

ANTI-DUMPING

– a guide



सत्यमेव जयते

**Directorate General of Anti-Dumping
& Allied Duties
Ministry of Commerce,
Govt. of India**



COMMERCE SECRETARY
GOVERNMENT OF INDIA
NEW DELHI-110 011


FOREWORD

This booklet seeks to provide a simple but comprehensive explanation of the anti-dumping laws and procedures in India. Indian laws were amended with effect from 1.1.1995 to bring them in line with the anti-dumping provisions in WTO Agreement. Anti-dumping duty investigations are carried out under Sections 9A of the Customs Tariff Act, 1975 read with Section 9B *ibid* and the rules made thereunder.

Anti-dumping duties are expected to overcome only the problem of dumping. To deal with the problem of direct and indirect Government subsidies there is provision for countervailing duties. In both cases injury and casual link must necessarily be proved. These investigations are carried out under the amended provisions of the Customs Tariff Act, 1975, and the rules made thereunder.

Safeguard measures are envisaged to deal with the problem of "increased imports" and neither dumping nor subsidies need be present. For safeguard measures, the injury requirements are more stringent in as much as serious injury to the domestic industry is required to be established. Even though safeguard measures can take the form of tariff increases or quantitative restrictions, it remains a sparingly used measure, as compensation may have to be paid to the trading partners in appropriate cases.

The importance of providing expeditious relief to our domestic industry against the trade-distorting phenomenon of dumping and subsidies cannot be undermined. This publication seeks to provide an overview of anti-dumping laws and procedures for the benefit of our domestic industry.


(P.P. PRABHU)

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ANTI-DUMPING DUTIES

- Essentially deal with the price behaviour of exporters
- Dumping exists when Normal Value is more than the Export Price
- Injury and causal linked are required to be proved

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. Pursuant to the GATT, 1994, detailed guidelines have

been prescribed under the specific agreements which have also been incorporated in the national legislation of the member countries of the WTO. Indian laws were amended with effect from 1.1.95 to bring them in line with the provisions of the respective GATT agreements.

Dumping is said to have taken place when an exporter sells a product to India at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping is per se not condemnable as it is recognized that producers sell their goods at different prices to different market. It is also not unusual for prices to vary from time to time in the light of supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. It is also not uncommon that the export prices are lower than the domestic prices. Therefore, from the point of view of anti-dumping practices, there is nothing inherently illegal or immoral about the practice of dumping. However, where

DUMPING PER SE NOT ACTIONABLE



- Cause of action only when dumping causes material injury.

dumping causes or threatens to cause material injury to the domestic industry of India, the Designated Authority initiates necessary action for investigations and subsequent imposition of anti-dumping duties.

LEGAL FRAMEWORK

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 thereunder form the legal basis for anti-dumping investigations and for the levy of anti-dumping duties. These laws are based on the Agreement on Anti-Dumping which is in pursuance of Article VI of GATT 1994.

LEGAL FRAMEWORK

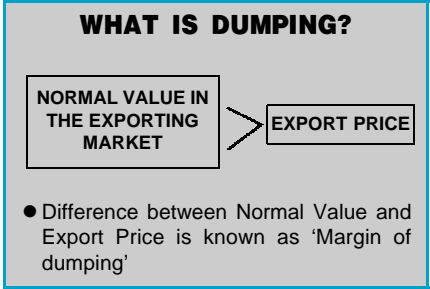
- **Based on Article VI of GATT 1994**
- **Customs Tariff Act, 1975 - Sec 9A, 9B (as amended in 1995)**
- **Anti-Dumping Rules [Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995]**
- **Investigations and Recommendations by Designated Authority, Ministry of Commerce**
- **Imposition and Collection by Ministry of Finance**

DETERMINATION OF DUMPING

Dumping

Dumping occurs when the export price of goods imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter. Imports at cheap or low prices do not per se indicate dumping.

The price at which like articles are sold in the domestic market of the exporter is referred to as the "Normal Value" of those articles.



NORMAL VALUE

- Comparable price of the like article when meant for home consumption
- In the course of ordinary trade
- Indian laws refer to domestic price in the exporting country or territory

Normal Value

The 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 or territory.

If the normal value cannot be determined by means of domestic sales, the Act provides for the following two alternative methods :

- Comparable representative export price to an appropriate third country.
- Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and for profits.

