

# Introductory Workshop on WTO Trade Remedies

## Session 3

### *Dumping and Anti-dumping Measures*

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# Trade Remedy / Trade Defence

- Important in post globalization world
- New attitudes to trade
- WTO rules detailed, complex



# Rules were written by USA – E.U.

- Also by:
  - Canada
  - Japan
  - Australia
- Cost of trade liberalization



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# Are rules too easy to use?

- Dispute Settlement shapes the system
- Rules can apply to similar situations
- WTO is not self-policing



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# WTO Dispute Settlement

- Very expensive
- Who are targets? Large markets
- Why?
- U.S./E.U. cases best to learn from



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# Is System Fair and Unbiased?

- Do smaller economies benefit from being smaller?
- Does trade remedies system need to be fixed?
- Will U.S. build anti-dumping wall?



# WTO Benefits

- Bullying by more powerful countries
- How to defend one's self
- Canada – Chile
- Canada – Israel



# Problems needing fixing

- Cumulation
- Over 3%; less than 9% of imports
- U.S. vs Canada or Cheaper by the dozen



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# Problems of Language

- Translation costs
- Short response time
- Expensive for small exporters
- Judicial review- never-ending story



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# Early Warning Systems

- Trade defence – be aware be prepared
- Should WTO be self-policing
- Collect/study useful decisions
- Learn from disputes and decisions of other countries
- Shared defence



## Welded Pipe was a multi-country, anti-dumping, countervailing duty investigation

AD	CVD
Chinese	India
Taipei	Oman
India	UAE
Oman	
Republic of Korea	
Thailand	
Turkey	
UAE	



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# CBSA initiated with very high estimated margins of dumping and subsidy

## CBSA'S Estimates of Margins of Dumping (expressed as a percentage of the export price)



COUNTRY	Margin of Dumping
Chinese Taipei	29%
India	69%
Oman	50%
Rep. of Korea	29%
Thailand	33%
Turkey	24%
UAE	42%



Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Initiation of Investigation, May 29, 2012



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# Estimated Amounts of Subsidy January 1, 2011 to December 31, 2011

<b>COUNTRY</b>	<b>Estimated Amount of Subsidy (as a % of export price)</b>
<b>India</b>	34%
<b>Oman</b>	35%
<b>UAE</b>	19%
<b>Other Countries</b>	
<b>Total Imports</b>	

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons,  
Initiation of Investigation, May 29, 2012



## Preliminary Determination issued without verification

- Two exporters from Chinese Taipei had AD margins less than 2%

### CBSA's Estimated Margins of Dumping

January 1, 2011 to December 31, 2011

COUNTRY	Margin of Dumping
Chinese Taipei	11.9%
India	83.6%
Oman	84.0%
Rep. of Korea	84.0%
Thailand	11.9%
Turkey	23.9%
UAE	59.8%

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Preliminary Determination, August 28, 2012



# At Preliminary Determination, Canada Border Services Agency estimates...

## Preliminary Determination of Dumping, Chinese Taipei

<b>COUNTRY</b>	<b>Margin of Dumping</b>
<b>Chinese Taipei</b>	
Chung Hung Steel Corporation	0.0%
Shin Yang Steel Co. Ltd.	0.5%
Yieh Phui Enterprise Co. Ltd.	4.4%
All Other Exporters	84.0%

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Preliminary Determination, August 28, 2012



## Preliminary Determination issued without verification

- Investigation was continued against all exporters and countries.

