
Strategies to Avoid Dumping Problems

This briefing is for informal guidance only. Before taking any decisions or actions relating to any matter mentioned, professional advice should be sought.

1 Advice on pricing to avoid dumping

The calculation of dumping margins is extremely complicated. Businesses are often shocked to find that they have been accused of pricing unfairly. For example, many businesses are aware that their export sales are profitable overall yet they do not realise that there can still be problems of dumping. The structure of dumping calculations is such that dumping can easily be occurring in such a situation. Great care needs to be taken in making simple calculations to check if dumping is occurring or not.

In order to achieve any element of certainty in avoiding dumped prices, professional assistance is almost certainly required. However, several tips can be provided to companies that are looking to avoid dumping when exporting to certain markets. These tips are based standards set by the WTO anti-dumping agreement. This means that they should be relevant to most export markets.

Definition of dumping – Dumping occurs when export price is below normal value. Normal value will usually be based on domestic prices, unless domestic sales are made in relatively low volumes or are made at prices below cost.

Thus, as an initial guide, export prices should be compared against the higher of:

- a) domestic prices or
- b) cost of production plus a reasonable amount for selling costs and profit.

Care should be taken if there are different specifications or model types. The dumping calculation should only compare like with like. A common mistake is to calculate average domestic and export prices and, if the latter is higher than the former, an assumption is made that dumping is not occurring. However, if export sales are, on average, a higher specification product than domestic sales, this may give a misleading impression.

Also, adjustments should be made for major differences in the conditions of sale e.g. credit terms, level of trade etc.

Note that the definition of dumping is not a good representation of an unfair trading practice. Many examples of dumping are normal commercial practices. Very often it is the case that the best prices are received from long term customers, to whom a commitment is made, on the domestic market. In such situations, it is very easy for dumping to occur. Likewise, in industries subject to cyclical pricing, there can be situations where all companies that export are dumping.

Weighted averages – Dumping margins are often, though not always, calculated on the basis of weighted averages (ensuring that like is always compared with like in line with the previous comment). This means that, in many cases, individual dumped transactions, or even individual dumped model types, are not a problem as long as, on average, dumping is not occurring.

De minimis dumping margin – The WTO agreement on anti-dumping defines de minimis dumping as below 2%. That is, export prices can be up to 2% below normal value before they will be considered ‘dumped’. This gives some leeway in trying to avoid dumping.

Negligible injury – WTO rules define negligible injury as less than 3% of imports into the country concerned. This analysis is done the basis of the country from which you export as a whole i.e. if total exports from the country in which you are producing are less than 3% of total imports of a particular export market, injury is considered to be negligible regardless of the export price. In some markets, the test is more generous (e.g. in the EU, negligible industry is considered to be less than 1% market share which, in most cases, works out favourably in relation to the 3% of imports test).

Beware if sales are made to a related importer – The WTO agreement allows related sales to be ignored on the basis that these are transfer prices. If export prices are not dumped, a false sense of security may be given if these sales are to a related importer. In such cases, a constructed export price would be calculated based on the price from the first independent sale.

2 Reducing the risk of investigations

Many companies are interested in how to calculate ‘safe’ prices to avoid anti-dumping problems. Taking into account the previous points can help to minimise this risk. However, as stated previously the dumping calculation is complex and it is difficult to price safely with 100% certainty. Even engaging experts cannot give guarantees. The WTO anti-dumping agreement, and the nature of the information being analysed, give anti-dumping authorities considerable discretion in calculating dumping margins. Often it is not possible to predict with certainty how any authority will handle any particular issue.

The best experts on dumping calculations are able to calculate dumping margins within a range and can identify the key drivers that affect the calculation. This can be an expensive process. In some situations, it may be well worth the cost to strategically avoid problems in critical markets.

In other situations, it may not be worth incurring such costs, even though it would still be good to reduce the risk of anti-dumping problems. A simple system to somewhat mitigate the risk of anti-dumping problems, that can be implemented by companies without the need of experts, is as follows:

- **Stage 1** – identify markets/products where volumes increased (consider total exports from the market in which you are producing and not just your exports). and/prices have fallen.
- **Stage 2** – for those products where volume has been increasing in particular markets, consider whether the product concerned is sensitive within that market. Has the domestic industry concerned made previous anti-dumping complaints? Have they made comments in the press or to trusted players in the market. Be aware that complainants can often start rumours of anti-dumping actions in the hope that this will be enough to stem imports without making a complaint..
- **Stage 3** – for high risk products/markets, there are simple strategies that can reduce the risk of anti-dumping problems;
 - a) product mix – can you adjust the mix of products sold to include more non-sensitive products?
 - b) country mix – can you focus your attention on markets where your product is not as sensitive?
 - c) can you add value to your product by taking it down the production chain – by turning it into a different product you may be able to avoid problems?
 - d) price cutting – if you are dumping , can you cut domestic prices to reduce the dumping margin?
 - e) cost allocation – can you legitimately allocate costs away from the higher risk items? This can allow more flexibility in pricing sensitive items at lower prices.
 - f) consider non-price means to compete e.g. marketing activities, advertising, promotions, service etc.

As stated earlier, to absolutely minimise the risk of anti-dumping problems requires the assistance of an expert (specifically one who is expert in dumping calculations). However, even with an expert there are no guarantees, due to the discretion that authorities have in treating certain issues during the calculation. The above 3 stage

strategy is at least a low cost method for companies to somewhat mitigate the risk of suffering anti-dumping problems.

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