

Introductory Workshop on Trade Remedies

Session 2

Dumping and Antidumping Measures

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Outline of Presentation

- What Is Dumping and Why Dumping?
- Substantial Elements of Dumping and Antidumping
- Determination of Dumping
 - Determination of normal value
 - Determination of export price
 - Calculation of dumping margins
- Determination of Injury and Casual Link
 - Material injury
 - Threat of material injury
 - Causal link between dumping and injury
- Procedural Aspects of Antidumping Investigations
 - Complainant's process
 - Respondent's process



Some Warm-up Questions

- (1) Under the WTO rules, are companies of a WTO member allowed to dump their products in the market of another WTO member?
- (2) Can coffee producers in Indonesia bring an antidumping complaint against dumping by a tea exporter from another WTO member?
- (3) If Indonesia decides to treat China as a market economy for the purpose of its anti-dumping law and practice. Is it allowed under the WTO?
- (4) A ski boot company from a tropical country is accused of dumping its boots in another country, how can its normal value be established?



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Substantive Elements of Dumping and Antidumping

- Dumping
- Injury
- Causal Link



WHAT IS DUMPING?

When an exporter sells a product to the importing country at a lower price than the price at which the same (or similar) product is sold in its own domestic market.

i.e. Domestic Price of Exporter > Export Price in the Importing Country



Art. 2.1



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INJURY

- Material Injury
- Threat of Material Injury
- Material retardation of the establishment of an industry





CAUSAL LINK

- To demonstrate the causal relationship between the dumped imports and the injury to the domestic industry based on an examination of all relevant evidence before the investigating authorities



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Legal Basis for Anti-Dumping Actions



- Article VI of GATT 1994

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- Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement)



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Essential Definitions

- Interested parties
- Normal value
- Export price
- Product under consideration or the subject product
- Like product
- Domestic industry
- Domestic market
- Margin of dumping



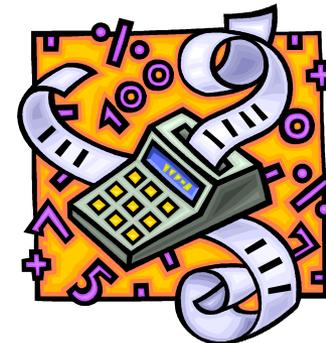
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Dumping and Anti-Dumping

- Determine the “Normal Value” (NV) of the subject product when sold in the domestic market of the exporting country
- Determine the “Export Price” (EP) of the subject product
- Compare the EP to the NV
- The domestic industry in the importing country is actually suffering from the injury caused by the allegedly dumped products
- Dumping Investigations and Injury determination



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If Domestic Price to Export Price Comparison not Possible



- ***Export price to third country (surrogate country)***

Use a comparable price of the like product when exported to an appropriate third country, provided that this price is representative

- ***Constructed value***

Cost of production in country of origin and reasonable amount for administrative, selling and general costs and for profits



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Construction of Export Price (Transactions between Related Parties)

- If there is no export price.

OR



- *Where it appears* that the export price is *unreliable* because of association (or a compensatory arrangement) between the exporter and the importer.

Art. 2.3



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Comparison of Domestic Price to Export Price

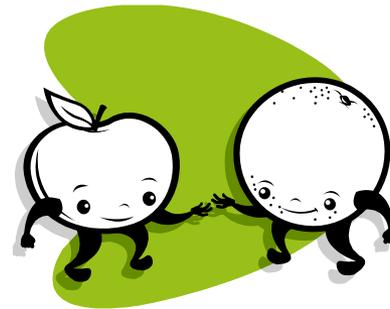


For price comparison to be fair, a number of adjustments need to be made to export price and domestic price

