

ANTI-DUMPING MEASURES

In general parlance, dumping is considered to mean cheap or low-priced imports. However, dumping in its legal sense under Trade Remedies Law means export of goods by a producer exporter in the exporting country to India at a price lower than its prevailing price in the domestic market of that country.

Normal Value, Export Price and Dumping Margin:

Normal Value: It is the comparable price of the like products at which the subject goods are sold in the ordinary course of trade, in the domestic market of the exporting country.

Export Price: It is generally the CIF value of the product exported, duly adjusted for ocean freight, insurance, commission, etc. so as to arrive at ex-factory export price of the product

Dumping Margin: It is the difference between the Normal Value and the Export Price of the alleged dumped articles at the same level of trade.

The essential requisites for initiating an Anti-dumping investigation:

For initiation of an Anti-dumping investigation, it is essential that sufficient evidence is available for dumping of alleged goods and said dumped imports are causing material injury or threatening to cause material injury or causing material retardation to the establishment of the domestic industry.

Broadly, injury may be analysed in terms of the volume effect and price effect of the imports. The parameters by which injury to the domestic industry is to be assessed in the anti-dumping proceedings are well

elaborated in Annexure-II of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on dumped articles and for Determination of Injury) Rules, 1995 comprising of such economic indicators as having a bearing upon the state of industry including the natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investment etc.

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 the cost of production and profit after nullifying the adverse impact of those factors of production which could have adversely affected the company and for which dumped imports can't be held responsible.

Non-Injurious Price is calculated based on the costing information furnished by the domestic industry in the prescribed proforma for the period of investigation. Accounting and Costing records maintained on the basis of Generally Acceptable Accounting Principle (GAAP) and Cost Accounting Standards form the basis for estimating Non- Injurious Price. In the estimation of Non-Injurious Price for the Domestic Industry, the Authority makes an 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 utilization etc. The Non-Injurious Price for Domestic Industry also includes the reasonable return on the capital employed.

The Injury Margin is the difference between the Non-Injurious Price and the Landed Value of the dumped imports of the like articles. Landed Value for this purpose is taken as the assessable value under the Customs Act and the applicable basic Customs duties except for CVD, SAD, and special duties.

The relevance of "causal link" in various trade remedial measures:

The term "causal link" means that relevant injury to the domestic industry is being caused by the dumped /subsidized / increased imports.

Whereas in a safeguard investigation a causal link needs to exist between increased imports and serious injury. In a CVD investigation, a causal link is to be found between subsidized imports and injury.

In Anti-dumping/Countervailing Investigations, the causal link is to be established generally in terms of the following effects of dumped/subsidized imports on domestic industry: -

- Volume effect
- Price effect

The volume effect of dumped imports relates to the market share of the domestic industry vis-à-vis the dumped/subsidized imports from the subject. With regard to the price effect, it is analyzed as to whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, 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.

The major stages of the anti-dumping investigation process in India:

An Application received by the Director General is dealt with in the following manner:-

A. Pre-initiation:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation.

B. Initiation:

The application is examined to ensure that it 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 notification is issued initiating an investigation.

C. Public Notice & Inspection Folder:

A public notice is issued to the interested parties for filing responses. The non- confidential versions of all the applications/responses is kept open for inspection for the interested parties in the form of a inspection folder.

D. Preliminary Findings:

The Authority will proceed expeditiously with the conduct of the investigation and may, in appropriate cases, make a preliminary finding containing the detailed information behind the determination.

E. Provisional Duty:

A provisional duty not exceeding the margin of dumping or injury, whichever is less, may be imposed by the Central Government on the basis of the preliminary finding recorded by the 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 & Oral Hearing:

Interested parties who participate in the investigation can present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Director General may grant oral hearing anytime during the course of the investigation.

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 Authority will inform all interested parties of the essential facts, which forms the basis for its decision before the final finding is made.

H. Final Determination:

The interested parties submit their response to the disclosure statement issued by the Authority. The Director General examines these final submissions of the parties and comes out with final findings.

I. Duty Notification

A copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue which, in turn, notifies the duty within a period of 90 days from the date of Final Finding after obtaining approval of the competent authority.

J. 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 up to period of 6 months, in exceptional circumstances, by the Central Government.

Under the WTO arrangement, the National Authorities can impose duties up to the margin of dumping i.e. the difference between the Normal Value and the Export Price. However, the Indian Law provides for Lesser duty rule i.e. Lower of Injury Margin or Dumping Margin. This ensures that the amount of duty which, if levied, would remove the injury applicable to the domestic industry. The anti-dumping duty shall remain in force for a period of not more than five years (or less if so notified) from the date of imposition of duty. However, such duty can be reviewed by the Authority any time before the expiry of the said period.