Export Price

The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

Constructed Export Price

If there is no export price or the export price is not reliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer.

NORMAL VALUE ALTERNATIVE METHODS

- Representative Export price to an appropriate third country
- Cost of Production in the country of origin
 - Plus Admn., Selling General costs, and Profits

EXPORT PRICE

- Arm's length transaction
- Resale price to an Independent buyer
- On a reasonable basis

If the articles are not resold as above or not resold in the same condition as imported, their export price may be determined on a reasonable basis.

Margin of Dumping

Margin of dumping refers to the difference between the Normal Value of the like article and the Export Price of the product under consideration. Margin of dumping is normally established on the basis of :-

- a comparison of weighted average Normal Value with a weighted average of prices of comparable export transactions; or
- comparison of normal values and export prices on a transaction to transaction basis.

A Normal Value established on a weighted average basis may be compared to prices of individual export transactions if the Designated Authority finds a pattern of export prices that differ significantly among different purchasers, regions, time period, etc. It is significant to note that the alternative method of comparing the normal values and export prices is a major change introduced after the Uruguay Round.

The margin of dumping is generally expressed as a percentage of the export price.

COMPARISON

NORMAL VALUE VS EXPORT PRICE

- At the ex-factory level
- Due allowances for factors affecting comparison
- Wt. Av. NV with Wt Av. EP
- NV- EP on a transaction to transaction basis

Factors Affecting Comparison of Normal Value and Export Price

The export price and the normal value of the goods must be compared at the same level of trade, normally at the ex-factory level, for sales made as near as possible in time. Due

allowance is made for differences that affect price comparability of a domestic sale and an export sale. These factors, inter alia, include :

- * Physical characteristics
- * Levels of trade
- * Quantities
- * Taxation
- * Conditions and terms of sale

It must be noted that the above factors are only indicative and any factor which can be demonstrated to affect the price comparability, is considered by the Authority.

Like Articles

Anti-dumping action can be taken only when there is an Indian industry which produces "like articles" when compared to the allegedly dumped imported goods.

The article produced in India must either be identical to the dumped goods in all respects or in the absence of such an article, another article that has characteristics closely resembling those goods.

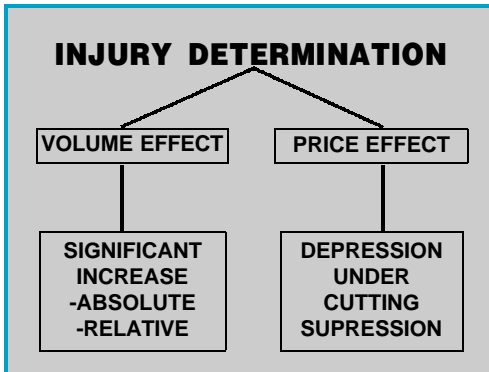
LIKE ARTICLE



- Identical - alike in all respects
- If not alike in all respects, having closely resembling characteristics

INJURY TO THE DOMESTIC INDUSTRY

The Indian industry must be able to show that dumped imports are causing or are threatening to cause material injury to the Indian 'domestic industry'. Material retardation to the establishment of an industry is also regarded as injury.



The material injury or threat thereof cannot be based on mere allegation, statement or conjecture. Sufficient evidence must be provided to support the contention of material injury. Injury analysis can broadly be divided in two major areas:

The Volume Effect

The Authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India, and its affect on the domestic industry.

The Price Effect

The effect of the dumped imports on prices in the Indian market for like articles, including the existence of price undercutting, or the extent to which the dumped imports are causing price depression or preventing price increases for the goods which otherwise would have occurred.

The consequent economic and financial impact of the dumped imports on the concerned Indian industry can be demonstrated, inter alia, by :

- decline in output
- loss of sales
- loss of market share
- reduced profits
- decline in productivity
- decline in capacity utilization
- reduced return on investments
- price effects
- adverse effects on cash flow, inventories, employment, wages, growth, investments, ability to raise capital, etc.

INJURY-EVALUATION OF ECONOMIC INDICATORS

- ACTUAL/POTENTIAL DECLINE IN
 - Sales
 - Output
 - Profits
 - Market Share
 - Productivity
 - Return on Investment
 - Capacity Utilization etc.
 - Employment
 - Inventors/Stocks
 - Ability to raise capital or investment etc.

