

A Handbook on Anti-Dumping, Anti-Subsidy and Safeguard Measures



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

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Foreword

It is a matter of great pleasure that Committee on Trade Laws and WTO has decided to issue publications on emerging areas for Chartered Accountants in the field of International Trade Laws and WTO.

The dawn of new economy has provided new areas to work upon and chartered accountancy profession being a key player in every sector of the economy accordingly needs to be conversant with the latest developments so that the stakeholders are able to reap the benefits of valuable professional services provided by professionals like Chartered Accountants. In the recent past, Anti-dumping, Anti-subsidy & Countervailing and Safeguard Measures have become a very prominent area in international trade. While establishment of the World Trade Organization in January 1995 is regarded as the culmination of efforts in establishing an international trade organization to facilitate free and unprotected cross border trade, however, depending upon the need, Anti-dumping, Anti-subsidy, Countervailing and Safeguard Measures have continued to be invoked.

All these measures are in the nature of trade remedies, which the domestic industry could take advantage of subject to the fulfillment of essential conditions and criteria as mandated under law. The Government has already put in place the requisite legal and institutional mechanism for administering these measures. However, various concepts and legal and operational aspects involved in these regards need to be understood in the proper sense and in the right perspective.

The present publication provides a comprehensive explanation of the Anti-dumping, Anti-subsidy, Countervailing and Safeguard Measures law and procedures at the WTO level and in India. I am sure that this publication will serve as a useful tool of information for Chartered Accountants wishing to practice in this emerging field of Anti-dumping, Anti-subsidy, Countervailing and Safeguard Measures. I appreciate the initiative taken by the Chairman of Committee on Trade Laws and WTO, CA. Rajkumar S. Adukia and all the Members of the Committee in bringing out this publication. I would also like to put on record the contribution of CA. Deepak Kumar Jain B. who has prepared the basic draft of this publication.

New Delhi.
February 3, 2007

CA. T.N. Manoharan
President

Preface

Under the existing WTO arrangement, and in terms of various provisions under the Customs Tariff Act of 1975 and Rules framed thereunder, anti-dumping and allied measures constitute the legal framework, within which the domestic industry can seek necessary relief and protection against dumping of goods and articles by exporting companies and firms of any country from any part of the world. These measures have assumed a great deal of relevance in India in recent times in view of the scenario arising out of unfair trade practices adopted by some of our trading partners, especially in the post-QR phase.

The Anti-Dumping and allied measures are complex legal disciplines which are often not within the easy comprehension of the trade and industry who are the users of these measures. To obviate this difficulty faced by large sections of the domestic industry, and to help Chartered Accountants wishing to develop an expertise in these matters, there is a need to explain the basic concepts, legal provisions and procedural aspects. This will facilitate Chartered Accountants to provide necessary help to the domestic industry to avail of these remedial measures in the wake of alleged dumping and of injury caused by unfair trade practices.

In the last about 10 years, anti-dumping initiations and its measures have increased phenomenally. It has been seen that more and more countries have initiated anti-dumping actions and the number of these actions have only grown over the years. As these measures have huge impact on the industry requiring need for an expert knowledge in the subject, the field is wide open and it is for us to recognize this potential and render service to the industry and the nation, as a whole.

The present publication is an attempt to provide guidance to Chartered Accountants in practice and in service and others concerned to have an insight in these fields. The publication tries to develop a lucid understanding of the relevant national and international law and procedures in these regards. For an easy understanding, relevant frequently asked questions and case studies have also been included in the publication. I sincerely hope that readers would find it useful. I am thankful to CA. Deepak Kumar Jain B. who has painstakingly authored the basic draft of the publication. I also thank CA. Sukamal Basu for lending his contribution in bringing out this publication. I would like to place on record my sincere thanks to all the members of the Committee on Trade Laws and WTO for the year 2006-07 namely, CA. T. N. Manoharan, President, CA. Sunil Talati, Vice-President, CA. Manoj Fadnis, Vice-Chairman, CA. S. Gopalakrishnan, CA. Amarjit Chopra, CA. Harinderjit Singh, CA. Pankaj I. Jain, CA. V. Murali, CA. Uttam Prakash Agarwal, Shri Jitesh Khosla, Shri Sidharth Birla, CA. Bhavna G. Doshi, CA. Kishore S. Peshori, CA. Abhay V. Arolkar, CA. K. Ravi, CA. R. Panchapakesan, CA. V. Srinivasu, CA. Jagdeep Singh Chopra, CA. Venugopal C. Govindan Nair, Shri M. K. Anand, Joint Director, Ministry of Commerce & Industry and Shri P. K. Patni, Deputy Controller of Patent and Designs for rendering their support in bringing out this publication and all the initiatives taken by the Committee during the year.

Mumbai.
January 25, 2007

CA. Rajkumar S. Adukia
Chairman, Committee on Trade Laws and WTO

A HANDBOOK ON ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD MEASURES

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Appendices (contained in CD attached with this book)

Appendix A : Anti-dumping - Questionnaire & Application

Appendix B : Anti-subsidy - Questionnaire & Application

Appendix C : Safeguards - Questionnaire & Application

CHAPTER 1

1. Introduction

- 1.1 Antidumping, Anti-subsidy and Countervailing Measures, has in the recent past, become by-far the most 'sought-after' practices in the international trade. This has also consequentially resulted in phenomenal growth in the literature being shared internationally on these matters. The growth in the international economic relations in the twentieth century, may be recognized as the early causes which led to the evolution of the concepts of free trade for establishment of a system of uniform trade practice with unprecedented growth in international cross border trade. In this regard, the establishment of World Trade Organisation (WTO) in January 1995 is often portrayed, as the culmination of the efforts put over several decades in establishing an international trade organization to facilitate free cross border trade.
- 1.2 In international transactions, 'Dumping' means to throw goods into a country of another at prices less than normal. Anti-dumping is a preventive measure adopted against dumping of goods by one country into another. WTO recognizes that dumping of goods in international transactions hinders free trade and authorizes member nations to take preventive steps to limit the effect of dumping. The guiding factor is the protection of the domestic industry manufacturing like products from the injury resulting as a direct cause from the dumping. Subsidy is an action taken by the Government or any public body of such Government, causing to provide financial benefit to individual enterprises with the intention to promote export or for seeking import substitution. Anti-subsidy is again a preventive measure adopted by one country to counter the effect of subsidy. The guiding factor is again, the protection of the domestic industry manufacturing like products from the injury resulting as a direct result of subsidy, where imported goods become cheaper when compared to the like goods manufactured by domestic manufacturers.
- 1.3 Anti-dumping and Anti-subsidy appear to be similar in cause and effect. However, there is an essential and fundamental difference between the two. Dumping is an action adopted by individuals or enterprises and whereas, subsidy is action adopted by the Government or supported by the action of the Government. WTO is an organization formed by negotiations between member nations to promote free international trade. In this regard, member nations have signed an undertaking and where necessary have also made necessary legislative provisions/changes in provisions to seek consistency with common international agreements and negotiations. Accordingly, subsidy being an action of the Government, it becomes easier for the member nations to seek enforcement of the provisions that deviate from the undertakings and negotiations entered into between them. However, as dumping is an action of an undertaking in the country of another, member nations cannot normally seek enforcement but are permitted to take counter measures, which can prevent/reduce the intended damage. This is the fundamental or the underlying difference between anti-dumping and anti-subsidy.

- 1.4 Safeguard measures are envisaged to deal with the problem of ‘increased imports’ and this has nothing to do with either dumping or subsidy. Consequent to the increase in imports, safeguard measures can be taken by member nations, to prevent serious injury to the domestic industry. They normally take the form of increase in the rate of customs duty payable on imports or imports of subject goods have restrictions on the quantity allowed. Though the objective appears to be noble, the measure is sparingly used, for the reason that member nations would be required to pay compensation to their trading partners in appropriate cases.
- 1.5 This book has been prepared with an objective to provide comprehensive explanation to the law and practice of Antidumping, Anti-subsidy and Countervailing Measures in India. The focus is to enable the reader to gain relevant understanding of the provisions governing the levy of Antidumping, Anti-subsidy and Countervailing Measures. The study has been prepared as part of research projects for the members of Institute of Chartered Accountants of India. The subject is divided into logical segments, covering the following aspects:

Topic	Subject
Understanding WTO	Giving its history, principles, important agreements, organization structure, the methodology in seeking membership, etc.
National Perspective to	Anti-dumping, Anti-subsidy and Countervailing Measures
FAQ’s	Giving practical aspects and objective understanding to the subject
Case studies on	Giving decided judicial pronouncements on various matters covering the subject
Opportunities, as a Chartered Accountant	Giving practical aspects for making an enduring practice in the area of Anti-dumping, Anti-subsidy and Countervailing Measures
Appendices containing	Extract of customs law, questionnaire & information list, etc.,

- 1.6 The law in India as regards anti-dumping, anti-subsidy and countervailing measures may be said as the result of the agreement entered into by India as a member nation of the WTO and undertaking commitments to enforce the free and fair trade in international markets. Consequently, it was considered necessary to discuss certain relevant provisions of WTO, so as to enable the understanding of the significance of WTO, the reasons behind enforcement of anti-dumping, anti-subsidy and countervailing measures and the consequential commitment that India shares in the progress and the enforcement of such measures.

CHAPTER 2

2. WTO; an understanding

WTO; its beginning

- 2.1 WTO formally came into existence on 01-Jan-1995, undertaking to carry on a four-decade old formal international trading system established in 1947-48 under the General Agreement on Tariffs and Trade (GATT). In-fact, the second WTO ministerial meeting, which was held in May 1998 in Geneva, celebrated the 50th Anniversary of this system. The celebration though not to commemorate the presence of WTO, which was then over three years old, was targeted to recognize the existence of the system over the past four decades. Over the years, WTO has introduced into its foray, agreements covering trade in services, traded inventions, creations and designs, apart from the refinement in the agreement of trade in goods, which was already covered under the GATT.
- 2.2 WTO may be seen as born as a result of negotiations, existing and working as a result of negotiations and if it may ever end, be by result of negotiations between countries. This is said because it was negotiations which lead to formation of the General Agreement on Tariffs and Trade (GATT) in 1947-48, it was also negotiations of member countries to GATT (*spreading across 1986-94, under the Uruguay Round*), which gave birth to the WTO and the more recent 2001 Doha Development Agenda, which has created a host of new negotiations. With negotiations emerging as international bindings, WTO became recognized as an international organization formed for regulating trade among nations in a manner aimed to establish free trade for unprecedented growth in international cross border trade. The noble cause is being achieved by WTO, with constituted WTO agreements, which have been negotiated and signed by predominant trading nations of the world and which also have been ratified by parliamentary legislations of individual nations. Over the years, WTO is being looked by nations as a forum for seeking liberalization in international trade, place for settlement of international trade disputes and a platform for negotiating trade and free trade agreements.
- 2.3 The WTO Agreements contain ground-rules for free international trade. These agreements bind contracting nations to keep their trade polices within the agreed or negotiated framework, which *inter alia* provide for curbing trade barriers and under specified circumstances, permit the existence of such barriers under reasons that warrant protection and/ or safeguard of the domestic trade against the foreign influx or under factors that seek protection under social and environmental objectives.

WTO; its principles

2.4 The WTO agreements are extensive and cover wide range of activities such as agriculture, textiles, banking, telecommunications, government purchases, intellectual property, product standards and safety, etc. Though separate agreements cover or deal with these aspects, the fundamental basis and principles are common for all of them. These principles become the foundation of the multilateral trading system of the WTO and the most important of which are given below:

a. Trade without discrimination

Most favoured nation

Most favoured nation principle provides that a country shall not normally discriminate between or among its trading partners. In other words, a Member Country shall not grant a special treatment only to one or few of the Member Countries. However, there are certain exceptions to this principle as in a case where a free trade agreement is entered into between two or more member nations or when concessions are given to developing nations for special access to markets of developed nations and enabling their development, etc.

Equal treatment to foreign and domestic goods

WTO provides that there should be no discrimination between domestically manufactured or procured goods and services with that of imported goods and services, atleast not after the imported goods or services have passed customs. Under this principle, the WTO seeks to gain equal recognition to international goods with that of domestic manufactured or traded goods. This is important to seek free international cross border trade.

b. Free Trade

In the past, on the pretext to protect domestic manufactures and dealers, it was ordinary for a nation to impose very high customs duties on imports or adopt quota systems, creating thereby an artificial trade barrier in international trade. The objective of the WTO is to ensure that continuous efforts are made to eliminate these trade barriers for establishment of free international trade.

c. Transparent Principles

WTO advocates the adoption of transparent principles in international trade that would enable stability and predictability, encouraging thereby investment and cross-border trade. In this regard, WTO seeks commitments from member countries by requiring them to be transparent in advocating these principles.

d. Fair Competition

WTO frames rules dedicated to be open, fair and providing undistorted competition in international trade. The WTO Rules on most favoured nation (MFN) and on equal treatment to foreign and domestic goods or for that matter, rules pertaining to dumping, are so designed to secure fair conditions in international trade.

2. Encouraging development and economic reform

WTO seeks to contribute in the development of international trade. In this regard, it recognizes that unless stringent steps are taken by member nations, the objective would be far from real. However, WTO recognizing that developing countries would need certain amount of flexibility, they provide them with additional time to implement these desired and so-called stringent steps.