The various review mechanisms under Anti-Dumping Investigation:

The various review mechanisms are as under:-

Sunset Review (SSR):

Anti-Dumping duty imposed under the law shall be in force for a period of not more than five years (as notified) from the date of imposition, unless

revoked earlier. Sunset review may either be initiated by DGTR on suo-moto basis or upon an application filed by the domestic industry of the article concerned at least 270 days before end of such period to examine as to whether there is a need to continue imposition of ADD for further period.

Mid Term Review (MTR):

After a reasonable period of time has elapsed since the imposition of anti-dumping duty (normally 12 months or more), the Authority can conduct an interim review, or full-fledged review to examine the need for the continued imposition of the ADD or change in the duty imposed. Such a review can be done suo-moto or on the basis of the information received from an interested party in view of the changed circumstances.

New Shipper Review (NSR):

There may be situation wherein an exporter/producer did not export the product concerned to India during the Period of Investigation of the previously concluded investigation, based on which the existing duty was notified. As a result, such exporter/producer could not be accorded a separate rate of duty. If such exporter thereafter wishes to claim an individual anti-dumping duty rate, he may do so by filing a new shipper review application. DGTR will thereafter review the need for determining margins of dumping for such exporter, provided that such exporter/producer has not exported the product during the period of investigation and is not related to any exporter or producers who are already subject to ADD on the product.

As per the Trade Notice no. 1/2010 dated 17/5/2010 an MTR application can be filed after a reasonable period of time, i.e. at least one year, has

elapsed since the imposition of the definitive anti-dumping duty by the Central Government. As per the Trade Notice no. 02/2017 dated 12.12.2017, the SSR application shall be filed at least 270 days prior to the date of the expiry of Anti-dumping measures. It can also be filed 240 days prior to the date of the expiry of Anti-dumping measures with the justification of delay and with the payment of late fee as prescribed by the Authority.

All formats for anti-dumping applications/questionnaire responses are available on the DGTR website namely www.dgtr.gov.in. These formats are to be read in consonance with the relevant Trade Notices.

The Authority shall terminate an anti-dumping 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 insufficient 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 and the volume of dumped imports collectively from all such countries is less than 7% of the total imports.
 - v. If injury is negligible.

The difference between Anti-dumping duty and Basic Customs duty:

The following are the main differences between the anti-dumping duty and the basic customs duty: -

- Conceptually, anti-dumping duty is an instrument for achieving fair trade. The object of anti-dumping duty is to provide level playing field to the domestic industry in a situation of unfair trade practices while that of customs duty is collection of revenue.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti-dumping and anti-subsidy measures are there as trade remedial measures.
- Anti-dumping duties are not necessarily in the nature of a tax measure in as much as the Authority is empowered to suspend these duties in case an exporter offers a price undertaking. Thus, such measures are not always in the form of duties/tax.
- Anti-dumping and Anti-subsidy duties are levied against producer/country in as much as they are country specific and producer specific as against the customs duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.
- Furthermore, the Anti-dumping duty is levied over and above the normal customs duty chargeable on the import of goods in question.
- Thus, there are basic conceptual and operational differences between the customs duty and the anti-dumping duty.

If anti-dumping duty is in force, then another application cannot be filed again on the same product before the expiry of original duty. It can only be revised through a process of review. Further, all trade defence measures provide for premature review and revocation, if it is established that there is no need for continuation of duty.

Anti-dumping duty may be 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, or is withdrawn, the differential amount already collected as provisional duty is liable to be refunded. If the final duty imposed is more than the provisional duty already imposed and collected, the difference shall not be collected.

Circumvention of anti-dumping duty occurs when producer exporters in the exporting country exports to India, the goods which attract the anti-dumping duty, either by altering the description or name or composition or form of the article or changing the country of its origin/export or in any manner which renders the anti-dumping duty so imposed ineffective. This situation is remedied by initiating an anti-circumvention investigation to provide suitable relief to the domestic industry.

In case the product on which the anti-dumping duties are levied is being altered or its composition is being changed, the anti-circumvention investigation may be initiated against the imports of such altered product or the product with such changed composition. However, in case of circumvention through change in country of origin, then the PUC may remain the same. The life of any anti-circumvention duty being imposed under such investigation shall be co-terminus with the validity of the relevant anti- dumping duty(ies).

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 open and fair trade 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 advantages gained by the overseas exporters through their dumping practices; it would prevent the decline of the domestic industry and would create congenial 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.

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