

## **A Basic Guide to the WTO Anti-Dumping Agreement**

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**This guide has been prepared to give a basic overview of the key provisions of the WTO anti-dumping agreement. It is not comprehensive and is only to be used as a simple reference tool . You should read the full agreement or seek professional advice before taking any action on matters raised in this guide.**

### **Article 1 –Principles**

AD measures can only be applied in the circumstances provided for in Article VI of the GATT 1994.

Article VI of the GATT 1994 defines dumping as when the export price is less than the normal value (comparable domestic price, export price to a 3<sup>rd</sup> country, or cost of production plus a reasonable addition for selling cost and profit).

Dumping is condemned if it causes or threatens material injury to an established industry.

### **Article 2 - Determination of Dumping**

Dumping occurs when a product is sold at less than its normal value.

The normal value will usually be the comparable price of the product in the domestic market of the exporting country.

Actual domestic prices do not have to be used when a) sales are not made in the ordinary course of trade (e.g. below cost) b) there is a particular market situation that does not permit a proper comparison c) there is a low volume of domestic sales.

When actual domestic prices are not available, or cannot be used, normal value can be based on the export price to a third country or cost of production in the country of origin (plus reasonable amount for selling costs and profit).

Export prices may be ‘constructed’ from the first independent price where the importer is related to the exporter.

A fair comparison must be made between export price and normal value. Allowances should be made for all differences that affect price comparability.

### **Article 3- Determination of Injury**

An injury determination must examine a) volume of dumped imports and effect of those import on prices in the domestic (importing) market; imports can be cumulated if several countries are involved in the same investigation. b) the consequent impact of these imports on the domestic industry – must include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry.

It must be demonstrated that dumped imports are causing injury and that injury caused by other factors is not attributed to the dumped imports.

Threat of injury must be clearly foreseen and imminent. Application of AD measures in such situations should be decided with care.

### **Article 4- Definition of Domestic Industry**

The domestic industry is all domestic producers of the product concerned, or those whose collective output constitutes a major proportion of total domestic production of those products.

Companies can be excluded from domestic industry if they are related to exporters or are themselves importing the product concerned.

### **Article 5 - Initiation and Subsequent Investigation**

Investigations should be initiated a) on the basis of a written application by or on behalf of the domestic industry b) by the authority in question if they have sufficient evidence of dumping, injury and causal link.

An application should include evidence of dumping, injury and causal link. It should particularly contain a) information on the applicant b) description of the product and identification of exporters & importers c) information on export prices and normal value d) information on the evolution of imports and their effect on the importing market.

An application is made on behalf of an industry if it is expressly supported by a minimum 25% of total production of the domestic industry (and if it is not opposed by more than 50% of those expressing an opinion).

A complaint shall be rejected if dumping is de minimis (less than 2% dumping margin) or injury is negligible (less than 3% share of imports).

Investigations shall normally be concluded within one year after initiation and in no case more than 18 months.

## **Article 6 - Evidence**

Exporters must be given at least 30 days to reply to questionnaires.

Evidence provided by one interested party will be made available to other interested parties, subject to the need to protect confidential information. Non-confidential summaries of such information must be provided.

A non-confidential version of the application should be made available as soon as the investigation has been initiated.

All interested parties must have a full opportunity to defend their interest throughout the investigation.

Authorities must satisfy themselves as to the accuracy of information supplied by interested parties. This may include on-site verifications in the exporting country.

Where interested parties do not provide the necessary information, authorities may use facts available to make their determination.

An authority should disclose its finding before a final determination is made.

As a rule, individual margins of dumping should be calculated for each known exporter or producer concerned. Sampling may be used where the number of exporters, producers, importers or product types are too large.

Industrial users and representative consumer organisations (where relevant) must be provided with the opportunity to comment on dumping, injury and causality.

## **Article 7- Provisional Measures**

Provisional measures (in the form of a duty or, preferably a security by cash deposit or bond) can be applied no sooner than 60 days after initiation of the investigation.

Provisional measures can be applied for a maximum of 4 months, extendable to 6 months. These deadlines are 6 and 9 months respectively when an authority applies a duty lower than the dumping margin where that is sufficient to remove the injury (i.e. lesser duty rule).

## **Article 8- Price Undertakings**

Proceedings can be terminated with voluntary price undertakings. Undertakings offered by exporters need not be accepted by the authority concerned nor shall exporters be required to enter into such undertakings.

## **Article 9 -Imposition and Collection of Anti-Dumping Duties**

Whether a duty should be imposed, or the amount of such a duty, are decisions to be made by the authority concerned.

It is desirable the duty be less than the dumping margin if sufficient to remove the injury to the domestic industry. The amount of dumping duty must not exceed the margin of dumping.

An accelerated review should be provided for new exporters that a) are not related to existing exporters b) did not export during the period of investigation.

## **Article 10 – Retroactivity**

Measures and duties should only apply to products imported after the measure is adopted.

Provisional duties can be retained if there is a final determination of injury.

Definitive duties can be levied retroactively for up to 90 days prior to provisional measures in certain circumstances.

## **Article 11- Duration and Review of Anti-Dumping Duties and Price Undertakings**

AD duties should only last for five years, unless an expiry review determines that the duty should be continued.

Duties should also be reviewed where interested parties show the need for a review (provided at least one year has passed).

## **Article 12 - Public Notice and Explanation of Determinations**

Authorities must provide public notice of a) AD investigations initiated b) preliminary or final determinations. Sufficient detail must be provided on findings and conclusions reached and all issues of fact and law considered material by the investigating authorities.

## **Article 13- Judicial Review**

A body, independent from the authorities responsible for the determination, must be maintained to review decisions relating to final determinations and reviews.

## **Article 14 - Anti-Dumping Action on Behalf of a Third Country**

Applications for AD action can be made by the authorities of a third country, where they can show that dumped imports are causing injury to the domestic industry in the third country.

### **Article 15 - Developing Country Members**

The possibility of constructive remedies should be explored with developing countries before applying AD duties.

### **Article 16 - Committee on Anti-Dumping Practices**

A Committee on AD Practices is established, composed of representatives from each WTO Member.

### **Article 17- Consultation and Dispute Settlement**

The WTO Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under the WTO anti-dumping agreement.

Members can request consultations with other Members if any benefit under the agreement is nullified or impaired.

If a mutually agreed solution is not reached, the matter can be referred to the DSB (Dispute Settlement Body). The DSB shall establish a panel to examine the matter.

### **Article 18 - Final Provisions**

Each Member must take necessary steps to ensure the conformity of its laws and regulations.

### **ANNEX I - PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS**

The authorities and the firms known to be concerned in the exporting country must be informed of the intention to carry out on-the-spot investigations.

Non-governmental experts can be included in the investigation team but must be subject to effective sanctions if they breach confidentiality.

Sufficient advance notice of the verification should be provided.

### **ANNEX II - BEST INFORMATION AVAILABLE**

Authorities should specify in detail information required from any interested party.

If information is not supplied within a reasonable time, authorities are free to make determinations on the basis of facts available, including those in the application / complaint.

Authorities can request information in a particular format but should take into account the ability of the interested party to respond in the preferred medium.

All information which is verifiable and supplied in a timely fashion should be taken into account when determinations are made.

Information that is not ideal in all respects should not be disregarded if the interested party has acted to the best of its ability.

Where information is rejected, reasons should be given.

Where authorities must base their findings on information from a secondary source, they must do so with special circumspection.

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