GATT; over the years

- 2.5 WTO was born as an offshoot of work left undone by GATT. GATT which was originally formed in 1947-48, was also formed as a salvaged attempt of Nations which came together to form an International Trade Organisation. From 1947-48 to the end of 1994, the General Agreement on Tariffs and Trade provided the Rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established, but unfortunately throughout those 47 years, it remained as a provisional agreement of nations and in the absence of a formal setup, became informally branded as an organization. The original intention was to create a third institution to handle the trade side of international economic cooperation, by joining the two institutions, the World Bank and the International Monetary Fund. In this endeavor, over 50 countries had participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. The United Nations Economic and Social Council, an Organisation primarily set up to co-ordinate initiatives in International Economic Co-operation, took steps in 1946 to draft a Convention for the consideration of an International Conference on Trade and Employment and drafting a Charter for an International Trade Organisation. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services. The aim was to create the International Trade Organisation at a UN Conference on Trade and Employment to be held in Havana, Cuba in 1947.
- 2.6 Initially, 15 countries came together in December 1945 undertaking reduction in customs tariff and wanting to give an early boost to trade liberalization. This first round of negotiations resulted in a package of trade rules and 45,000 tariff concessions affecting \$10 billion of trade, which was about one-fifth of the world's total trade volume. The group of 15 countries had expanded to 23 countries by the time the deal was signed on 30-Oct-1947. The deal

contributed to reduction in tariff concessions, which came into effect by 30-Jun-1948 through a “Protocol of Provisional Application”. This became known as the General Agreement on Tariffs and Trade, with 23 founding members, officially called “contracting parties”. The contracting parties were also part of the larger group negotiating the International Trade Organisation Charter. Thus, came the birth of GATT.

2.7 The Havana conference began on 21-Nov-1947, which was less than a month after GATT was signed. The Charter was finally agreed in Havana in March 1948, but its ratification in some national legislatures was shown to be impossible, with most serious opposition coming from the US Congress, even though the US Government had been one of the driving forces. Finally in 1950, the United States announced that it would not seek Congressional ratification of the Havana Charter, which effectively caused the death of ITO. Accordingly, GATT became the multilateral instrument governing international trade from 1948 until the WTO was established in 1995. The basic principle of GATT remained unchanged for almost half a century but for additions in the form of a section on development added in the 1960s and “plurilateral” agreements (i.e. with voluntary membership) in the 1970s. Much of this was achieved through a series of multilateral negotiations known as “trade rounds” — the biggest leaps forward in international trade liberalization have come through these rounds, which were held under GATT’s auspices. In the early years, GATT primarily concentrated on continuously seeking reduction in tariffs. The Kennedy Round, held in the mid-sixties constituted Anti-Dumping Agreement and a separate section on development. Similarly, the Tokyo Round, which was held during the seventies, became the first major attempt to tackle trade barriers that do not take the form of tariffs. The eighth GATT Trade Round, known as the Uruguay Round of 1986-94, was the most extensive of all. The table below gives the gist of the several GATT Trade Rounds:

GATT; the trade rounds

Year	Place/ name	Subjects covered	Countries
1947	Geneva	Covering roughly 45,000 tariff concessions and \$10 billion in trade	23
1949	Annecy, France	Covering roughly 5,000 tariff concessions	34
1951	Torquay, England	Covering roughly 8,700 tariff concessions	38
1956	Geneva	Tariffs involving \$ 2 to 5 billion in trade	26
1960-1961	Geneva [Dillon Round]	Covering roughly 4,400 tariff concessions and \$5 billion in trade	45
1964-1967	Geneva [Kennedy Round]	Tariffs and anti-dumping measures involving \$40 billion in trade	62

1973-1979	Geneva [Tokyo Round]	Tariffs, non-tariff measures, "framework" agreements and \$ 300 billion in trade	102
1986-1994	Geneva [Uruguay Round]	Tariffs, non-tariff measures, intellectual property, rules, services, dispute settlement, agriculture, textiles, WTO creation, etc., & \$3.7 trillion of trade	123

GATT; its success and failures

2.8 GATT which was formed from a provisional agreement of certain nations which in its 47 year tenure, spanning from 1947-48 to the end of 1994, made significant efforts in seeking and securing the liberalization of world trade. Pursuant to its efforts that caused reduction in import tariffs, the global trade during the 1950s and 1960s grew on an average by 8% every year. Further, the momentum of trade liberalization helped ensure that trade growth consistently out-paced production growth throughout the GATT era. This was further evidenced by the growth in the number of member after every GATT round, which demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform. However, all was not well for GATT. The economic recessions in 1970's to early 1980's, which saw growing unemployment, high interest rates, growing foreign trade deficit predominantly in developing and under developed economies, increased foreign competition, rapidly growing complex business environment, growing global recognition of trade in services (*not covered by GATT Rules*), etc., made GATT no longer as relevant to the realities of world trade as it had been in the early 1950's. These and other factors convinced GATT members that a new effort was needed to reinforce and extend the multilateral system. This recognition resulted in the success of the Tokyo and the Uruguay Round, the Marrakesh Declaration and the creation of the WTO. WTO has replaced GATT as an international organization, which moved from an informal to a much formal set-up. But despite its replacement, the 1994 agreement, which was signed by most of the participating nations, continues to exist as an umbrella treaty for trade in goods along with the original 1947 GATT agreement, which is regarded as the heart of GATT. Post-Uruguay, the agreements which were signed had set timetables for future work that saw many additions and modifications during the course and were often referred to as its 'built in agenda', which became over 30 in number. Some of these have since become part of the Doha Development Agenda. Thus, despite the so-called takeover by WTO, GATT remains as a no-end road in international trade reform, continuing its efforts in seeking free and unprecedented cross-border trade between nations.

WTO; the final take over

2.9 WTO took over the reigns from GATT on and from 01-Jan-95 as a separate and a formal international organisation. The objectives of the WTO are no

different from GATT but they seek to re-emphasize the need for international reform in its stated preamble, which is reproduced below:

- (a) That international economic relations should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand;
- (b) Expanding the production of trade in goods and services;
- (c) While allowing for the optimum use of the world's resources in accordance with the objectives of sustainable development, seeking both to preserve the environment and to enhance the means of doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

2.10 WTO, seen from the past, intends to achieve the stated objectives by one or more of the following mode or means:

- Administering trade agreements
- Acting as a forum for trade negotiations and settlement of trade disputes
- Reviewing national trade policies
- Assisting developing countries in trade policy issues, through technical assistance and training program
- Co-operating with other international organization

WTO; and their agreements

2.11 WTO has constituted number of agreements, as a means to fulfill the stated objectives, these agreement deals with different subjects. These agreements collectively seek international reform in cross-border transactions, ensuring to establish free trade between and among nations. In this regard, WTO has *inter alia* ensured that constant efforts are put by its member nations to reduce tariffs, seek substantial reduction of trade barriers and elimination of discriminatory treatment in international trade and further that these are equally applied to all its trading partners under the most-favoured nation treatment. As a result to these efforts, member nations at the WTO, have signed agreements such as the Agreement on implementation of Article VI of GATT, 1994 (*more popularly called as the Anti-dumping Agreement*), the Agreement on subsidies and countervailing measures and so also the Agreement on safeguards. In fact, WTO has supported and even advocated these exceptions, rather intentionally. These exceptions have drawn their force from the WTO for the reason that where WTO upholds the principle of free trade, it also seeks to ensure that the trade is fair and full.

WTO, anti-dumping agreement

2.12 Article VI of GATT, 1994 and so also GATT, 1947, lays down the principle for levy of anti-dumping duty. It states that the practice of exporting goods from one country to another at less than the normal value, should be strictly condemned if it causes or threatens to cause material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. In order to seek implementation of the said Article, member nations at WTO have entered into an agreement called the Agreement on implementation of Article VI and more-popularly referred to as the "Anti-dumping Agreement".

2.13 Article 2.1 of the WTO antidumping agreement stipulates:

"A product is considered as being dumped i.e. introduced into the commerce of another country at less than its normal value if the export price of the product from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

The activity of throwing goods at less than their normal value into another country would be called dumping. When dumping causes or threatens to cause material injury to domestic industry of the importing country, the action undertaken to counteract the said dumping, by the importing country, is called as 'anti-dumping'. In this regard, the WTO has laid down the principles on how a Nation can or cannot react to dumping. In this regards the Agreement also specified that, to establish dumping, it would be essential for a member country to prove that there should have been a material and genuine injury to its competing domestic industry, before in any manner, taking steps against dumping. Accordingly, the importing country would be allowed to take action against dumping, when:

- Dumping is not only said but also shown to have taken place by the importing country;
- On the basis of dumping, being said to exist, the importing country is able to establish from reliable information and considering all possible factors that such dumping has actually caused or could cause, material injury to its domestic industry; and
- Lastly, as a reasonable justification for any action against dumping, the importing country should be able to present the calculation stating the extent of dumping i.e. the difference between the export price and the normal price in the exporter's home country.

2.14 In case the above factors are satisfied, GATT and the corresponding Anti-dumping Agreement, allows a nation to take action against the dumping under and in the manner provided to in the said Agreement. Normally, anti-dumping is levied as a duty in addition to the duty of customs normally levied. The

intention is to bring the price closer to the 'normal value' or to do such as would remove the injury to the domestic industry in the importing country.

- 2.15 WTO lays down many different ways of calculating whether a particular product is being dumped and also the extent of such dumping. The agreement also provides three methods to calculate a product's "normal value".

The first method is based on the difference between the price in the exporter's domestic market (called normal value) and the price charged for export to the subject nation. In the absence of the price in the domestic market,

The second method is to compare the price charged by the exporter for exports to another country that to the price charged on export to the subject nation. In the absence of such a comparable price, as a third alternative, the normal price in the exporting market is derived by considering the exporter's production costs, expenses and his normal profit margins, which is then compared to the price charged for export to the subject nation. In all the three methods, if the price charged for export to the subject nation is materially lower from the comparable price, then dumping is presumed to have taken place.

- 2.16 Once dumping is presumed, the anti-dumping action can be initiated only when such dumping is said to become injurious. Accordingly, upon the determination of dumping, as a further step, it needs to be established that dumping has caused or could cause material injury to the domestic industry in the importing country. In this regard, a detailed investigation has to be conducted in terms of the specified rules. The investigation must evaluate all relevant economic factors that have a bearing on the state of the industry in question. If the investigation shows dumping has taken place and domestic industry is hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid anti-dumping import duty. WTO provides for detailed procedure on how anti-dumping cases are to be initiated, how the investigations are to be conducted and the conditions for ensuring that all interested parties are given an opportunity to present evidence. Further, it is provided that any measure taken against dumping must normally expire within five years after the date of its imposition, unless further investigation on the matter shows ending the measure would cause injury. In case the authorities determine that the margin of dumping is insignificantly small (defined as less than 2% of the export price of the product), then also anti-dumping investigations would need to end immediately. Similarly, the investigations would also need to end if the volume of dumped imports are negligible (i.e. if the volume from one country is less than 3% of total imports of that product — although investigations can proceed if several countries, each supplying less than 3% of the imports, together account for 7% or more of total imports). Procedurally, in terms of the agreement, a member country must inform the "Committee on Anti-Dumping Practices" about all preliminary and final anti-dumping actions, promptly and in detail. Further, periodically, member

countries are required to report, twice every year, on all investigations initiated by them, whether preliminary or final.

WTO, subsidies and countervailing measure

2.17 Article XVI of GATT, 1994 and so also GATT, 1947, lays down the meaning of the term 'subsidy' and relating provisions containing countervailing measures against what is referred to in the agreement as 'specific subsidies', which are categorized further into 'prohibited subsidies' and 'actionable subsidies'. The term 'subsidy' has been defined to mean any financial contribution provided by a Government or a Public Body in the form of transfer of funds, tax incentives, provision of goods or service or any other form of income or price support. Subsidies, by their very nature, can distort free international trade. In order to seek discipline on the use of subsidies, member nations at WTO have entered into an agreement called the "Agreement on Subsidies and Countervailing Measures", which regulates subsidies and also provides for counter actions against the effects of subsidies.

2.18 The WTO Agreement differentiates non-permissible subsidies into two broad categories i.e. prohibited subsidies and actionable subsidies. The Agreement also had originally contained a third category, namely non-actionable subsidies, which existed for five years, ending on 31-Dec-1999 and which did not get extended. The meaning of the terms prohibited subsidies and actionable subsidies are explained below:

- **Prohibited subsidies:** Subsidies that require the recipients to meet certain export targets or to use domestic goods instead of imported goods would fall under the category of prohibited subsidies. They are prohibited because they are specifically designed to distort international trade and are therefore likely to hurt trade between countries. They can be challenged in the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, then the country providing such subsidy must withdraw them immediately and in the absence of which, the complaining country can take counter measures including imposition of countervailing duty when domestic producers are hurt by imports of subsidized products.
- **Actionable subsidies:** Subsidies which have an adverse effect on the interest of the complaining country would fall under the category of actionable subsidies. The complaining country need not be the importing country and may be any country whose interest is said to be affected adversely. WTO defines actionable subsidy to be of three types i.e. those which arise when any subsidy hurts the domestic industry of importing country or is such which has the effect of reducing the share of the competing country in the competing export market or is such which make the imported goods uncompetitive to domestic goods. On a complaint, if the dispute settlement body rules that the subsidy has an adverse effect, then the subsidy must be withdrawn immediately or steps

should be taken to remove its adverse effect. In the absence of any remedial steps, the complaining country can take counter measures including imposition of countervailing duty on import of subsidized goods.

- 2.19 Countervailing duty (*the parallel of anti-dumping duty*) can be charged after the importing country has conducted a detailed investigation similar to that required for anti-dumping action. WTO provides for detailed rules for deciding whether a product is being subsidized, the criteria for determining whether imports of subsidized products are hurting (“causing injury to”) domestic industry, the procedures for initiating and conducting investigations, and rules on the implementation and duration (normally five years) of countervailing measures initiated against subsidized articles.
- 2.20 Subsidies can play an important role for countries which are developing and also for transformation of centrally-planned economies to become market economies. Considering this, WTO has laid down the time-table for the manner of their continuance or elimination. In this regard, WTO provides exemption from disciplines on prohibited export subsidies to least-developed countries and to developing countries with less than \$1,000 per capita GNP. As regards, developing nations having higher per capita, they were given time until 2003 to get rid of their export subsidies and until 2000 for eliminating import-substitution subsidies (i.e. subsidies designed to help domestic production and avoid importing). However, least-developed countries were given time until 2003 for seeking elimination of import-substitution subsidies.