### CBSA's Estimated Amounts of Subsidy January 1, 2011 to December 31, 2011

<b>COUNTRY</b>	<b>Estimated Amount of Subsidy (as a % of export price)</b>
<b>India</b>	<b>54.1%</b>
<b>Oman</b>	<b>34.6%</b>
<b>UAE</b>	<b>12.9%</b>

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Preliminary Determination, August 28, 2012





# Final Determination

## Margin of Dumping and Volume of Dumped Goods January 1, 2011 to December 31, 2011

Country	Volume of Dumped Goods as a Percentage of Country Imports	Weighted Average Margin of Dumping	Volume of Country Imports as a Percentage of Total Imports	Volume of Dumped Goods as a Percentage of Total Imports
Chinese Taipei	100.0%	8.9%	18.9%	18.9%
India	100.0%	53.9%	9.5%	9.5%
Oman	100.0%	54.2%	4.3%	4.3%
Rep. of Korea	100.0%	54.2%	7.0%	7.0%
Thailand	100.0%	6.5%	12.8%	12.8%
Turkey	1.4%	0.8%	12.6%	0.2%
UAE	69.1%	17.9%	7.2%	5.0%

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, [Final Determination](#), November 26, 2012



# Final Determination

## Amount of Subsidy

January 1, 2011 to December 31, 2011

Country	Weighted Average Amount of Subsidy*
India	52.4%
Oman	0.008%
UAE	0.0%

\* Expressed as a percentage of export price.

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Final Determination, November 26, 2012



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# Averages hide reality

## Summary of Margins of Dumping for Chinese Taipei

Exporter	Margin of Dumping*
<b>Chinese Taipei</b>	
Chung Hung Steel Corporation	0.005%
Shin Yang Steel Co., Ltd.	0.4%
Yieh Phui Enterprise Co., Ltd.	4.7%
All Other Exporters	54.2%
Chinese Taipei Overall	8.9%

\* Expressed as a percentage of export price.

Source: CBSA, Carbon Steel Welded Pipe, Statement of Reasons, Final Determination, November 26, 2012



# Basic Termination Rule

Article 5.8 explains...

“The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.”



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# Problems???

- Canada did not terminate the investigation against:

- Chung Hung Steel Corporation

- Shin Yang Steel Co. Std.



- Chinese Taipei challenged Canada's inclusion of imports with de minimis margins as dumped imports for injury determination.

ADA Articles 3.1, 3.2, 3.5, 3.7



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- Panel found that exporters who had de minimis margins at Preliminary Determination should be terminated.
- The obligation to immediately terminate – means exporters with de minimis margins could not be treated as “sources found to be dumped” for purposes of duty imposition.



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- Canada applies ADA Article 5.8 on country-wide basis.
- Chinese Taipei argued should be exporter-specific – USA does this.



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- Panel agreed with Chinese Taipei
- Issue had been decided in Mexico - Anti-dumping Measures in Rice
- Article 5.8 of the ADA says:

“There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible.”



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# Problems???

- Canada applied facts available rate to all exporters – including Chung Hung and Shin Yang



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# Facts Available

- Canada relies on highest dumping margin on any single transaction from any country in the investigation.
- Panel said Canada had failed to make a comparative evaluation and assessment of all facts on the record.
- This is required by Article 6.8 and Annex II, para 7.



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# Final Determination

## Application of Facts Available to New Models

Exporter	Margin of Dumping*	New Models
<b>Chinese Taipei</b>		
Chung Hung Steel Corporation	0.005%	54.2%
Shin Yang Steel Co., Ltd.	0.4%	54.2%
Yieh Phui Enterprise Co., Ltd.	4.7%	54.2%
All Other Exporters	54.2%	54.2%
Chinese Taipei Overall	8.9%	54.2%

\* Expressed as a percentage of export price.



# New Models

- Prospective normal values for new models are difficult to obtain.
- Canada applies the “facts available” rate to new models.
- Article 9.3 - Fundamental link between dumping margin established for the exporter and the amount of dumping duty imposed and collected.
- Canada failed to preserve the fundamental link – inconsistent with Article 9.3.
- No basis for applying facts available outside Article 6.8 and Annex II.



- The issue was not brought to the Appellate Body. The Panel decision has been adopted.
- Canada has 14 months to comply. Some changes are already being made.