Injury analysis is a detailed and intricate examination of all the relevant factors. It is not necessary that all the factors considered relevant should individually show injury to the domestic industry.

CAUSAL RELATIONSHIP

DUMPING

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INJURY

- Causal relationship to be demonstrated
- Other factors to be considered
 - Volume and price of other imports
 - Demand contraction
 - Productivity
 - Technology

CASUAL LINK

A 'causal link' must exist between the material injury being suffered by the Indian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping.

Some of these are volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, export performance, productivity of the domestic industry etc.

WHO CAN FILE AN APPLICATION

A dumping investigation can normally be initiated only upon receipt of a written application by or on behalf of the “Domestic Industry”.

In order to constitute a valid application, the following two conditions have to be satisfied :

- The domestic producers expressly supporting the application must account for not less than 25% of the total production of the like article by the domestic industry in India; and
- The domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and those opposing the application.

STANDING TO FILE AN APPLICATION

- Express support of those who account for
 - more than 25% of total domestic production, and
 - more than 50% production by those supporting and those opposing the application.

DOMESTIC INDUSTRY

- Producers of like articles as a whole or those producers whose output is a major proportion of total Indian production
- The following are excluded
 - Importers
 - Those related to importers or exporters

Domestic Industry

Domestic industry means the Indian producers of like articles as a whole or those producers whose collective output constitutes a major proportion of total Indian production.

Producers who are related to the exporters or importers or are themselves importers of the allegedly dumped goods shall be deemed not to form part of the domestic industry.

RELIEF TO THE DOMESTIC INDUSTRY

Relief can be provided to the domestic industry in the form of anti-dumping duties or price undertakings.

1. ANTI-DUMPING DUTIES

Duties are imposed on a source specific basis and can be expressed either on ad valorem or specific basis. Non-cooperative exporters are required to pay the residuary duty, which is generally the highest of the co-operative exporters.

RELIEF TO DOMESTIC INDUSTRY

- Lesser duty Rule
 - Only that amount of duty which is sufficient to remove the injury to the domestic industry

Lesser Duty Rule

Under the GATT provisions, the national authorities cannot impose duties higher than the margin of dumping. It is, however, suggested that it would be desirable if the appropriate Government authorities impose a lesser duty which is adequate to

remove the injury to the domestic industry. Under the Indian laws, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e. dumping margin and the injury margin.

Injury Margin

Besides the calculation of the margin of dumping, the Designated Authority also calculates the injury margin which is the difference between the fair selling price due to the domestic industry and the landed cost of the product under consideration. Landed cost for this purpose is taken as the assessable value under the Customs Act and the basic customs duties.

INJURY MARGIN

- Difference between the Fair Selling Price and the landed value
- Landed Value is
 - Assessable value under customs Act plus
 - Basic Customs Duty

De Minimis Margins

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 are established.

DE MINIMIS MARGINS

- Margin of Dumping
 - Exporter Specific
 - Less than 2% of Export Price
- Volume of Dumped Imports
 - Country specific
 - Less than 3% from individual country and cumulatively not more than 7%.

Further, investigations against any country are required to be terminated if the volume of the dumped imports from that particular source are found to be below 3% of the total imports, provided the cumulative imports from all those countries who individually account for less than 3%, are not more than 7%.

2. PRICE UNDERTAKINGS

The Designated Authority may suspend or terminate investigation if the exporter concerned furnished an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No undertaking can however be accepted before preliminary determination is made. No anti-dumping duties are recommended on such exporters from whom price undertaking has been accepted. No price undertaking may, however, be accepted in case it is found that acceptance of such undertaking is impracticable or is unacceptable for any reason.

THE APPLICATION PROCEDURE

Applications can be made by or on behalf of the concerned domestic industry to the Designated Authority in the Ministry of Commerce for an investigation of any alleged dumping. The designated Authority may initiate an investigation when there is sufficient evidence that dumped imports are causing or are threatening to cause material injury to the Indian industry producing like articles or are materially retarding the establishment of an industry.

Copies of the prescribed application proforma is available from the Ministry of Commerce.

Information Required

Applications should be submitted to the Designated Authority in the Ministry of Commerce in the prescribed form. Guidelines on how to complete a questionnaire are a part of the prescribed application proforma.