WTO, safeguard measures

- 2.21 Article XIX of GATT, 1994 and so also GATT, 1947, lays down the provisions with respect to safeguards. WTO allows a member nation to restrict imports of a particular product when the domestic industry is injured or threatened with injury to be caused by the surge in imports of any product into its country. However, to justify any action (referred to as ‘safeguard’), by the member nation against such surge in imports, the injury would need to be serious. In order to seek implementation of Article XIX and to provide the manner and use of safeguard measures, member nations at WTO have entered into an agreement called the “Agreement on Safeguards. However, the WTO discourages its member nations from entering into bilateral negotiations outside the auspices of GATT either by adopting to restrain exports ‘voluntarily’ or by agreeing to other means such as sharing of markets, etc.
- 2.22 The WTO agreement sets out the criteria for assessing whether “serious injury” was caused or threatened to be caused and the factors which must have been considered in determining the impact of imports on the domestic industry. The surge in imports may be considered to be either real increase in imports i.e. absolute increase in value or volume or it may be a relative increase in imports i.e. say an increase in the share of imports in a market which is shrinking. WTO provides that any safeguard measure when imposed should be applied only to the extent necessary, so as to prevent or give remedy to the serious injury which has been caused or is threatening to

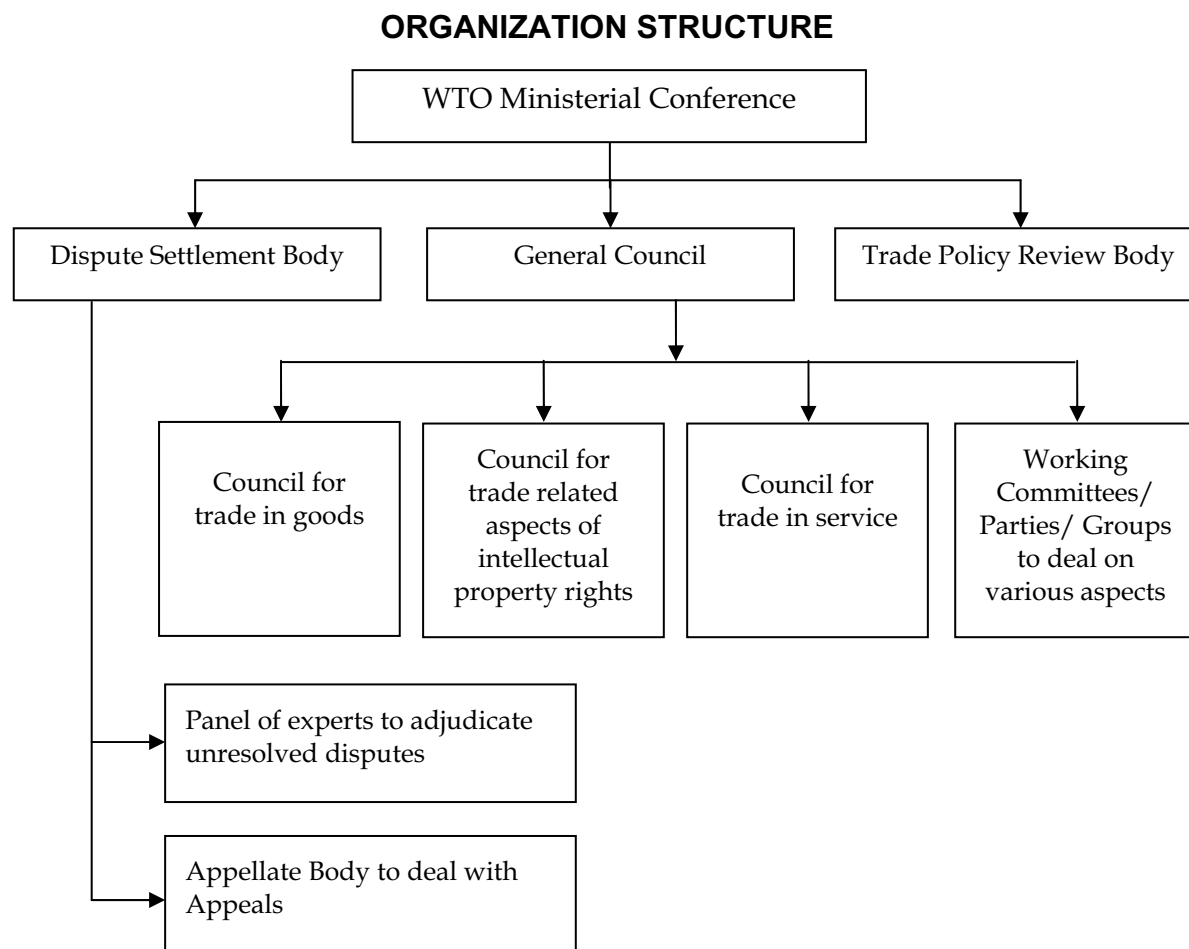
cause. Further, when quantitative restrictions (quotas) are imposed, the measure should be such as which would not normally reduce the quantities of imports below the annual average for the last three representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

- 2.23 The WTO agreement sets out the requirements for conducting safeguard investigations by national authorities. In this regard, it emphasizes the national authorities to be transparent and to follow established rules and practices, avoiding thereby any arbitrary methods in safeguarding the interest of domestic industry. Further, the authorities conducting investigations have to announce publicly when hearings are to take place and provide other appropriate means for interested parties to present evidence. The implementation of the safeguard measure should not in principle be targeted at imports from a particular country but quotas may be allocated among supplying countries in the manner described in the agreement, including in the exceptional circumstance. A safeguard measure which has been implemented by a member nation, should not last for more than four years, although the safeguard measure can be extended for a further period up to eight years, subject to a determination by competent national authorities that the safeguard measure are considered necessary in the interest of industry. Normally, when a country restricts imports in order to safeguard its domestic producers, it must give something in return to the exporting country. WTO provides the manner in which the imposing country needs to compensate the exporting country. However, WTO provides certain concessions to developing countries against imposition of safeguard actions. WTO has also constituted a Safeguards Committee to oversee the operation of the agreement and to also take the responsibility for surveillance of members' commitments. In this regard, member nations have to report each phase of a safeguard investigation and related decision-making for review by the said committee.

WTO, as an organization

- 2.24 The WTO has been set-up as a formal organization, officially taking over the reins from GATT w.e.f. 01-Jan-1995. WTO has become an organization that is driven by its members representing different countries the world over and which over a period of time collectively represent significant portion of the world economy. WTO has brought together all major member nations with an intention to seek international reform in cross border trade with unprecedented growth and which can be marked by free trade between and among nations. The decisions that are taken at WTO are those that evolves from discussions conducted through regular council and committee meetings or through specially created negotiating groups and marked by consensus of all member nations. All major decisions are made by the member nations as a whole, either by ministers (*who meet at least once every two years*) or by their ambassadors or delegates (*who meet regularly in Geneva*). At WTO, the member nations enforce the rules under procedures agreed and negotiated by them, which accordingly makes the decisions more acceptable. In this respect, WTO seeks to be different from some other international

organizations such as the World Bank or the International Monetary Fund, where power gets delegated to the board of directors or to a designated head of the organization. The organization structure of WTO is given below:



WTO; the decision making process

2.25 Normally, we would presume that most important decisions or breakthroughs would happen at the highest level i.e. at the WTO Ministerial Conference. However, at WTO, this is seldom the case. All decisions at the WTO are to be taken by consensus of all members and normally in any decision making process, particularly if they are important, cannot be undertaken in one sitting. Therefore, informal consultations within the WTO play a vital role in seeking agreement or uniform consensus among the diverse member group of nations. In this regard, member nations appoint a Head to lead their delegation and to represent them in the WTO negotiating group. Among the Head of the Delegations, a chairperson is then appointed, who attempts to forge a compromise by holding consultations on all important matters either individually or in groups comprising of 2 to 10 member nations, depending of

circumstances that warrant. The challenge before the negotiating group is to seek a breakthrough from member nations holding significant weight on decision concerning the matter on their hand and then to strike appropriate balance among all WTO members, to gain their consensus on the final decision. On successful consultations, the decisions or matters are given effect to by the member nations at the WTO Ministerial Conference, by a more formal process. Thus, informal consultations in various forms play a vital role in seeking consensus, but these do not appear in organization charts, precisely because they are informal. However, they are necessary for making formal decisions in the Council and Committees. The formal Ministerial meetings then become the forum for exchanging views, putting countries' positions on the record and ultimately to confirm the decisions. Accordingly, at the WTO, the decision-making is both formal and informal, together playing an important role in the entire decision process.

WTO, structural framework

2.26 The WTO Secretariat is based at Geneva, with a director-general being designated as its administrative head. As the decisions making power is vested with the member nations, the secretariat functions only in the capacity of a supporting role and for this reason, WTO does not also have branch offices outside Geneva. The member nations make their decisions through various councils, working committees, working groups and working parties, whose membership consists of all WTO members. In the working structure at the WTO, the ministerial conference comes at the highest level, which meets at least once every two years. The Ministerial Conference has the power to take decisions on all matters under any of the multilateral trade agreements.

At the second level are following bodies, which control the administrative work of the Organisation:

- The General Council
- The Dispute Settlement Body
- The Trade Policy Review Body

2.27 The dispute settlement body and the trade policy review body are normally not recognized as separate bodies but are considered as part of the General Council. However, they have been designated differently as these bodies meet under different terms of reference. The members of all the above bodies consist of nations who are members at the WTO and being subordinate to the Ministerial Conference, they have to report periodically on the activities to the Ministerial Conference.

At the third level in the working structure are the following Council Groups:

- The Council for Trade in Goods (Goods Council);

- The Council for Trade in Services (Services Council);
 - The Council for Trade-Related aspects of Intellectual Property Rights (TRIPS Council)
 - Working committees, Working groups and Working parties, acting subordinate parts of the Council formed for respective areas of trade.
- 2.28 The Councils have been formed for respective areas of trade and have been made responsible for the implementation of the WTO agreements. These Councils have in turn formed several working committees, working groups, etc., as sub-ordinate groups to them, to assist in the implementation of the objectives in respect of which the Council is formed.
- 2.29 The sub-ordinate groups formed under the Council may be said to form the fourth layer in the Organisation structure at the WTO. The members of the Council and working groups are nations who are again members at the WTO. At the WTO, there are several such committees, groups, etc., which have significant presence, each of which deals with specific matters assigned to them by the respective Council to which they are attached.

WTO; dispute settlement

- 2.30 WTO has established a Dispute Settlement Body under the Dispute Settlement Understanding entered into by all the members of the WTO. This is a binding dispute settlement authority of the WTO. Members are allowed to challenge the imposition of anti-dumping, anti-subsidy and countervailing measures, whether preliminary or final and can raise all issues concerning compliance with the requirements of the Agreement, by doing so before a panel established under the DSU. In case of disputes under the Anti-Dumping Agreement or the Anti-subsidy Agreement or the Safeguard Agreement, a special standard of review is applicable providing for a certain amount of deference to national authorities in their establishment of facts and interpretation of law and is intended to prevent dispute settlement panels from making decisions based purely on their own views.

WTO; membership and accession

- 2.31 We have seen that WTO is formed by virtue of negotiations between member nations to enable continuous reform in international trade. The admission of a member to WTO is also by way of negotiations and it means a balance between certain rights and obligations, to the member seeking common accession. As new members, nations would get to enjoy the same privileges as availed by existing member-countries and in return for this the new member would have to make commitments for opening up of their markets and to abide by the rules framed by the WTO. WTO provides that any state or territory having full autonomy in the conduct of its trade policies may join or accede to become the member of the WTO. In this regard, WTO has a four stage process before accepting any application for membership:

- “Know your country”: Under this the government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This is submitted to the WTO in a memorandum form for their examination and also for examination by the WTO members.
- “Give and take”: Under this the country seeking membership has to provide what it can offer. In this regard, parallel bilateral talks are held between the prospective new member and member nations covering tariff rates, specific market access commitments, and other policies in goods and services. The new member’s commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits (in the form of export opportunities and guarantees) other WTO members can expect when the new member joins.
- “Draft membership terms”: Once the working party has completed its examination of the applicant’s trade regime and the parallel bilateral market access negotiations are complete, the working party finalizes the terms of accession. These appear in a report, draft membership treaty (protocol of accession) and lists (schedules) of the member-to-be commitments.
- “The decision”: The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization. In many cases, the country’s own parliament or legislature has to ratify the agreement before membership is complete.

2.32 A member may also withdraw from the WTO membership by making an application through a formal written notice stating its intention to do so. The Director General would then intimate the receipt of the letter to other WTO members. The actual withdrawal from membership will take place six months after receipt of the notice of withdrawal.

CHAPTER 3

3. Anti-dumping; the national perspective

Anti-dumping, the legislation

- 3.1 The provisions governing the levy of anti-dumping duty are contained in the Customs Tariff Act, 1975 (*hereinafter referred to as the 'Act'*) and the Rules made thereunder. Section 9A of the Act, provides for levy and collection of anti-dumping duty on import of articles considered as being dumped into India from a country outside India. In this regard, the Government has issued Notification No. 2/95 – Cus (NT), dated 01-01-1995, providing for rules to determine the manner in which the articles liable for anti-dumping duty are to be identified, the manner in which export price, normal price, the margin of dumping is to be determined and the manner in which the duty is to be collected and assessed under the Act. These rules are called Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (*hereinafter referred to as the 'Rules'*).
- 3.2 The Act contains separate provisions providing for refund in certain circumstances, the circumstances under which levy under Section 9A would not be applicable and the procedure for appeal. These are contained in Section 9AA, Section 9B and Section 9C of the Act, respectively. Accordingly, Sections 9A, 9AA, 9B and 9C together with the rules referred to above, contain the provisions governing Anti-dumping in India.