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# U.S. – Carbon Steel

- Very important case for establishing criteria
- Every definition in the ADA on calculation of margins is very important



# U.S. – Carbon Steel

## Point of Sales Comparisons

- Ex-factory
- Freight equalization
- Freight absorption
- Technical or real dumping





# U.S. – Carbon Steel

## Methodology

- Fair comparison
- Should not ensure dumping will be found
- Fair comparison is crucial



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# U.S. – Carbon Steel

## Location

- Sales from plants
- Where does sale take place?
- Freight adjustments



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# Point of Direct Shipment

- Plate VII
- Plate VIII
- Freight from mill
- From regional sales offices
- Must exhaust sales comparisons from mill



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# Date of Sale

- Exchange rates are very important
- Local currency ↓
- Local currency ↑



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# Differences in Quality

- Measurement of differences
- Value based
- Cost based
- Is cost preferable?



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# Zeroing

- Controversial
- Examine total Normal Value and Export Price
- U.S. – ADA only about dumping
- Exemption for targetted dumping



# Trade Levels

- Direct to retail
- Through Wholesalers
- Multi-level
- Adjustments



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# Credit Terms

- Limited credit – home market
- Exports longer term
- Disadvantage
  - Credit terms to who
  - Take account of distance, delivery and terms



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# Warranties and Guarantees

- Hard to prove
- Adjustments in lieu of warranty
- Free goods



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# Third Country Comparisons

- Difficult to secure co-operation
- Provides potential evidence of dumping
- Could be dumping to several countries



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# Constructed Cost

- Cost of Production
  - Raw Materials
  - Direct Labour
  - Factory Overhead
  - Amount for Profit
- Selling, Administrative Other Costs
- Design/Engineering Cost



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# Other Factors

- Credit sales
- Benefits on re-sale of goods
- Currency Conversion



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# Export Price Determination

- Who is the importer?
- Who is the exporter?
- Use of trading companies
- Related Party Transactions
- Selling Commissions



# Related Party Transactions

## Hidden Dumping (Gypsum Board)

- Goods resold in condition imported
- Goods for assembly, Packaging or Further manufacturing
- Calculating amount for profit
- Deduction of SIMA duties



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# Export Price – Other Issues

- Agreement to absorb AD
- Credit sales
- Benefits or resale
- Currency movement
- Counter trade



# Transshipment

- Transshipment is not evasion
- Which price/value applies?
- Is this overkill?



