
A basic guide to using anti-dumping experts

This guide has been prepared to give an indication of some of the issues that arise in using anti-dumping experts. It is not comprehensive and is aimed at business people to provide them with a briefing prior to engaging in discussions with anti-dumping experts.

What kind of experts can assist with anti-dumping cases?

- Lawyers; anti-dumping investigations take place within a legal procedure and, therefore, the advice of a lawyer is often essential.
- Economists; Most of the tests established in anti-dumping laws are economic in nature. Therefore, economists can play a critical role on issues such as the dumping margin and injury/causality analysis.
- Accountants; involvement in anti-dumping investigations, either as a complainant or respondent, usually involves completion of detailed questionnaire on prices and costs of production. An accountant can play a crucial role in this process. For example, costs often are not recorded at the level of the product concerned and therefore specially made cost allocations are required.
- Lobbyists; the extent to which there is a political element in decision-making on anti-dumping varies between countries. However, where there are important political considerations, lobbyists can play a useful role in ensuring that the correct political buttons are pressed.

Is engagement of an expert required?

Engagement of an expert is not absolutely required. Certainly, some of the expertise outlined above may exist in-house.

Nevertheless, there are situations where an expert may make a significant difference.

For complainants, an expert can assist in ensuring that the complaint is to produced to the necessary standard and to maximise the chance of successfully obtaining protection against unfairly priced imports. In some countries, such as the US, almost all complaints are submitted with the assistance of outside counsel. In other regions, such as the EU, many complaints are submitted through counsel inside a trade or industry association and outside counsel is not used. Outside counsel can often be useful in ensuring that the complaint remains focused on the key issues relevant to anti-dumping. Business people, who are often suffering very badly which is why they are turning to

anti-dumping, can sometimes find it difficult to detach themselves emotionally from the case which is necessary to ensure an effective complaint.

For exporters accused of dumping, of course, cooperation in an anti-dumping proceeding is not compulsory. However, non-cooperation will usually mean that high duties are applied against exports of your products. Thus, the extent to which an exporter cooperates can significantly affect the outcome of the case, both in terms of injury & causality findings and, if measures are adopted, the level of the measures. If the country conducting the anti-dumping investigation is a really important market, it will usually be beneficial to employ outside counsel. A good counsel can maximise the chance of a case being terminated completely or, at least, minimise the level of any anti-dumping duties applied. Good advice cannot necessarily guarantee that a case will be closed. However, often, it can make the difference between a 20% duty and a 10% duty, which can be critical in remaining competitive in the market.

What should I look for when choosing an expert?

Care should be taken when choosing an expert. Usually, it will be best to speak to a lawyer first. A lawyer can set out a legal strategy and it can then be decided to which extent additional economic, accountancy or political resources are required. However, any of these tasks can be done in house. For example, a good in-house lawyer may be able to handle the legal aspects of the case with an economist experienced in the concepts of anti-dumping. On the other hand, an external lawyer may be able to use in-house economic or accountancy resources. The exact mix will vary from situation.

The most important component of choosing any expert is verifying that they are experienced. Ask for a list of cases they have worked on. Ask them to describe their role in particular cases. Some people create a long list of cases where, in many of the cases listed, they have only played an ancillary role. Ask them to be specific about how much they were involved. Then, ask them to provide contact details of someone you can speak to in order to confirm that what they have said is correct.

It is not straightforward to judge between different experts by results. Some experts may tell you that their work ensured that a particular investigation was terminated without measures, and that they were responsible for this. This may well be true. However, it may also be true that the case would have been terminated without any intervention from outside counsel because the facts just did not justify adoption of measures. At the same time a 30% duty level may be a great success if it allows an exporter to remain in the market but, in the absence of the outside advice, the duty would have 60%. Do not judge simply by whether measures were adopted in any particular investigations on which they worked. Judge by speaking to clients of the firm and how hard they think they worked.

Also speak to the officials involved. Ask them if they have come across the firm before. Individual officials may not have encountered the particular firm concerned. Ask them if their colleagues know the firm.

Note that some firms take on a small number of cases and do them well. Other firms take on a large number of cases and do them not so well in order to get economies of scale. The latter firms become well known to everyone in an anti-dumping administration. The former are well known to those that come into contact with them but not necessarily with everyone in the administration. Thus, it is important to check with several sources what they think of the firm or people involved.. Some of the best people only take on a few cases a year. You should remember this when deciding between firms.

In addition, ask the expert lots of questions. Ask them the ways in which they might assist you on specific points e.g. injury causality, dumping margin. A real expert will not be shy in answering questions on detailed aspects of the case.

How expensive is it to use an anti-dumping expert?

This is an impossible question to answer definitively.

My primary experience is in the EU. Using AD experts in the EU is definitely a situation where you get what you pay for. There are often several firms offering very cheap services to work on anti-dumping cases. However, often, firms offer very low fees just to get experience or to get a high volume of cases in order to achieve economies of scale.

As an exporter, to get good advice throughout a whole EU anti-dumping investigation should cost at least 100,000 euros. If you shop around you may be able to find someone who can provide this level of service for 40,000-50,000 euros.. Other firms may even offer to do it for less. 10,000 euros is not unknown for an anti-dumping investigation. However, remember that you get what you pay for.

In the US, one regularly hears fee quotes of \$1 million to provide full representation to an exporter throughout an investigation. Similar fees are often quoted to assist in preparing a petition/complaint. Due to the fact that legal representatives have access to all confidential information held by the DOC and ITC, there is actually a lot more work that a lawyer or consultant can do on a US case than an EU case. The best experts in the US are very expensive, though in return the standard of service is very high. In the US, there are firms that operate on much lower fee rates but, of course, they provide a much lower level of service.

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