Anti-dumping, its regulations and how it has been formed

- 3.3 The original GATT, 1947 stated that the practice of exporting goods from one country to another at less than the normal value should be strictly condemned if it causes or threatens to cause material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. The GATT had also set forth a number of basic principles applicable in trade between Members of the WTO including the "most favoured nation" principle. It also requires that imported products should not be subjected to internal taxes or other charges in excess of those imposed on domestic goods and that the imported goods in other respects be accorded a treatment no less favourable than the domestic goods under the domestic laws and regulations. It also establishes rules regarding quantitative restrictions, fees and formalities related to importation, customs valuation and establishment of schedules of bound tariff rates. Overtime and following the original GATT agreement, as tariff rates were being lowered by nations, the trend showed that nations were increasingly adopting the imposition of the levy of anti-dumping duties. This portrayed the inadequacy of Article VI of GATT, 1947 to govern their imposition on account of one or more reasons. For instance, Article VI of GATT, 1947 requires a determination of material

injury, but it did not contain any guidance as to the criteria for determining whether and how the injury is said to exist.

- 3.4 Consequently, it was felt by the contracting parties to GATT to negotiate for a more detailed Code relating to anti-dumping. The first Code came as a result of the Kennedy Round, in 1967, under the Agreement on Anti-Dumping Practices. However, the United States never signed this Code and as a result, the Code had little practical significance. The Tokyo Round, during 1973-80, made quantum leaps in the manner of imposition of anti-dumping duties. The code provided for further guidance on the determination of dumping, its injury and consequent remedy. Further, it set-out in detailed procedural and process requirements for the manner and conduct of investigations. However, the Code was also marked with many ambiguities and controversial points and so became construed as no more than a general framework for countries to follow in conducting investigations and imposition of duties. It was also limited in application by the fact that only the 27 Parties to the Code were bound by its requirements. Finally, in 1994, GATT was rewritten and it reemphasized that the practice of exporting goods from one country to another at less than the normal value should be strictly condemned if it causes or threatens to cause material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. The member nations, in order to iron-out the controversies and ambiguities left unresolved by the Tokyo Round, constituted an Agreement on implementation of Article VI of GATT 1994 and became more popularly known as the "Anti-dumping Agreement". The agreement elaborated the basic principles set forth in Article VI and provides for detailed methodology to be adopted for and the manner in which investigation, determination and application of the anti-dumping duties need to be governed. The Anti-dumping Agreement, despite certain reservations, became the most-accepted code on levy and administration of anti-dumping duties in international transactions. Consequent to the international agreement between nations on anti-dumping, domestic legislations has been framed in line with the international law, to regulate the law against dumping in India.

Anti-dumping, its general meaning

- 3.5 In international transactions, the activity of throwing goods at less than their normal value into another country would be called dumping. When dumping causes or threatens to cause material injury to domestic industry of the importing country, the importing country can counteract the said dumping by levying 'antidumping' duties. The action undertaken to counteract the said dumping, by the importing country, is called as 'anti-dumping'. Thus, anti-dumping as also suggested by its name, is a measure adopted to prevent unfair dumping. The role of WTO on anti-dumping is not to pass judgments but to lay down the principles on how a Nation can or cannot react to dumping. In this regard, it would be essential for a member country to prove that there should have been a material and genuine injury to its competing

domestic industry, before in any manner, taking steps against dumping. The importing country is allowed to take action against dumping, when:

- Dumping is not only said but also shown to have taken place by the importing country;
- On the basis of dumping, being said to exist, the importing country is able to establish from reliable information and considering all possible factors that such dumping has actually caused or could cause, material injury to its domestic industry; and
- Lastly, as a reasonable justification for any action against dumping, the importing country should be able to present the calculation stating the extent of dumping i.e. the difference between the export price and the normal price in the exporter's home country.

3.6 Accordingly, dumping is in general, considered to be a situation arising from discrimination in prices of any product in international market, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. In the simplest of cases, one identifies dumping by comparing prices in two markets. However, the situation is rarely, if ever, that simple and in most cases it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country (known as the 'normal value') and the appropriate price in the market of the importing country (known as the 'export price') so as to be able to undertake an appropriate comparison.

Anti-dumping, determination of dumping

The trigger

3.7 An action imposing and collecting dumping would require a three step approach; first the establishment of evidence in favor of dumping, second the establishment of evidence in respect of its injury and finally the determination of the quantum of dumping based on the investigation of the nature and value of article that is said to have been dumped. In case of a product that is considered as being dumped in India, the following conditions would need to be fulfilled before initiating an action against such dumping:

- a. The product which is said to have been dumped, has been imported into India from a country outside India;
- b. The price at which it is introduced into India is less than its normal price i.e. the export price is less than its comparable price;
- c. Consequent to being dumped, it has caused or the effect of causing material injury to manufacturers of like product in India; and

- d. The transaction alleging dumping is undertaken in the ordinary course of trade.
- 3.8 In case all the above conditions are satisfied, then an action against dumping can be initiated. In this regard, the terms 'normal value', 'export price', 'margin of dumping', 'like product', 'ordinary course of trade', etc., are explained below, for better understanding.

Normal Price or Comparable Value

- 3.9 The term 'normal value' is generally understood as the price of the product when sold in the ordinary course of trade for consumption in the exporting country. In respect of anti-dumping investigations, the term 'normal value' is also referred to as the 'comparable price'. In this regard, the Hon'ble Tribunal in the case of *Alkali Manufacturers Association of India Vs. Designated Authority*¹ has held that "for arriving at dumping in relation to an article the Designated Authority is required to make a fair comparison between the export price and the normal value. The comparison is required to be made at the same level of trade at ex-factory level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case on its merits for differences which affect price comparability including differences in conditions and terms of sale, taxation, level of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability. Further, in case such comparison leads to a finding that margin of dumping is different for different suppliers then different margins may be adopted for the levy of anti-dumping duty based on the supplier.
- 3.10 In certain circumstances, there may be no sales in the domestic market to enable comparison, in which case, it may not be possible to determine normal value. In such circumstances, there are two alternative methods which have been provided for determination of the normal value. The two alternative methods for cases where the sales in the exporting country do not form an appropriate basis for the determination of normal value, are given below, which in such cases may be considered as comparable:
- (a) the price at which the product is sold to a third country:
- € One of the alternative methods for determining normal value is to look at the comparable price of the like product when exported to an appropriate third country, provided that the price so charged is representative. However, the criteria for determining what is appropriate in the context of a third country export, has not been specified.
- (b) the "constructed value" of the product, which is calculated on the basis of the cost of production plus selling, general and administrative expenses and normal profits.

¹ 2006 (194) E.L.T. (161) - (Tri. - Delhi)

- € The other alternative method for determining normal value is to compute the value based on cost of production including expenses in the nature of selling, general and administrative expenses plus reasonable profits. This method of computing the normal value is also referred to as the "constructed normal value" for the purpose of anti-dumping investigations.

Export Price

- 3.11 The export price will normally be based on the transaction price at which the foreign producer sells the product to an importer in the importing country. However, in certain cases the transaction price may not be appropriate for purposes of comparison with normal value. These circumstances may arise in case of say internal transfers i.e. transfer between the same entities from one location to another, where there is no transaction value or in case of barter or exchange transactions, where the money value is absent or in cases where the relationship existing between the exporter and the importer may have an influence or bearing on the price negotiated or for such other reasons where the transaction price may not be considered to be at arms-length. In such cases, the transaction value cannot be adopted and the export price needs to be determined based on an appropriate alternative method which can be considered for comparison purposes. In this regard, the manner in which the export price needs to be constructed has to be reasonable. It is provided that the export price may be constructed based on the price at which the imported product is first resold to an independent buyer or if the imported product is not resold to an independent buyer or is not resold in the manner in which it is imported, then resort need to made to some other reasonable basis which may fairly be construed as the export price. Further, in case of constructed export price, to derive the export price, allowance must be given for costs including duties and taxes, incurred between the importation of the product and its resale to an independent purchaser, as well as for reasonable profits accruing there from. Also in cases where the price comparability is affected on account of different levels of trade, conditions and terms of sale, taxation, quantities, physical characteristics, and other matters demonstrated to affect price comparability, then sufficient allowance needs to be given to those factors, so as enable the export price comparable. In this regard, as no specific method has been provided, the construction of the export price should be reasonable and based on facts and circumstances, which are warranted in each case.
- 3.12 The Hon'ble Supreme Court in the case of Rishiroop Polymers Pvt. Ltd. Vs. Designated Authority² held that "export price in relation to an article has been defined to mean the price of the article exported from the exporting country and the normal price has been defined to mean the comparable price, in the

² 2006 (196) E.L.T. (385) - (S.C.)

ordinary course of trade, for the like article when meant for consumption in the exporting country and that in determining whether goods were being dumped, the authority is required to consider the comparable price and export price”.

Like Product

- 3.13 In respect of anti-dumping investigations, the remedy is based on the injury which an article alleged as being dumped can cause to the domestic industry of the importing country manufacturing like product. Further, comparable price is based on value of like goods in the exporting country. The term “like product” is defined as “a product that is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration”. Accordingly, the first step in the anti-dumping investigation process is to seek comparison of the export price with the normal price. The comparison is made with respect to a product that is identical in all respects. If an identical product is not available for verification then the price of similar product is taken into account. A product is said to be identical if it is same in all material respects.

For eg. A “Yellow Maruti Car” of model name Zen Version V2 would said to be identical to “Red Maruti Car” of the same model and version. In this regard, the colour of the car whether red or yellow is not material and therefore for the purpose of comparison they would be said to be identical for all practical purposes. Similarly, the product “Tiger Biscuits” manufactured by Britannia Industries Limited can be said as similar to the product “Glucose Biscuits” manufactured by Parle G, for they are alike in all material respects such as they use the same or nearly the same ingredients, the market to which they cater is same, the manufacturing process adopted by them is similar, etc. Thus even though they have been manufactured by two different supplying entities, the products are similar because they are alike in all material respects. The decision regarding the like product is important because it is the basis of determining which companies constitute the domestic industry, and that determination in turn governs the scope of the investigation and determination of injury and causal link.

- 3.14 The Hon’ble Tribunal in the case of *Oxo Alcohols Industries’ Association Vs. Designated Authority*³ while considering whether the product ‘Normal Hexanol’ is a like article to the product taken for investigation, held that “*the Designated Authority did not come to the conclusion that “Normal Hexanol” and the product investigated are interchangeable or can substitute each other. Further, the Designated Authority has not come to the conclusion that “Normal Hexanol” has characteristics closely resembling to the articles under investigation. What the Authority found is that the products manufactured by use of “Normal Hexanol” can substitute the products manufactured by the*

³ 2001 (130) E.L.T. (58) - (Tri. - Delhi)

product under investigation. Even if the products manufactured using these two types of alcohols are interchangeable, they cannot be treated as "like article" in the absence of a finding that they themselves have characteristics closely resembling each other".

Sales in the ordinary course of trade

- 3.15 One of the complicated questions in anti-dumping investigations is the determination of the fact whether sales in the domestic market of the exporting country are made in the ordinary course of trade or not. This is to enable the comparison of the price in the domestic market of the exporting country with that of the price charged for exports to a market where goods are alleged as being dumped. In case the price at which the goods are sold in the domestic market is below its cost, then prima facie, it would mean that the sales made in the domestic market are not in the ordinary course of trade. Accordingly such sales may be disregarded in the determination of normal value. However, sales made below costs may not be disregarded for determination of normal value where they allow for recovery of costs within a reasonable period of time, which may normally be one year or are insignificant. In this regard, the Hon'ble Tribunal in the case of *Alkali Manufacturers Association of India Vs. Designated Authority*⁴ on whether the designated authority was justified in ignoring certain transactions where the goods were sold below cost in the domestic market has held "*that during the period of investigation the number of transactions were 20,000 and the number of transactions where the goods were sold below per unit cost were in all 1.96% of the total transactions, therefore, the Designated Authority correctly did not remove these transactions while arriving at the normal value as they were not substantial*".

Special references; determination of dumping

- **Insufficient volumes of sales**

- 3.16 In respect of the computation of the normal value, if certain sales are made below their cost, then they are to be ignored for computation purposes and the normal value would be determined based on remaining sales. It may be possible that while excluding these below-cost sales, the level of remaining sales are insufficient to determine normal value based on home market prices. The remaining sales would normally be considered as sufficient if they constitute 5% or more of the export sales made to the country conducting the investigation against dumping. In certain cases, a lower ratio may also be accepted if the volume of domestic sales nevertheless is of such a magnitude, which could enable a fair comparison between export price and normal price. In case the remaining sales are insufficient on account of insignificant volume of sales in the home market, then the normal value would be computed based

⁴ 2006 (194) E.L.T. (161) - (Tri. - Delhi)

on the alternative methods provided. This rule is popularly referred to as the *de minimis* rule. In this regard, the Hon'ble Supreme Court in the case of *S & S Enterprises Vs. Designated Authority*⁵ held that “under the *de minimis* rule in terms of Rule 14(d), it is quantity and not value which needs to be considered and if the volume (based on quantity) is less than the specified percentage then the matter is to be regarded as too trivial and the levy of anti dumping duty and its investigation is therefore to be ignored”.

- **Indirect exports or surrogate exports**

3.17 A situation may arise where products are not imported directly from the country of manufacture but from an intermediate country. In such cases, the normal value is to be determined on the basis of sales in the market of the originating country unless this may result in an inappropriate or impossible comparison. For example, if the product merely transshipped through the exporting country to counter anti-dumping investigations, then it may not be appropriate to consider the price in the exporting country for arriving at the comparable price. In such cases, it would be appropriate to derive the normal value on the basis of the price of the product in the country of origin and not on the basis of the price in the exporting country. This view has also been confirmed by the Hon'ble Tribunal in the case of *Alkali Manufacturers Association of India Vs. Designated Authority*⁶.