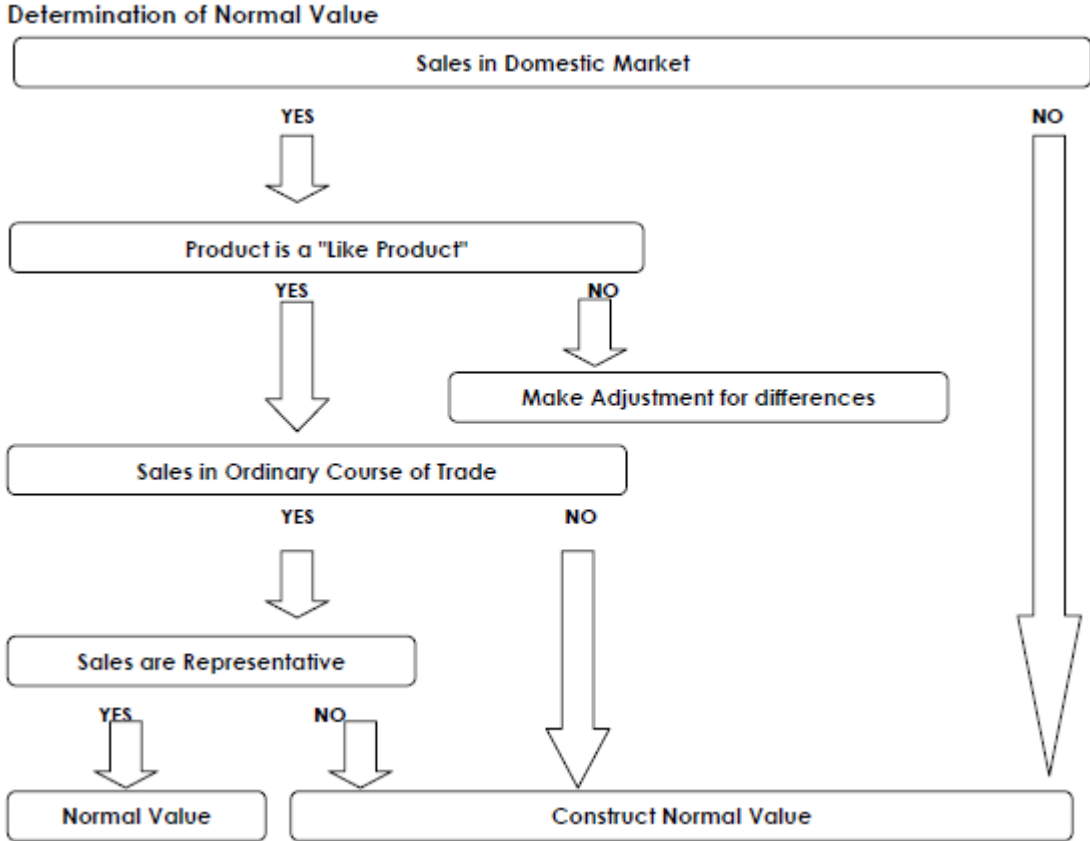


# Margins of Dumping

- No Zeroing
- Margin by Country
- Margin by Exporter
- De Minimis



# Normal Value Calculation

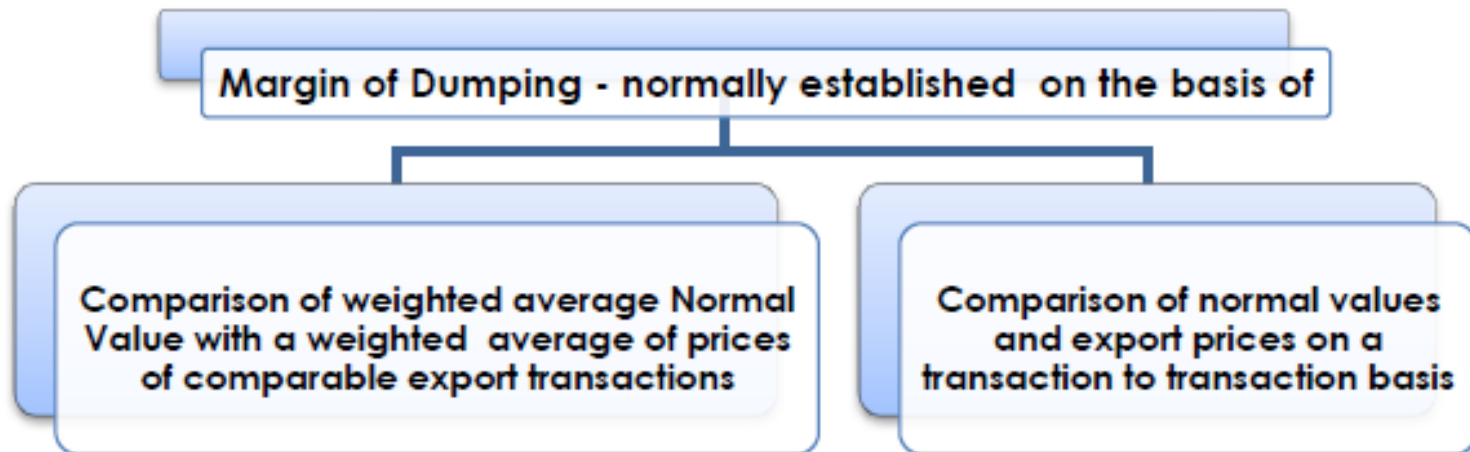


# Export Price



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# Margin of Dumping



## Q&A and Discussion

Thank you for your participation.

