

## ANTI-DUMPING & ANTISUBSIDY MEASURES

### FAQS

#### I. Antidumping – Meaning and Concept

##### **Q. 1. What is anti dumping? What is its purpose in International Trade?**

Ans. Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value. This is an unfair trade practice which can have a distortive effect on international trade. Anti dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti dumping is 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.

##### **Q.2. Does dumping mean cheap or low priced imports?**

Ans. Often, dumping is mistaken and simplified to mean cheap or low priced imports. However, it is a misunderstanding of the term. On the other hand, 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.

Import of cheap products through illegal trade channels like smuggling do not fall within the purview of anti-dumping measures.

##### **Q.3. Is anti dumping a measure of protection for domestic industry?**

Ans. Anti dumping, in common parlance, is understood as a measure of protection for domestic industry. However, anti dumping measures do not provide protection per se to the domestic industry. It only serves the purpose of providing remedy to the domestic industry against the injury caused by the unfair trade practice of dumping. In fact, anti dumping is a trade remedial measure to counteract the trade distortion caused by dumping and the consequential injury to the domestic industry. Only in this sense, it can be seen as a protective measure. It can never be regarded as a protectionist measure.

**Q.4. 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?**

Ans. 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 there 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 and anti subsidy measures are there as trade remedial measures.
- The object of anti dumping and allied duties 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 and anti subsidy 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.

Thus, there are basic conceptual and operational differences between the customs duty and the anti dumping duty. The anti dumping duty is levied over and above the normal customs duty chargeable on the import of goods in question.

**Q.5. What are the parameters used to assess dumping of goods from a country?**

Ans. 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.

**Q. 6. How do you define:**

- **Normal Value**
- **Export price and**
- **dumping margin**

Ans. **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 goods allegedly dumped into India means the price at which it is exported to India. 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 i.e. at the ex-factory level.

**Q.7. What are the essential requisites for initiating an anti dumping investigation?**

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

- a. 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.

- b. 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.

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 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.

Note: This is to further clarify that a domestic industry, which seeks relief, should give sufficient evidence with respect to the above parameters. Unless the above parameters are satisfied, it will not be possible for the Authority to initiate an anti-dumping investigation.

#### **Q. 8. What are the parameters of injury to the domestic industry?**

Ans. Broadly, injury may be analysed in terms of the volume effect and price effect of the dumped imports. 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.

#### **Q.9. What is the Non-injurious Price and injury margin? How these are worked out?**

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

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 except CVD, SAD 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 investigations and for three previous years. Accounting records maintained on the basis of Generally Acceptable 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

**Q.10. How is causal link established between dumping and injury to the domestic industry?**

Ans. 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 generally in terms of the following effects of dumped imports on domestic industry: -

- volume effect
- price effect

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 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.

**Q.11. In case anti dumping duty is warranted after the investigation, what is the extent of such duty to be recommended/imposed?**

Ans. Under the WTO arrangement, the National Authorities can impose duties upto the margin of dumping i.e. the difference between the normal value and the export price. The Indian law also provides that the anti dumping duty to be recommended/levied shall not exceed the dumping margin.

**Q.12. 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?**

Ans. **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:** Further, 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 these countries who individually account for less than 3%, should not exceed 7% of the import of the like product.

**Q.13. What is the relief/remedy to the Domestic Industry under the Anti Dumping mechanism. Is it always in the form of Anti-dumping duty?**

Ans. 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 furnished 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 recommended on such exporters from whom price undertaking has been accepted.

**Q.14 What are other remedial measures against unfair trade practices in addition to Anti Dumping? How do they come into operation?**

Ans. Apart from dumping, some of the countries also resort to subsidisation of their exports to other countries. Export subsidies, under the WTO agreement, are treated as unfair trade practice and such subsidies are actionable by way of levy of anti-subsidy countervailing duty.

There is one more trade remedial measure called "safeguards" which are applied as an emergency measure in response to surge in imports of a particular item.

- Anti subsidy countervailing measure is in the form of countervailing duty which is to be imposed only after the determination that:
  - a. the subsidy is a specific subsidy
  - b. the subsidy relates to export performance;
  - c. the subsidy relates to the use of domestic goods over imported goods in the export article; or
  - d. the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article.

**What is subsidy for this purpose?**

A subsidy is said to exist;

- a. if there is a financial contribution by the Government or any public body within the territory of the exporting country, i.e. where-
- there is a direct transfer of funds (including grants, loans and equity) by the Government;

- government revenue i.e. otherwise due is foregone and not collected (including fiscal incentives, I.T. exemption)
- a government provides goods or services other than general infrastructure;
- b. a government grants or maintains any form of income or price support which operates directly or indirectly to increase export of any article from its territory.

#### **What is not a subsidy?**

- However the subsidy which is for research activities conducted by the persons engaged in manufacture or export or the subsidy which is for assistance to disadvantaged regions with the territory of the exporting country is not actionable. Thus, no countervailing duty is to be levied on such subsidies.
- In anti subsidy countervailing investigation, the Government of the exporting country/ies is a party to the investigation in addition to the exporters from these countries. The countervailing duty imposed on the subsidized exports from a country shall not exceed the amount of such subsidy/ies.
- In India the Designated Authority for anti dumping is also the Authority for administering anti subsidy countervailing measures.

#### **What it Safeguards?**

- Safeguards, on the other hand, are applied when :
  - a. there is a surge in imports of a particular product irrespective of a particular country/ies and,
  - b. it causes serious injury to the domestic industry.
- Safeguard measures are applied to all imports of the product in question irrespective of the countries in which it originates or from which it is exported. This aspect distinguishes Safeguards from anti dumping and anti subsidy measures which are always country specific and exporter specific.
- Safeguards are applied in the form of either safeguard duty or in the form of safeguard QRs (import licenses). These measures are administered in India by an Authority called Director General (Safeguards) who functions in the jurisdiction of the Department of Revenue, Ministry of Finance.

**Q.15 What is the legal framework for Anti Dumping, Anti Subsidy and safeguard measures?**

Ans. Sections 9, 9 A, 9 B and 9 C 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 and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 framed there under form the legal basis for anti-dumping and anti subsidy investigations and for the levy of anti-dumping and countervailing duties. These laws are in consonance with the WTO Agreements on Anti Dumping and Anti Subsidy countervailing measures.

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