- **Conversion of Currency**

3.18 The comparison of the normal value with that of export price would require conversion of currency. Normally, when the base currency is different from USD or Euro, they are converted into USD or Euro for the purpose of calculations. In such cases, the exchange rate to be used should be one on which the material terms of sale were established i.e. date of sale (date of contract, invoice, purchase order or order confirmation, etc.). In case of a forward currency sale, where it is directly linked to the export sale, then the exchange rate adopted for the forward transaction should be used for conversion. In this regard, the Hon'ble Tribunal in *Pig Iron Manufacturers Association Vs. Designated Authority*⁷, while deciding whether designated authority was justified in seeking conversion of the currency in dollar terms, held that “*anti-dumping duty is fixed after a finding that foreign goods are sold at less than their normal value in the Indian market causing injury to domestic producers. The amount of dumping margin is worked out in dollar terms as all aspects of trade are in US\$. Section 9A stipulates that anti-dumping duty shall not exceed dumping margin. Thus, the law's intention and purpose is to afford protection to the domestic industry at rates not exceeding the dumping margin and injury margin. Therefore, anti-dumping duty should be fixed in dollar*

⁵ 2005 (181) E.L.T. (375) - (S.C.)

⁶ 2006 (194) E.L.T. (161) - (Tri. - Delhi)

⁷ 2000 (116) E.L.T. (67) - (Tri. - Delhi); also maintained by Supreme Court in 2000 (118) ELT (305) - (SC)

terms so that erosion of the quantum of protection does not take place on account of changes in the exchange rates”.

Anti-dumping, determination of injury and causal link

- 3.19 The determination of injury for purposes of levy of anti-dumping duty shall be based on positive evidence, which would normally involve an objective examination of (a) the volume of the dumped imports and the effect it has on the prices in the domestic market for like products and (b) the consequent impact of these imports on domestic producers of such products.
- 3.20 The term "domestic industry" has been defined to mean "the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". In certain circumstances, it may not be appropriate to include all producers of the like product in the domestic industry. In this regard, it would be considered as appropriate to exclude from the domestic industry, producers who are related to the exporters or importers of the product under investigation and producers who are themselves importers of the allegedly dumped product. In this regard, a producer can be deemed as "related" to an exporter or importer of the allegedly dumped product if there is a relationship of control between them and if there is reason to believe that the relationship causes the domestic producer to behave differently from non-related producers. In this regard, a producer would be deemed to be related to the exporter or importer if:
- (a) one of them directly or indirectly controls the other; or
 - (b) both of them are directly or indirectly controlled by a third person; or
 - (c) together they directly or indirectly control a third person, subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers

In this regard, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.

- 3.21 Further, there are also special rules that allow in exceptional circumstances, consideration of injury to producers comprising a "regional industry", which is deemed as a separate domestic industry for the purpose of determination of injury. A regional industry may be found to exist in a competitive market if producers within that market sell all or almost all of their production of the like product in that market, and demand for the like product in that market is not to any substantial degree supplied by producers of the like product located outside that market. In such cases, it may be possible that this regional industry gets materially injured by supply of the dumped article in its market, even if a major proportion of the entire domestic industry including producers

outside that region may not be materially injured. Accordingly, a finding of injury to the regional industry would be allowed only if (1) there is a concentration of dumped imports into the market served by the regional industry, and (2) dumped imports are causing injury to the producers of all or almost all of the production within that market. In the event that the investigation leads to the conclusion that the regional industry has been materially injured by the articles being dumped in its territory, then the investigating authorities would provide for levy of duties on all imports of the product, without limitation for the territory as a whole. In this regard, before imposing to levy anti-dumping duty, the investigating authorities would offer the exporters an opportunity to cease dumping of the subject goods in the region or seek to enter into a price undertaking with them for raising the price of the article being dumped.

Determination of Injury

- 3.22 We have seen that determination of injury to domestic industry of the importing country is an essential pre-requisite for levy of protective anti-dumping duty. In the context of dumping, the term "injury" has been defined to mean either (i) material injury to a domestic industry, (ii) threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry. Thus, there needs to be either an actual injury or a threat of an injury, in respect of an established domestic industry or injury significant enough to retard the establishment of a domestic industry yet to be established. However, the law is silent on the manner of evaluating and establishing as to how the domestic industry can be said to be materially retarded from being established. Further, the law also does not define the term 'material', in the context of 'injury'. Nevertheless, these terms have to be understood in their general sense.
- 3.23 The determination of injury must be based on positive evidence i.e. there should be evidence in favor of material injury/ threat to the domestic industry. Further, the manner in which the evidence is examined against dumping should be objective, considering (i) the volume of imports of the article being dumped in the domestic industry and the effect it has on the prices in the domestic market for like products, and (ii) the consequent impact it has caused or could cause to the domestic producers of the like product. In this regard, detailed guidance has not been provided on how these factors are to be evaluated or weighed or on how the determination of causal link is to be made. However, it lays down certain factors to be considered in the evaluation of threat in respect of material injury. These include the rate of increase of dumped imports, the capacity of the exporter(s), the likely effect on prices of dumped imports and inventories. But it does not make further elaboration on how these factors are to be evaluated. Nevertheless, the determination of the threat in respect of material injury is required to be based on facts and not merely on allegation, conjecture, or remote possibility and moreover that the change in circumstances which would create a situation where dumped imports caused material injury must be clearly foreseen and imminent possibility.

- **Evaluation of Injury**

- 3.24 As regards evaluation of injury, the law does not provide for decisive guidelines on how the investigating authorities are to evaluate the injury, which is based on volume and price, in respect of the article being dumped but they specify that such factors need to be considered for investigation purposes. In this regard, the investigating authorities have to develop analytical methods for consideration of these factors which may be regarded as relevant in the light and circumstances of each case. As regards evaluating the impact on the domestic industry by the article alleged as being dumped, it is provided that the investigating authorities are required to evaluate all relevant economic factors having bearing upon the state of the domestic industry. In this regard, a number of factors have been listed such as actual or potential declines in sales, profits, output, market share, productivity, return on investments, utilization of capacity, actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and the magnitude of the margin of dumping. However, this list is not exhaustive and other factors may be deemed relevant. In this regard, it is specified that no single factor or combination of factors can necessarily lead to either an affirmative or negative determination, as regards the alleged dumping.
- 3.25 In evaluating the injury to the domestic industry, the investigating authorities are required to consider whether there has been significant price undercutting in respect of the dumped imports as compared to the price of the like product in the domestic industry of the importing country. In this regard, the investigating authorities are also required to consider whether the purpose of the article being dumped is to depress prices of like products in the domestic industry to a significant degree or to prevent the increase in price of such products, which otherwise would have occurred, to a significant degree.

Causal Link

- 3.27 As regards the establishment of material injury, it needs to be demonstrated that there is a causal relationship between the article that is alleged as being dumped and the injury it seeks to cause to the domestic industry manufacturing or producing like product. In this regard, the demonstration has to be based on an examination of all relevant evidence, though the law does not specify particular factors that may be considered as relevant in evaluating the evidence of such causal link. In this regard, the investigating authorities are required to consider for factors that can cause injury other than by virtue of it being dumped. For eg. Factors such as change in technology, change in pattern of demand, etc., also cause injury but they may not be by virtue of the dumping. Accordingly, analysis of such 'other factors' which may cause injury are important in the establishment of evidence against material injury, as they need to be excluded in evaluating the injury on account of dumping. In this regard, the investigating authorities are required to develop analytical methods for determining what evidence is or may be relevant in a particular case and for evaluating that evidence, to take into account other

factors which may also cause injury but not by virtue of the alleged dumping. Accordingly, only those factors, which may be said to have a causal link between dumping of alleged goods and its consequent injury to the domestic industry are required to be factored, considered and evaluated. In this regard, the Hon'ble Tribunal in the case of *Videocon Narmada Glass Vs. Designated Authority*⁸, while deciding whether import of Strontium Carbonate in "granular form" could be said to cause injury to domestic manufacturers of Strontium Carbonate in "powder form", held that "*though these products may be considered to be like articles, the causal link is absent as both of these products do not commercially compete with each other*".

Cumulative Analysis

3.27 In certain cases, an article may be found to be dumped into the importing country from more than one country. In this regard, it is possible to undertake a cumulative analysis of the article being dumped from more than one country for assessing whether such article is causing material injury to the domestic industry. In this regard, it is provided that the authorities must be required to determine the margin of dumping from each country and that such margin should not be less than 2%, expressed as a percentage of the export price for each country and that the volume of imports from each country should not be less than 3% of the imports of like articles. In this regard, if the imports from one country is less than 3%, then such investigation may be possible if the collective imports from all such countries is not be less than 7% of the import of like articles. Further, the investigating authorities are required to assess whether cumulative assessment is appropriate in light of the conditions of competition between the imported products per se and the conditions of competition between the imported products and the like domestic product.

Anti-dumping, assessment of duty

Calculations of Dumping

3.28 The margin of dumping is normally calculated as the difference between the weighted average normal value and the weighted average price of all comparable exports. In certain cases, this comparison may be done on a transaction-to-transaction basis. The difference between the normal value and export price is called as the margin. If the export price is lesser than normal value i.e. if the price at which the goods are exported is lesser than its comparable price in the domestic market, then the difference is called dumping margin. The investigation would continue only when the export price is lesser than the price of the same goods when sold in the domestic market of the exporting country. In case the export price differs significantly among different purchasers, regions or time periods, then comparison based on weighted average export price may not be appropriate. This situation is

⁸ 2003 (151) E.L.T. (80) - (Tri. - Delhi)

normally referred to as 'targeted dumping'. In such cases, the investigating authorities would compare the weighted average normal value with that of the export price on individual transaction basis.

Assessment of Duty

- 3.29 Normally, the assessment of dumping margin for the purpose of the levy of anti-dumping duty is to be calculated with respect to each exporter or producer of the product concerned under investigation. However, such a system may not be practically feasible in all cases and thus the investigating authorities may limit the number of exporters, importers, or products individually considered and impose the anti-dumping duty even on uninvestigated sources, on the basis of the weighted average dumping margin established with respect to exporters or producers actually examined. In this regard, the sample is chosen based on validly accepted statistical information or based on largest percentage of volume of exports from the country in question. In all cases, to keep the investigation process as judicious as possible, it is provided that the selection of exporters, importers, producers or types of products should be chosen in consultation with all the concerned parties. In this regard, the investigating authorities are precluded from including in their calculation of the weighted average dumping margin any dumping margins which are less than 2% of the export price or of cases where there is no dumping or on facts made available to them but those which have not been investigated by them.
- 3.30 Upon determination of dumping, action against the dumping can be initiated on a non-discriminatory basis, with respect to imports from all sources found for dumping goods and causing material injury. In such cases, the amount of duty collected should not exceed the dumping margin, although it may be less. In this regard, the anti-dumping duty may be either levied based on provisional investigation or on final assessment. In the event that the anti-dumping duty is collected based on provisional investigation and on final determination, it appears that the amount of duty collected is in excess of the duty determined, then such excess is required to be refunded to the importer within a period of 90 days. The final determination of duty in all cases should be completed within 12 months. In certain cases, in lieu of levying anti-dumping duty, if an agreement is entered into with nations causing the goods to be dumped, whereby a price undertaking is given which ensures that the price of the article being dumped would be sufficiently increased so as bridge the dumping margin. In such cases, anti-dumping duty would not be levied on imports from countries in respect of which they have price undertaking.
- 3.31 As regards, the relevant date for determination of duty in the context when the import is made prior to imposition of duty but the goods are cleared after the date of imposition, the Hon'ble Tribunal in the case of *M.K.P. Fashions Vs.*

*Commissioner of Customs (Port), Kolkata*⁹, has held that “Section 15 of Customs Act (determination of rate of duty) would not apply to anti-dumping provisions as anti-dumping duty is levied under the Customs Tariff Act and not under the Customs Act, 1962. Further, the Tribunal observed had the intention of the legislature were to apply the provisions of Customs Act to the levy anti-dumping duty, then similar provisions as is contained in Section 3 (for levy of countervailing duty) of the Customs Tariff Act would have been contained in Section 9A. In the absence of such provisions, Section 15 cannot be applied to anti-dumping duty. Accordingly, the Tribunal held that the relevant date is the date of import and not as specified in Section 15”. In the same context, the Hon’ble Tribunal in the case of *Sneh Enterprises Vs. Commissioner of Customs, New Delhi*¹⁰ has held that “in determining the date when import is complete, the decision of the Hon’ble Supreme Court in the case of *Kiran Spinning Mills*¹¹ and in *Garden Silk Mills*¹² would have to be considered, which has held that the import of goods into India would commence when the same cross the territorial water but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods cross the territorial water and import is not complete until the goods cross the Customs barriers i.e. until the bill of entry for home consumption is filed”. Thus, the relevant date for determination of duty is date of import and not as specified in Section 15 of Customs Act.

Anti-dumping, procedural requirements

Initiation of Investigation

3.32 The investigations against dumping are required to be normally initiated on the basis of a written request submitted "by or on behalf of" a domestic industry. In this regard, the application would be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion in the domestic industry, either expressly supporting or opposing the application. However, the investigation would not be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced in the domestic industry of the importing country.

3.3 On the question whether the investigation should be initiated by the investigating authorities when one of the applicant subsequently withdraws his application, the Hon’ble Tribunal in the case of in *Pig Iron Manufacturers*

⁹ 2004 (174) E.L.T. (45) - (Tri. - Kolkata)

¹⁰ 2004 (178) E.L.T. (764) - (Tri. - Delhi)

¹¹ 1999 (113) E.L.T. (753) - (S.C.)

¹² 1999 (113) E.L.T. (358) - (S.C.)

*Association Vs. Designated Authority*¹³, held that “under Rules 5 and 14 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the designated authority could initiate investigation based on written application by the domestic industry (of the required percentage) and their subsequent withdrawal by one of the applicants does not affect its continuation, accordingly the authority could initiate the investigation in such circumstances”.