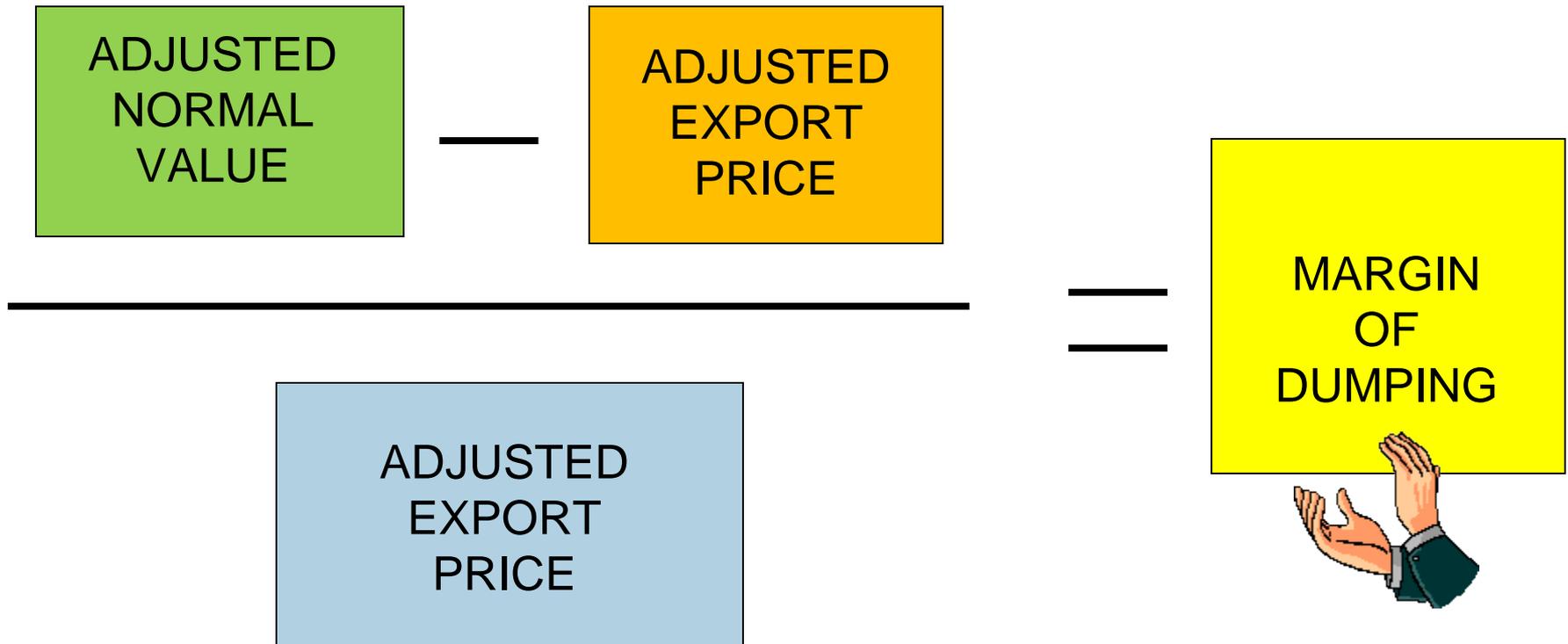
Art. 2.4

Fair Comparison Between NV and EP

- The comparison must be made at the *same level of trade, normally at the ex-factory level*, and in respect of sales made *at as nearly as possible the same time*.
- *Adjustments must be made for differences which affect price comparability*, including differences in
 - conditions and terms of sale
 - taxation
 - quantities
 - physical characteristics
 - levels of trade, and
 - any other differences which are demonstrated to affect price comparability



Computing the Margin of Dumping





Injury

- The term “injury” has three meanings:
 - Material injury to a domestic industry (“past or present injury”)
 - Threat of material injury to a domestic industry (“future injury”)
 - Material retardation of the establishment of a domestic industry

Art. 3



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Basic Principles for the Determination of Injury



The determination of injury must be based on ***positive evidence*** and involve an ***objective examination*** of:

- the *volume* of the dumped imports
- the *effect of the dumped imports on prices of the like products in importing country* , and
- the *consequent impact* of these imports *on domestic producers of like products in importing country*



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Art. 3.1

Injury Factors

- Actual and potential decline in:
 - Sales
 - Profits
 - Output
 - Market share
 - Productivity
 - Return on investment
 - Utilisation 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
 - Ability to raise investment



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Determination of Material Retardation



