suppression, **we would expect that such a factor would also have had the same or similar effects on the price trends of subject imports and domestic products. The fact that there was a substantial divergence in pricing levels over that period could suggest that the two products were not in competition with each other, or that there were other factors at work.**

Causal Link Analysis

- The Panel in *China – Autos (US)* (WT/DS440/R), para. 7.262.
 - The record clearly shows that from 2006 to 2007, the average unit values of subject imports and of the domestic like product moved in different directions: the AUV of subject imports decreased by 8.47%, while the AUV of the domestic like product rose by 11.08%. ... **While we do not mean to suggest that diverging price movements between subject imports and the domestic like product necessarily preclude a finding of parallel pricing in general, we consider that any such finding would require some indication of the IA's reasoning in support of a conclusion of parallel pricing in this situation.**

□ **Price correlation alone is not sufficient:**

- The Panel in *China – X-Ray Equipment* (WT/DS425/R), para. 7.247
 - an overall correlation between dumped imports and injury to the domestic industry may support a finding of causation. However, such a coincidence analysis is not dispositive of the causation question; **causation and correlation are two distinct concepts.**

Causal Link Analysis

□ Required Causal Link to be Found:

– FANs' Position:

- Dumped imports should be **the primary cause of the injury**, or “in and of themselves” are causing injury.

– Current Provisions – “a genuine and substantial relationship”:

- The Appellate Body in *US – Wheat Gluten* (WT/DS166/AB/R), para. 69 (a safeguard case):
 - the competent authorities determine, as a final step, whether “the causal link” exists between increased imports and serious injury, and whether this causal link involves a **genuine and substantial relationship** of cause and effect between these two elements.

Causal Link Analysis

□ **Required Causal Link under the AD Agreement:**

– **Not Necessarily Cable of Causing Injury on Their Own:**

- The Appellate Body in US – *Wheat Gluten* (WT/DS166/AB/R) (a safeguard case), para. 70:
 - ... However, the need to distinguish between the effects caused by increased imports and the effects caused by other factors does *not* necessarily imply, as the Panel said, that increased imports *on their own* must be capable of causing serious injury, nor that injury caused by other factors must be *excluded* from the determination of serious injury.

– **Other Causes So As Not to Have Broken the Causal Link:**

- the Panel in *EC – Tube or Pipe Fittings* (WT/DS219/R), para. 7.367:
 - any other factors that may have contributed to the injury to the domestic industry were "not such as to have broken the casual link" between dumped imports and injury.

Causal Link Analysis – Other Causes

- **Moreover, no fixed rules on how to separate and distinguish the effects of other causes:**
 - The Appellate Body in *EC – Tube or Pipe Fittings* (WT/DS219/AB/R) para. 189:
 - provided that an investigating authority does not attribute the injuries of other causal factors to dumped imports, **it is free to choose the methodology** it will use in examining the "causal relationship" between dumped imports and injury."
 - The Panel in *US – Countervailing Duty Investigation on DRAMs* (WT/DS296/R), para. 155:
 - Given that **there is no obligation under Article 15.5 to quantify the amount of injury caused by alleged subsidized and non-subject imports respectively**, the ITC has done all that it was required to do.

Causal Link: No Allocation of Injurious Effects

- **The Amount of Dumping Duty Should be limited to the Extent Necessary**
 - The Appellate Body in *US – Line Pipe* (WT/DS202/AB/R), para. 252 (a safeguard case):
 - It would be illogical to require an investigating authority to ensure that the "causal link" between increased imports and serious injury not be based on the share of injury attributed to factors other than increased imports while, at the same time, permitting a Member to apply a safeguard measure addressing injury caused by all factors.
 - **But, no mandatory rule to limit the AD duty “to the extent necessary to counteract dumping which is causing injury”;** and
 - **No explicit rules in AD Agreement on how to determine the AD duty “to the extent necessary to counteract dumping which is causing injury”**
 - Lesser duty based on injury margin requires dumped imports to provide remedy to 100% of the injury of the domestic industry, even through other causes would also contribute to the injury.

Questions?

Thank you

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