- 3.34 In this regard, the Application is required to include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 and (c) the causal link between the article alleged as dumped and its alleged injury. Further, the application should submit reasonable evidence and it should not be a simple assertion or of evidence, unsubstantiated. The application is required to contain the following information, for consideration by the investigation authorities:
- (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
 - (ii) complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
 - (iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member.
 - (iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

¹³ 2000 (116) E.L.T. (67) - (Tri. - Delhi); also maintained by Supreme Court in 2000 (118) ELT (305) - (SC)

3.35 On receipt of the application the investigating authorities would examine the accuracy and adequacy of the evidence provided for determining whether there is sufficient evidence to justify the initiation of an investigation. On being satisfied with the documents presented but before initiating the investigation, the investigating authorities would be required to notify the exporting country of its intended investigation. The investigating authorities can also initiate the investigation suo moto i.e. on their own, if they consider that they have sufficient evidence of dumping, injury and causal link. In order to ensure that investigations without merit are not continued, it is provided that the investigation should be terminated immediately if it found that the margin of dumping is less than 2%, expressed as a percentage of export price or the volume of dumping from a country is less than 3% of the imports of like product or 7% collectively from all countries. Further, in order to minimize the trade-disruptive effect of investigations, it is provided that the investigations should be completed within 12 months and in no case, more than 18 months after the date of initiation of investigation.

Conduct of Investigation

3.36 The manner of conducting the investigation including the collection of evidence has been provided. It requires the authorities to guarantee the confidentiality of sensitive information and verify the information on which determinations are based. At the same time, in order to ensure that there is transparency in proceedings, the authorities are also required to disclose the information on which determinations are to be based to all interested parties and to provide them with adequate opportunity to make or provide their comments. The investigating authorities are required to give notice to all interested parties about the investigation. In this regard, the term 'interested party' has been defined to include (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; (ii) the government of the exporting Member; and (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member. The definition of 'interested party' is meant to be inclusive and not exhaustive. Accordingly, it may be possible to include persons other than those specified above as interested in the investigation process. Further, the rights of parties to participate in the investigation including the right to meet with parties with adverse interests, for instance in a public hearing, has been provided.

3.37 The procedure followed by investigating authorities in conduct of investigation is as below:

- Preliminary screening:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. In case information submitted appears to be inadequate, then a deficiency letter is issued to the

applicant. In this regard, unless the applicant rectifies such deficiencies, the submission made before the Authority are not construed as an application pending before such Authority.

- Initiation:

The designated authority determines that the application has been made by or on behalf of the domestic industry. In this regard, it also examines the accuracy and adequacy of the evidence provided in the application and when the authority is satisfied that there is sufficient evidence regarding dumping, injury and its causal link, then it issues a public notice initiating an investigation. The initiation notice is ordinarily to be issued within 5 days from the date of receipt of a properly documented application. In this regard, the Hon'ble Madras High Court in the case of *J.G. Impex (P) Ltd. Vs. Designated Authority*¹⁴ has held that “*anti-dumping investigations are time-bound and therefore the designated authority may issue a public notice giving the interested parties such time as it considers necessary for seeking/ providing information*”.

- Access to information:

The authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection to all interested parties on request after receipt of the responses. The Hon'ble Supreme Court in the case of *Sterlite Industries (India) Ltd Vs. Designated Authority*¹⁵ has held that “*the confidentiality of information supplied by the parties is not automatic and the designated authority cannot treat all material before it as confidential merely on the application of the party asking it to be treated as confidential. In this regard, the designated authority is required to use its discretion and even when the information is considered as confidential, the party should be required to submit non-confidential summary and when such summary is not furnished then the party should submit a statement of reason as to why the summarization is not possible*”.

- Preliminary findings:

Based on the information available before it and based on further information collected by the authority, a preliminary finding is made, which would also contain the reasons behind the determination made by the authority. In this regard, the preliminary finding is undertaken normally within 90 days from the date of initiation. In the event the interested parties withhold any information, the investigation authorities have the discretion to rely on the information made available to it and at the same time it may not restrict to the information made available and it may seek information on its own. In such cases, the investigating authorities would conclude its investigation to the best of its

¹⁴ 2003 (154) E.L.T. (57) - (Mad.)

¹⁵ 2003 (158) E.L.T. (673) - (S.C.)

judgment. The Hon'ble Supreme Court in the case of *Designated Authority Vs. Haldor Topsoe A/S*¹⁶ has also confirmed this view.

- Provisional duty:

In case the authority considers it necessary, it may recommend the Central Government to impose a provisional duty, not exceeding the margin of dumping, on the basis of the preliminary finding recorded by it. The Central Government may issue a notification imposing provisional anti-dumping duty. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. Further, such duty will remain in force for a period not exceeding six months but which may be extended to nine months under certain circumstances.

- Oral evidence & public hearing:

Interested parties are allowed to request the designated authority to afford them an opportunity to present their case and relevant information orally. However, the designated authority would consider the oral information only when it is subsequently reproduced in writing. The Authority is empowered to grant oral hearing anytime during the course of the investigation. In this regard, the authority also holds a public hearing, wherein all interested parties are invited to make their submissions before it. All oral submissions made during the hearing need to be reproduced in writing for the Authority to bring the same on record.

- Disclosure of information:

The designated authority, based on the submissions and evidence gathered during the investigation and verification, would proceed to make the determination of the final findings and formulate the basis thereof. However, the designated authority will inform all interested parties of the essential facts, which form the basis for its decision before such final findings are made.

- Final Determination:

The interested parties would submit their response to the disclosure and the authority would consider such submissions before taking a final position on the matter.

- Time-limit for Investigation Process

The investigation process is normally concluded within the period allowed under the Statute. In this regard, the normal time allowed for completion of the investigation process is one year from the date of initiation of the investigation. The Central Government is empowered to extend such period by another six months.

¹⁶ 2000 (120) E.L.T. (11) - (S.C.)

Price Undertakings

- 3.38 The Central Government is empowered to accept price undertakings from exporters of the article alleged as being dumped, in lieu of the imposition of anti-dumping duties. In this regard, the term 'Price Undertaking' refers to a voluntary undertaking by exporters to revise the price or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. For this purpose, the price undertaking given by exporters shall not be higher than necessary so as to eliminate the margin of dumping. In certain cases, it may be desirable that the price increase be lesser than the margin of dumping if they can be considered to be adequate to remove the injury to the domestic industry. However, the Central Government would be allowed to accept the price undertakings from exporters only after preliminary affirmative determination has been made that dumping exists and that consequent to dumping, injury has also been caused to the domestic industry. This is for the reason that price undertakings are always to be linked with the quantum of dumping and in the absence of affirmative evidence towards the quantum of dumping, an undertaking of this kind, would not be judiciously acceptable in international transactions. In this regard, the Hon'ble Tribunal in the case of *P.T. Polysindo Eka Parkasa Vs. Designated Authority*¹⁷, while deciding whether the designated authority was justified in rejecting the price undertaking given by exporters without going into merits, held that *"in terms of Rule 15, the designated authority was required to consider the price undertaking given by the exporter and rejecting it without going into merits was not correct in law. Accordingly, the matter was remanded back for denovo consideration. The Tribunal also held that refusal to accept the price undertaking and failure to fulfill statutory duty to consider the undertaking on merits amounts to clear violation of fundamental right to equality and the same is appealable"*.
- 3.39 The investigating authorities are required to complete their investigation on the dumping and its consequent injury, in the event it is desired by the exporter or by the investigating authorities despite accepting the price undertakings. In case the investigation leads to a negative determination of dumping or injury, then the undertaking given shall automatically lapse and in case of the contrary, the undertaking would continue consistent with its terms and the provisions agreed upon.

Special Status

- 3.40 The law provides for special status to export oriented units including units in free trade zone and in special economic zone. In this regard, the notifications issued for the purpose of levy of anti-dumping duty on articles dumped into India would not be applicable for imports made by export oriented units unless

¹⁷ 2005 (185) E.L.T. (358) - (Tri. - Delhi)

the intention to levy on their imports is specifically stated in the notification. The meaning of the term 'export oriented units' would be the same as is assigned in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944. The meaning assigned to them under the Central Excise Act, is given below:

- (i) "free trade zone" means a zone which the Central Government may, by notification in the Official Gazette , specify in this behalf;
- (ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;
- (iii) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Provisional Measures

3.41 The investigating authorities are allowed to take certain provisional measures in the form of levy of provisional duty for import of goods alleged to be dumped. These provisional measures are allowed only when the following conditions are fulfilled:

- (i) The investigating authorities have initiated the investigation giving proper public notice and interested parties have been given adequate opportunities to submit information and make their comments;
- (ii) The investigating authorities have a preliminary affirmative determination in favor of dumping and its consequent injury to the domestic industry; and
- (iii) The investigating authorities judge that such provisional measures are necessary to prevent injury being caused during the investigation period.

3.42 The investigating authorities cannot apply the provisional measures sooner than 60 days after initiating the investigation. Further, the provisional measures cannot normally extend for a period beyond six months at the request of exporters. In case the investigating authorities in the course of an investigation examine that a duty lower than the margin of dumping would be sufficient to remove injury, then the provisional measures may extend normally for a period of 6 months, with a possible extension to 9 months at the request of exporters.

Retroactivity or retrospective imposition of duty

3.43 As regards the levy of anti-dumping duty, the general principle is that both provisional and final anti-dumping duties may be applied only as of the date on which the determinations of dumping, injury and causality have been made. However, recognizing that injury may have occurred during the period of investigation or that exporters may have taken actions to avoid the imposition of an anti-dumping duty, there is a provision for the retroactive (retrospective) imposition of dumping duties in specified circumstances. In case the imposition of anti-dumping duties is based on a finding of material injury, as opposed to threat of material injury or material retardation of the establishment of a domestic industry, anti-dumping duties may be collected as of the date provisional measures were imposed. In this regard, if provisional duties were collected in an amount greater than the amount of the final duty or if the imposition of duties is based on a finding of threat of material injury or material retardation, a refund of provisional duties is required. In specified circumstances, the investigating authorities may levy a definitive anti-dumping duty on products, which entered for consumption not more than 90 days prior to the date of application of provisional measures. The circumstances under which such duty can be levied are:

- (i) Where there is a history of dumping which has actually caused injury or that the importer was or should have been aware of the practice of the exporter to dump goods and that such dumping is causing injury, and
- (ii) When the injury is caused by massive imports of a product that is being dumped in a relatively short time, which in the light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty. In this regard, the concerned importers should be given an opportunity to comment.

3.44 In this regard, duty cannot be levied retroactively on products, which have entered for consumption prior to the date of initiation of the investigation. In other words, the duty even if levied retroactively, can be from the date of initiation of investigation and not earlier.

3.45 Further, related to the question of retrospective powers of the Government to levy anti-dumping duty is whether on final determination of the levy, duty can be levied retrospectively from the period when the provisional measures were initiated and more particularly for the period when the levy of provisional duty has lapsed prior to its final determination. We have seen that provisional duty can be levied not sooner than 60 days from the date of initiation of investigation and that provisional duty if levied is valid for 6 months and in no case for more than 9 months. Further the time limit for final determination of duty is 12 months, which may extend to 18 months. Accordingly, there may be a situation when the Government has levied provisional duty but which has expired prior to determination of final duty. The period between the lapse of provisional duty and final determination of duty is popularly called

“interregnum period”. The situation is explained with the help of the illustration given below:

Date of initiation of investigation	01-Jan-2006
Date of levy of provisional duty (validity six months)	15-Mar-2006
Period upto which provisional duty was leviable	14-Sep-2006
Date of final determination of duty	01-Jun-2007
Interregnum period	15-Sep-2006 to 31-May-2005

- 3.46 There are judicial differences as to whether duty can be levied for the interregnum period. The Hon’ble Tribunal in the case of *Commissioner of Customs, Cochin Vs. Raghav Enterprises*¹⁸ has held that duty cannot be levied during the said period, while in the case of *Nitco Tiles Ltd. Vs. Designated Authority*¹⁹ it has been held that duty can be levied during the said period. Further, the Central Board of Excise and Customs (CBEC) relying on the decision in the case of Nitco Tiles and on the view expressed by the Ministry of Law and Justice, has clarified in its circular²⁰ that duty would be leviable during the interregnum period. Consequent to the difference in the opinion, seeking view of a higher court would be advisable on the matter.

¹⁸ 2005 (189) E.L.T. (461) - (Tri. - Bangalore)

¹⁹ 2006 (193) E.L.T. (17) - (Tri. - Delhi)

²⁰ Circular No. 9/2006 - Cus, dated 23-01-2006

Anti-dumping, illustrative notifications

Notification issued for provisional levy of duty

Anti-dumping duty on Sodium Formaldehyde Sulphoxylate (SFS), originating in, or exported from, People's Republic of China

[Notification No. 95/2005-Cus., dated 11-11-2005]

Whereas, in the matter of import of Sodium Formaldehyde Sulphoxylate (SFS) (hereinafter also referred to as the subject goods), falling under tariff item number 283110 20 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People's Republic of China (hereinafter referred to as the subject country), the designated authority in its preliminary findings vide notification No. 14/25/2004-DGAD, dated the 26th August, 2005, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 29th August, 2005, has come to the conclusion that -

- (a) the subject goods have been exported to India from the subject country below its normal value;
- (b) the domestic industry has suffered material injury;
- (c) the injury has been caused by the dumped imports from the subject country; and has recommended imposition of provisional anti-dumping duty on import of the subject goods, originating in or exported from the subject country.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 9A of the said Customs Tariff Act, read with rules 13 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid findings of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under the tariff item of the First Schedule to the said Customs Tariff Act, 1975, as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), and produced by the producer as specified in the corresponding entry in column (6), when exported from the country as specified in the corresponding entry in column (5), by the exporter as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at a rate which is equivalent to the amount as specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10) and per unit of measurement as specified in the corresponding entry in column (9), of the said Table.