The Agreement does not provide any guidance regarding the definition of material retardation



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Causality



ARTICLE 3.5

- Illustrative list of potential “other factors”:
 - The volume and price of imported goods not sold at dumping prices
 - Contraction in demand
 - Restrictive trade practices of, and competition between, foreign and domestic producers
 - Developments in technology
 - Export performance and productivity of domestic producers
- Shall not attribute the injuries caused by such other factors to the dumped imports



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Procedural Aspects of Anti-dumping Investigations





Complainant versus Respondents

- *Complainant—party seeking duties*
 - Generally domestic industry, but can include associations and unions
- *Respondents—any party opposing duties*
 - Can include exporters, importers, consumer advocates, foreign producers, any other interested groups



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What the Complainant Should Do?

- *Complainants must establish that:*

- (1) Subject imports are dumped;
- (2) Domestic industry producing like goods injured or threatened with injury; and
- (3) Dumped imports cause the injury

- *Complainants must establish all three conditions for duties to be imposed*



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What the Respondents Should Do?

- *Respondents will rebut the complainant's case by demonstrating:*
 - (1) No dumping;
 - (2) No injury; and
 - (3) No causality
- *Respondents only have to establish one of the three to avoid the duties.*



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Complainant's Process

- ***Three-Step Process:***

Step 1: Preparation;

Step 2: Filing properly documented
complaint (PDC);

Step 3: Participation in the administrative
process



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Complainant's Process

Step 1: Preparation

- *Identify imported goods and like domestic goods*
- *Determine the origin of the imported goods*
- *Determine which goods are negatively affected by imported goods*
- *Determine the injury by considering:*
 - Extent of injury
 - Type of injury
 - Which imported goods caused/threatened to cause injury
 - Estimated dumping margins
 - Volume of dumped goods
 - Effect of dumped imports
 - Impact of dumped imports on domestic producers

• *Injury must be “material”*

- *Determine whether dumping is negligible or volume is de minimis*



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Complainant's Process

Step 2: PDC

- *Prepare and file a complaint with the authorities*
- *Demonstrate dumping, injury and causality*
- *Attach all evidence*
- *Meet all procedural requirements*
- *Submit the complaint to investigating authorities*
- *Investigating authorities review the complaint/case*
 - Sufficient evidences to warrant an investigation
 - PDC meets the requirements
 - Request additional information
 - Review the case
 - Once accepted, investigating authorities will initiate the investigation
 - Preliminary determination of dumping and dumping margins
 - Final determination of dumping and dumping margins
 - Final injury inquiry and injury determination



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Complainant's Process

Step 3: Participation

- **Indonesia: Antidumping and Countervail Committee, responsible for both dumping investigation and injury determination**
- **Canada: Two federal institutions are involved:**
 - **CBSA: determine dumping and dumping margins**
 - **CITT: determine injury – hearing process**
- **Complainant must actively involved in the process from the beginning to the end**
- **Complainant must:**
 - Respond to the questionnaires
 - Prepare and file written submissions
 - Respond to written submissions filed by parties in opposition
 - Present evidence (witnesses) and participate fully in the hearing
 - Prepare and file RFIs
 - Object/respond to RFIs
 - Respond to requests for product exclusions, etc.



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Respondent's Process

- *Become involved in the process following PDC and initiation of the case*
- *Comments on administrative records*
- *Study and rebut the complainant's case*
- *Identify the weak points of complainant and determine a response*
- *Undertake research to respond to complainant's case*
- *Conduct objective analysis to support the arguments*
- *Obtain positive evidences to support your case*



Respondent's Process (Cont.)

- *Respond to the questionnaires*
- *Prepare and file written submissions to respond to the Complainant's submissions, including allegations and evidence*
- *Prepare and file RFIs*
- *Object/respond to RFIs*
- *Present the evidence (including witnesses) and participate fully in the hearing processes*
- *Prepare requests for product exclusions, if any*
- *Coordinate with other respondents in each case*
- *Fatal if respondents take mutually exclusive positions*



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Q&A and Discussion

Thank you for your participation.