The proforma also advises the applicant of the type of evidence required in appropriate areas.

Period of Investigation

Neither the GATT Agreement on anti-dumping nor the Indian laws provide for any specific guidelines regarding the period of investigation. However, there are indications that the period should not be, in any case, less than six months. It is, however, important that the period taken into consideration for detailed investigation should be representative and as recent as possible.

Confidential Information

Any information provided to the Designated Authority on a confidential basis by any party shall not be disclosed to any other party without the

specific authorization of the party providing the information, if the Designated Authority is satisfied about its confidentiality. Interested parties supplying information on a confidential basis are required to furnish non-confidential summaries thereof or a statement of reasons as to why such summarization is not possible.

If the Designated Authority is not satisfied that the confidentiality is warranted or the provider of information is not willing to disclose it in a generalized form, then such information may be disregarded.

An application received by the Designated Authority is dealt with as follows :

1. Preliminary Screening:

The application is scrutinized to ensure that it is adequately documented and provides sufficient evidence for initiation. If the evidence is not adequate, then a deficiency letter is issued normally within 20 days of the receipt of the application.

2. Initiation:

When the Designated Authority is satisfied that there is sufficient evidence in the application with regard to dumping, material injury and causal link, a Public Notice is issued initiating an investigation to determine the existence and effect of the alleged dumping.

The Designated Authority notifies the diplomatic representative of the Government of the exporting country before proceeding to initiate the investigation.

The initiation notice will be issued normally within 45 days of the date of receipt of a properly documented application.

3. 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 after receipt of the responses.

4. 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 150 days of the date of initiation.

5. 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.

6. Oral Evidence :

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 investigations.

7. Final Determination:

The final determination is normally made within 150 days of the date of preliminary determination.

8. Disclosure of Information:

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.

9. Time-limit for Investigation Process

The 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.

10. Termination:

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) injury is negligible.

RETROSPECTIVE MEASURES

The Act provides for levy of anti-dumping duty retrospectively, where -

- i) there is a history of dumping which caused the injury or that the importer was, or, should have been aware that the exporter practices dumping and that such dumping would cause injury, and
- ii) the injury is caused by massive dumping, in a relatively short time, so as to seriously undermine the remedial effect of anti-dumping duty.

Such retrospective application will not go beyond 90 days of the date of imposition of provisional duty. Further, no retrospective application prior to the date of initiation of investigation is possible.

REVIEW

An anti-dumping duty imposed under the Act shall have the effect for 5 years from the date of imposition, unless revoked earlier.

The Designated Authority shall also review the need for the continued imposition of the anti-dumping duty, from time to time. Such a review can be done suo motu or on the basis of request received from an interested party in view of the changed circumstances. A review shall also follow the same procedures prescribed for an investigation to the extent they are applicable.

The Designated Authority is also required to carry out a review for determining margins of dumping for any new exporter or producer from a country that is subject to anti-dumping, provided that these exporters or producers are new and are not related to any of the exporters or producers who are subject to anti-dumping duty on the product.

APPEAL

An appeal against the order of the Designated Authority may be filed with the Customs, Excise and Gold (Control) Appellate Tribunal within 90 days of the date of the order.

REFUND OF DUTY

If the anti-dumping duty imposed on the basis of final findings is higher than the provisional duty already imposed and collected, the difference shall not be collected.

If the final anti-dumping duty is less than the provisional duty already imposed and collected, the difference shall be refunded.

If the provisional duty is withdrawn based on a negative final finding, then the provisional duty already collected shall be refunded.

Products Imported by Units in EPZs/100% EOUs, Advance Licence Holders and by Other Exporters

Anti-dumping duty is not payable on products imported by units in EPZs and 100% EOUs, as well as imports on products imported by advance licence holders in terms of Customs notification No. 41/97-Cus dated 30.4.1997.

The final anti-dumping duty paid on imported goods used in the manufacture of export goods are liable to be refunded as duty drawback in accordance with the drawback rules.

Applicability of Anti-dumping Duties vis á vis Other Measures

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 articles shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

**For further details, please contact :
Director,
Directorate General of Anti-Dumping
& Allied Duties
Ministry of Commerce
Udyog Bhawan, New Delhi- 110 011
Tele : 3016286, Fax : 3014418
E-mail: kirthy@ub.delhi.nic.in**