Table

Sl. No	Tariff item No.	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	28311020	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Wuxi City Dongtai Fine Chemical Co. Ltd.	Wuxi Greenapple Chemical Industry Company Ltd.	469.17	Metric Tonne.	Dollar of United States of America
2.	28311020	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Wuxi City Dongtai Fine Chemical Co. Ltd.	Any	469.17	Metric Tonne.	Dollar of United States of America
3.	28311020	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Any (other than Wuxi City Dongtai Fine Chemical Co. Ltd.)	Any	655.13	Metric Tonne.	Dollar of United States of America
4.	28311020	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	Any country except People's Republic of China	Any (other than Wuxi City Dongtai Fine Chemical Co. Ltd.)	Any	655.13	Metric Tonne.	Dollar of United States of America
5.	28311020	Sodium Formaldehyde Sulphoxylate (SFS)	Any country except People's Republic of China	People's Republic of China	Any	Any	655.13	Metric Tonne.	Dollar of United States of America

The anti-dumping duty imposed under this notification shall be effective up to and inclusive of the 10th day of May, 2006, and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

Notification issued for levy of duty after final determination

Anti-dumping duty on Sodium Formaldehyde Sulphoxylate originating in, or exported from People's Republic of China

[Notification No. 23/2006-Cus., dated 6-3-2006]

Whereas, in the matter of import of Sodium Formaldehyde Sulphoxylate (hereinafter referred to as the subject goods), falling under Tariff item No. 2831 10 20 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People's Republic of China (hereinafter referred to as the subject country), the designated authority in its preliminary findings, vide notification No. 14/25/2004-DGAD, dated the 26th August, 2005, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 29th August, 2005, had come to the conclusion that -

- (a) the subject goods had been exported to India from the subject country below its normal value;
- (b) the domestic industry had suffered material injury;
- (c) the injury had been caused by the dumped imports from the subject country; and had recommended imposition of provisional anti-dumping duty on import of the subject goods, originating in, or exported from, the subject country.

And whereas on the basis of the aforesaid findings of the designated authority, the Central Government had imposed provisional anti-dumping duty on imports of the subject goods, falling under tariff item No. 2831 10 20 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the subject country, vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 95/2005-CUSTOMS, dated the 11th November, 2005, published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 11th November, 2005 vide G.S.R. 660(E), dated 11th November, 2005.

And whereas the designated authority in its final findings, vide notification No. 14/25/2004-DGAD, dated the 25th January, 2006, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 25th January, 2006, has come to the conclusion that -

- (a) subject goods have been exported to India from the subject country below its normal value;
- (b) the domestic Industry has suffered material injury;
- (c) the injury has been caused by the dumped imports from the subject country; and has recommended imposition of definitive anti-dumping duty on all imports of subject goods;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Customs Tariff Act, read rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid final findings of the designated authority, hereby imposes on the said goods, the description of which is specified in column (3) of the Table below, falling under sub-heading of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), and produced by the producers as specified in the corresponding entry in column (6), when exported from the countries as specified in the corresponding entry in column (5), by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10) and per unit of measurement as specified in the corresponding entry in column (9), of the said Table.

Table

Sl. No.	Tariff item No.	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	2831 10 20	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Wuxi City Dongtai Fine Chemical Co. Ltd.	Wuxi Greenapple Chemical Industry Company Ltd.	471.91	Metric Tonne.	Dollar of United States of America
2.	2831 10 20	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Wuxi City Dongtai Fine Chemical Co. Ltd.	Any	471.91	Metric Tonne.	Dollar of United States of America
3.	2831 10 20	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	People's Republic of China	Any (other than Wuxi City Dongtai Fine Chemical Co. Ltd.)	Any	657.87	Metric Tonne.	Dollar of United States of America
4.	2831 10 20	Sodium Formaldehyde Sulphoxylate (SFS)	People's Republic of China	Any country except People's Republic of China	Any (other than Wuxi City Dongtai Fine Chemical Co. Ltd.)	Any	657.87	Metric Tonne.	Dollar of United States of America
5.	2831	Sodium Formaldehyde	Any country	People's Republic	Any	Any	657.87	Metric Tonne.	Dollar of United

Sl. No.	Tariff item No.	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	10 20	Sulphoxylate (SFS)	except People's Republic of China	of China					States of America

The anti-dumping duty imposed under this notification shall be effective up to and inclusive of the 10th day of November, 2010, and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, "rate of exchange" applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the "bill of entry" under section 46 of the said Customs Act.

Notification issued for terminating the levy of duty

Anti-dumping duty on Thermal Sensitive Paper (TSP), exported by Papierfabrik August Koehler Ag, Germany — Notification No. 120/2001-Cus. rescinded

[Notification No. 128/2002-Cus., dated 15-11-2002]

WHEREAS in the matter of import of Thermal Sensitive Paper (hereinafter referred to as TSP) falling under sub-heading No. 4809.10 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, Japan, Finland, Germany and European Union, the designated authority, vide its final findings, notification No. 25/II/98/ADD, dated the 3rd March, 2000 published in the Gazette of India, Extraordinary, Part I Section 1, dated the 3rd March, 2000, had come to the conclusion that -

- (a) TSP originating in, or exported from European Union and Japan has been exported to India below its normal value;
- (b) the domestic Industry has suffered material injury;
- (c) the injury has been caused to the domestic industry by the dumping of TSP originating in, or exported from, European Union and Japan;

AND WHEREAS on the basis of the aforesaid findings of the designated authority, the Central Government had imposed an anti-dumping duty on TSP vide notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), No. 39/2000-Customs, dated the 6th April,

2000 [G.S.R 318 (E), dated the 6th April, 2000], published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 6th April, 2000;

AND WHEREAS the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as CEGAT), in its Final Order No. 42 to 43/2000-A dated 10th November, 2000 in Appeal No. C/373/2000-AD in the matter of *M/s. Jujo Thermal Ltd. v. Designated Authority, Ministry of Commerce*, had directed the Government of India to modify the amount of anti-dumping duty in terms of US dollar;

AND WHEREAS the designated authority had accepted the above Final Order of CEGAT, dated the 10th November, 2000 and has amended paragraph 31 of the said final findings;

AND WHEREAS on the basis of the aforesaid Final Order of CEGAT, the Central Government had imposed an anti-dumping duty on TSP vide notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), No. 156/2000-Customs, dated the 26th December, 2000 [G.S.R. 936 (E), dated the 26th December, 2000], published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 26th December, 2000;

AND WHEREAS on the basis of a request made by M/s. Papierfabrik August Koehler Ag, Germany for review in terms of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 in respect of exports made by them and the recommendation of designated authority vide notification No. 38/1/2001-DGAD dated the 15th October, 2001 published in the Gazette of India, Extraordinary, Part I, Section 1 dated the 15th October, 2001, the Central Government, vide notification No. 120/2001-Customs, dated the 16th November, 2001 [published in the Gazette of India, Extraordinary, vide G.S.R. 851(E), dated the 16th day of November, 2001], had ordered that pending the outcome of the review initiated by the designated authority, TSP, falling under sub-heading No. 4809.10 of the First Schedule to the said Customs Tariff Act, exported, during the period of investigation beginning with the 1st November, 2001 and ending with the 30th April, 2002, by M/s. Papierfabrik August Koehler Ag, Germany, when imported into India shall be subjected to provisional assessment and a Bank guarantee for the amount of duty calculated at the rate of US\$ 0.04390 per square meter;

AND WHEREAS the designated authority vide its final findings in mid term review, Notification No. 31/1/2001-DGAD, dated the 11th September, 2002, published in the Gazette of India, Extraordinary, Part-I, Section 1, dated the 11th September, 2002 has recommended imposition of anti-dumping duty, *inter alia*, in respect of exports of TSP by M/s. Papierfabrik August Koehler Ag, Germany;

AND WHEREAS on the basis of the aforesaid final findings in mid term review of the designated authority, the Central Government had imposed an anti-dumping duty on TSP vide notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), No. 102/2002-Customs, dated the 7th October, 2002 [G.S.R. 681 (E), dated the 7th October, 2002], published in Part II, Section 3, Sub-section (i) of the Gazette of India, Extraordinary, dated the 7th October, 2002;

AND WHEREAS the designated authority in the case of new shipper review in respect of M/s. Papierfabrik August Koehler Ag, Germany regarding anti dumping duty on TSP vide notification No. 38/1/2001-DGAD dated the 11th October, 2002 published in the Gazette of India, Extraordinary, Part I, Section 1 dated the 11th October, 2002, in view of the aforesaid final findings in mid term review, did not consider it necessary to issue findings, and therefore, has recommended for termination of review initiated vide the said notification No. 38/1/2001-DGAD dated the 15th October, 2001;

Now, therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government after considering the aforesaid recommendation of the designated authority, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 120/2001-Customs, dated the 16th day of November, 2001 [G.S.R. 851 (E), dated the 16th November, 2001] and orders that all provisional assessments of Thermal Sensitive Paper (TSP) falling under sub-heading No. 4809.10 of the First Schedule to the said Customs Tariff Act, during the period beginning with the 1st November, 2001 and ending with the 30th April, 2002, exported by M/s. Papierfabrik August Koehler Ag, Germany, and imported into India, be finalised calculating the applicable anti-dumping duty at the rate of US \$ 0.04390 per square meter.

Explanation. - For the purposes of this notification, the anti-dumping duty shall be calculated in Indian currency and the rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time in exercise of the powers under sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act, 1962 (52 of 1962) and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

Notification issued pertaining to mid-term review of the duty

Anti-dumping duty on Cold Rolled Flat Products of stainless steel originating in, or exported from USA and Japan

[Notification No. 99/2005-Cus., dated 25-11-2005]

Whereas in the matter of import of Cold Rolled Flat Products of stainless steel, of a width of 600 mm or more, whether further processed or not, of all grades or series (hereinafter referred to as the subject goods), classified under sub-headings 7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from the European Union, Japan, Canada and the United States of America (hereinafter referred to as the subject countries), the Designated Authority vide its final findings No. 24/1/2001-DGAD, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 21st October, 2002, read with the corrigendum published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 14th November, 2002, had come to the conclusion that :-

- (a) Cold Rolled Flat Products of stainless steel originating in, or exported from, the subject countries had been exported to India below normal value, resulting in dumping;
- (b) the domestic industry had suffered injury;
- (c) injury suffered by the domestic industry is on account of the dumped imports from the subject countries or territory;

and recommended imposition of definitive anti-dumping duty on all imports of the said goods, originating in, or exported from the subject countries.

And whereas on the basis of the aforesaid final findings of the designated authority, read with the aforesaid corrigendum, the Central Government had imposed anti-dumping duty on imports of the subject goods, classified under sub-headings 7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from the subject countries, vide notification No. 134/2002-Customs dated the 5th December, 2002 [G.S.R. 804(E) dated the 5th December, 2002], published in part II, Section 3, sub-section (i) of the Gazette of India, Extraordinary, dated the 5th December, 2002.

And whereas the designated authority vide its Notification No. 15/16/2004-DGAD dated the 14th September, 2004, had initiated a mid-term review in the matter of continuation of anti-dumping duty on imports of the subject goods from the subject countries.

And whereas the designated authority in its mid-term review findings published in Part I, Section 1 of the Gazette of India, Extraordinary, vide Notification No. 15/16/2004-DGAD dated the 13th September, 2005, read with amendment dated the 3rd November, 2005, has concluded that :-

- (i) the subject goods have been found to be exported from subject countries to India below their normal value resulting in dumping;

- (ii) the domestic industry continues to suffer material injury;
- (iii) due to the likelihood of recurrence of injury to the domestic industry as a result of the continued dumping, the anti dumping duty may continue to remain imposed;
- (iv) due to the negative injury margin in respect of imports from the European Union and Canada, the anti-dumping duty on the European Union and Canada may be withdrawn and anti dumping duty may remain in force in respect of the United States of America and Japan.

and has recommended continuation of anti-dumping duty at new rates on imports of Cold Rolled Flat Products of stainless steel from the United States of America and Japan.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the said Customs Tariff Act, read with rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 134/2002-Customs dated the 5th December, 2002 [G.S.R. 804(E), dated the 5th December, 2002], except as respects things done or omitted to be done before such supersession, the Central Government, on the basis of the aforesaid mid-term review findings of the designated authority, read with the aforesaid amendment, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under sub-headings 7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90 of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4) of the said Table, originating in the countries as specified in the corresponding entry in column (5), and produced by the producers as specified in the corresponding entry in column (7), when exported from the countries as specified in the corresponding entry in column (6), by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10), of the said Table.

Table

S. No	Sub-Heading	Description of goods	Specification	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90	Cold rolled flat products of stainless steel, of a width 600 mm or more, whether further processed or not	All Grades or Series	United States of America	Any country	Any producer	Any exporter	445.69	Metric tonne	US \$
2	7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90	Cold rolled flat products of stainless steel, of a width 600 mm or more, whether further processed or not	All Grades or Series	Any country	United States of America	Any producer	Any exporter	445.69	Metric tonne	US \$
3	7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90	Cold rolled flat products of stainless steel, of a width 600 mm or more, whether further processed or not	All Grades or Series	Japan	Any country other than United States of America	Any producer	Any exporter	305.00	Metric tonne	US \$
4	7219 31, 7219 32, 7219 33, 7219 34, 7219 35 and 7219 90	Cold rolled flat products of stainless steel, of a width 600 mm or more, whether further processed or not	All Grades or Series	Any country other than United States of America	Japan	Any producer	Any exporter	305.00	Metric tonne	US \$

The anti-dumping duty imposed under this notification shall be effective from the date of issue of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, “rate of exchange” applicable for the purposes of calculation of anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred under sub-clause (i) of clause (a) of subsection (3) of section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the “rate of exchange” shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

CHAPTER 4

4. Anti-subsidy; the national perspective

Anti-subsidy, the legislation

- 4.1 The provisions governing the levy of anti-subsidy duty or countervailing duty (*as it is referred to*) is contained in the Customs Tariff Act, 1975 (*hereinafter referred to in this section as 'Act'*) and the Rules made thereunder. Section 9 of the Act, provides for levy and collection of countervailing duty on import of subsidized articles into India from a country outside India. In this regard, the Government has issued Notification No. 1/95 – Cus (NT), dated 01-01-1995, providing for rules to determine the manner in which the subsidized articles liable for countervailing duty are to be identified, the manner in which subsidy provided is to be determined and the manner in which the duty is to be collected and assessed under the Act. These rules are called Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (*hereinafter referred to in this section as 'Rules'*).
- 4.2 The Act contains separate provisions for the circumstances under which the levy under Section 9 would not be applicable and the procedure for appeal. These are contained in Section 9B and Section 9C of the Act, respectively. Accordingly, Sections 9, 9B and 9C together with the rules referred to above, contain the provisions governing Anti-subsidy in India.

Anti-subsidy, its meaning

- 4.3 The term 'subsidy' has been defined to mean any financial contribution provided by a Government or a Public Body in the form of transfer of funds, tax incentives, provision of goods or service or any other form of income or price support. Subsidies, by their very nature, can distort free trade, accordingly the law provides for levy of countervailing duty on import of subsidized articles. Under the law only certain types of subsidy are considered to distort trade and therefore only those articles enjoying such subsidy would become subjected to the levy of countervailing duty on their imports into India. Essentially, these restricted subsidies are of two types, namely prohibited subsidies and actionable subsidies, which are explained below:
- **Prohibited subsidies:** Subsidies that require the recipients to meet certain export targets or to use domestic goods instead of imported goods would fall under the category of prohibited subsidies. They are prohibited because they are specifically designed to distort international trade and are therefore likely to hurt trade between countries.
 - **Actionable subsidies:** Subsidies which have an adverse effect on the interest of the complaining country would fall under the category of

actionable subsidies. The complaining country need not be the importing country and may be any country whose interest is said to be affected adversely. An actionable subsidy may be of three types i.e. those which arise when any subsidy hurts the domestic industry of importing country, or is such which has the effect of reducing the share of the competing country in the competing export market, or is such which make the imported goods uncompetitive to domestic goods.

- 4.4 Subsidies which would be liable to countervailing duty are those which are specifically provided to an enterprise or industry or group of enterprises or industries. The basic principle is that a subsidy that distorts the allocation of resources within an economy should be subject to discipline. In case a subsidy is widely available within an economy, then such a distortion in the allocation of resources is presumed not to occur. Thus, only 'specific subsidies' would be subjected to the levy of countervailing duty. In this regard, normally there are four types of specific subsidies:

Specific Subsidy	Particulars of Subsidy
Enterprise	Government targets a particular company or companies for subsidization
Industry	Government targets a particular sector or sectors for subsidization
Regional	Government targets producers in specified territory for subsidization
Prohibited	Government targets export goods or to using domestic inputs for subsidization

- 4.5 Further, there are certain exceptions which have been provided even in case of specific subsidies. In this regard, the following subsidies have been exempted even when they are specific:

- (i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or
- (ii) assistance to disadvantaged regions within the territory of the exporting country; or
- (iii) assistance to promote adaptation of existing facilities to new environmental requirements

- 4.6 The term "subsidy for research activity" has been defined to mean assistance for research activities conducted by commercial organizations or by higher education or research establishments on a contract basis with the commercial organizations if the assistance covers not more than seventy five per cent of the costs of industrial research or fifty per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to -

- (i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

- (ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
- (iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc.;
- (iv) additional overhead costs incurred directly as a result of the research activity; and
- (v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

4.7 The term “subsidy for assistance to disadvantaged regions” has been defined to mean assistance to disadvantaged regions within the territory of the exporting country given pursuant to a general framework of regional development and such subsidy has not been conferred on limited number of enterprises within the eligible region:

Provided that -

- (a) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;
- (b) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region’s difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;
- (c) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors -
 - (i) one of either income per capita or household income per capita, or Gross Domestic Product per capita, which must not be above eighty-five per cent of the average for the territory concerned;
 - (ii) unemployment rate, which must be at least one hundred and ten per cent of the average for the territory concerned, as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

4.8 The term “subsidy for assistance to promote adaptation of existing facilities to new environmental requirements” has been defined to mean assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on commercial organizations:

Provided that the assistance -

- (i) is a one-time non-recurring measure;

- (ii) is limited to twenty per cent of the cost of adaptation;
- (iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by commercial organizations;
- (iv) is directly linked to and proportionate to a commercial organization's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
- (v) is available to all firms which can adopt the new equipment and/or production processes.

Anti-subsidy, first remedy against prohibited subsidy

4.9 In the event that a member nation has reason to believe (complaining member) that a prohibited subsidy is being granted or maintained by another member nation (second member), then the complaining member may request the second member for consultations, which may be done as quickly as possible. The purpose of the consultations is to clarify the facts and to arrive at a mutually agreed solution. In case where no mutually agreed solution is reached within 30 days of the request for consultations, any Member party to such consultations may refer the matter to the Dispute Settlement Body ("DSB") for the immediate establishment of a panel, unless the DSB decides by consensus for deciding not to establish a panel. Upon its establishment, the panel may request the assistance of the Permanent Group of Experts (referred to in this Agreement as the "PGE") with regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the Member applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusions to the panel within a time-limit determined by the panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the panel without modification.

4.10 The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 90 days of the date of the composition and the establishment of the panel's terms of reference. In the event that the panel finds that the measure in question is a prohibited subsidy, then the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn. The report shall be deemed as adopted by the DSB unless one of the parties to the dispute formally notifies the DSB within 30 days of its issuance, of its decision to appeal or the DSB decides by consensus not to adopt the report. In the event that the panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. In case the Appellate Body

considers that it cannot provide its report within 30 days, then it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. However, in no case can the proceedings exceed 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report. This would need to be done within 20 days following its issuance to the Members.

- 4.11 In the event that the recommendations of the DSB are not followed by the subsidizing member within the time-period specified by the panel, then the DSB shall grant the complaining Member specific authorization to take appropriate countervailing measures. In the event that a party to the dispute requests for arbitration then the arbitrator shall determine whether the countervailing measures in the given circumstance could be considered as appropriate.

Anti-subsidy, first remedy against actionable subsidy

- 4.12 In the event that a member nation has reason to believe (first member) that an actionable subsidy is being granted or maintained by another member nation (second member), then the first member may request the second member for consultations, which may be done as quickly as possible. In case consultations do not result in a mutually agreed solution within 60 days, then any Member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 120 days of the date of the composition and establishment of the panel's terms of reference.
- 4.13 The report shall be deemed as adopted by the DSB unless one of the parties to the dispute formally notifies the DSB within 30 days of its issuance, of its decision to appeal or the DSB decides by consensus not to adopt the report. In case the panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. In case the Appellate Body considers that it cannot provide its report within 60 days, then it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. However, in no case can the proceedings exceed 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.
- 4.14 In the event that the panel report or an Appellate Body report is adopted where it is determined that any subsidy has resulted in adverse effects to the interests of another Member, then the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall take steps to withdraw the subsidy. In the event that the Member nation does not take appropriate steps to remove the adverse effects of the subsidy or

withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countervailing measures, commensurate with the degree and nature of the adverse effects determined to exist. In the event that a party to the dispute requests for arbitration then the arbitrator shall determine whether the countervailing measures in the given circumstance could be considered as appropriate.

Anti-subsidy, countervailing measures

Initiation of Investigation

4.15 Countervailing measures would mean levy of countervailing duty on import of specified subsidized articles into India. The countervailing measures would be resorted only when the subsidizing nation refuses to remove/ withdraw the specific subsidy. The investigations against alleged subsidy are normally initiated on the basis of a written request submitted "by or on behalf of" a domestic industry. In this regard, the application would be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion in the domestic industry, either expressing supporting or opposing the application. However, the investigation would not be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced in the domestic industry of the importing country. In this regard, the Application is required to include evidence of (a) subsidy and if possible, its amount, (b) injury within the meaning of Article XVI of GATT 1994 and (c) the causal link between the subsidized imports and its alleged injury. Further, the application should submit reasonable evidence and it should not be a simple assertion or of evidence, that is unsubstantiated. The application is required to contain the following information, for consideration by the investigation authorities:

- (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
- (ii) a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

- (iii) evidence with regard to the existence, amount and nature of the subsidy in question;
 - (iv) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.
- 4.16 On receipt of the application the investigating authorities would examine the accuracy and adequacy of the evidence provided for determining whether there is sufficient evidence to justify the initiation of an investigation. On being satisfied with the documents presented but before initiating the investigation, the investigating authorities would be required to notify the exporting country of its intended investigation. The investigating authorities can also initiate the investigation *suo moto* i.e. on their own, if they consider that they have sufficient evidence of the existence of subsidy, its injury and the causal link. In order to ensure that investigations without merit are not continued, it is provided that the investigation should be terminated immediately if it found that the amount of subsidy is less than 1%, *ad valorem* (for developing nations, it is 2%) or the volume of subsidized imports from a country or the actual or potential injury, is negligible (for imports from developing nations, the volume of imports should be less than 4% when taken individually or 9% when considered collectively). Further, in order to minimize the trade-disruptive effect of investigations, it is specified that the investigations should be completed within one year and in no case, more than 18 months after initiation of investigation.

Conduct of Investigation

- 4.17 The investigation authorities are required to guarantee the confidentiality of sensitive information and verify the information on which determinations are based. At the same time, in order to ensure that there is transparency in proceedings, the authorities are also required to disclose the information on which determinations are to be based, to all interested parties and to provide them with adequate opportunity to make or provide their comments. In this regard, the term 'interested party' has been defined to include (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and (ii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member. The definition of 'interested party' is meant to be inclusive and not exhaustive. Accordingly, it may be possible to include persons other than those specified above as interested in the investigation process. The law establishes the rights of parties to participate in the

investigation process including the right to meet with parties with adverse interests, for instance in a public hearing.

Anti-subsidy, determination of injury and causal link

- 4.18 The determination of injury for purposes of levy of countervailing duty against subsidy shall be based on positive evidence, which would normally involve an objective examination of (a) the volume of the subsidized imports and the effect it has on the prices in the domestic market for like products and (b) the consequent impact of these imports on domestic producers of such products.
- 4.19 The term "domestic industry" has been defined to mean "the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". In certain circumstances, it may not be appropriate to include all producers of the like product in the domestic industry. In this regard, it would be considered as appropriate to exclude from the domestic industry, producers who are related to the exporters or importers of the product under investigation and producers who are themselves importers of the allegedly subsidized goods. In this regard, a producer can be deemed as "related" to an exporter or importer of the allegedly subsidized goods if there is a relationship of control between them and if there is reason to believe that the relationship causes the domestic producer to behave differently from non-related producers.
- 4.20 Further, there are also special rules that allow in exceptional circumstances, consideration of injury to producers comprising a "regional industry". A regional industry may be found to exist in a competitive market if producers within that market sell all or almost all of their production of the like product in that market, and demand for the like product in that market is not to any substantial degree supplied by producers of the like product located outside that market. In such cases, it may be possible that this regional industry gets materially injured by supply of the subsidized article in its market, even if a major proportion of the entire domestic industry including producers outside that region may not be materially injured. Accordingly, a finding of injury to the regional industry would be allowed only if (1) there is a concentration of subsidized imports into the market served by the regional industry, and (2) subsidized imports are causing injury to the producers of all or almost all of the production within that market. In the event that the investigation leads to the conclusion that the regional industry has been materially injured by the import of subsidized articles into its territory, then the investigating authorities determine to levy countervailing duty on subsidized articles on imports of the product, without limitation to the territory. In this regard, before imposing to levy countervailing duties on subsidized articles, the investigating authorities must offer the exporters an opportunity to cease exporting the subsidized article into the said region or territory.

Determination of Injury

4.21 We have seen that determination of injury to domestic industry of the importing country is an essential pre-requisite for levy of protective countervailing duty on subsidized articles. In this regard, the term "injury" has been defined to mean either (i) material injury to a domestic industry, (ii) threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry. Thus, there needs to be either an actual injury or a threat of an injury, in respect of an established domestic industry or injury significant enough to retard its establishment. However, the law is silent on the manner of evaluating and establishing as to how the domestic industry can be said to be materially retarded from being established. Further, the law also does not define the term 'material', in the context of 'injury'. Nevertheless, these terms have to be understood in their general sense.

4.22 The determination of injury must be based on positive evidence i.e. there should be evidence in favor of material injury/ threat to the domestic industry. Further, the manner in which the evidence is examined against subsidized articles should be objective, considering (i) the volume of imports of the subsidized article in the domestic industry and the effect it has on the prices in the domestic market for like products, and (ii) the consequent impact it has caused or could cause to the domestic producers of the like product. In this regard, detailed guidance on how these factors are to be evaluated or weighed or on how the determination of causal link is to be made, is not provided. However, it lays down certain factors to be considered in the evaluation of threat in respect of material injury. These include the rate of increase in the imports of subsidized articles, the capacity of the exporter(s), the likely effect it has on prices and inventories. But it does not make further elaboration on these factors are to be evaluated. Nevertheless, the determination of the threat in respect of material injury is required to be based on facts and not merely on allegation, conjecture, or remote possibility and moreover that the change in circumstances which would create a situation where subsidized imports would cause material injury must be clearly foreseeable and imminent.

- **Evaluation of Injury**

4.23 As regards evaluation of injury, the law does not provide decisive guidelines to the investigating authorities on the manner of evaluating the injury, which is based on volume and price, in respect of the import of subsidized but they specify that such factors need to be considered for investigation purposes. In this regard, the investigating authorities have to develop analytical methods for consideration of these factors, which may be regarded as relevant in the light and circumstances of each case. As regards evaluating the impact on the domestic industry by the import of subsidized, it is provided that the investigating authorities are required to evaluate all relevant economic factors having bearing upon the state of the domestic industry. In this regard, a number of factors have been listed such as actual or potential declines in

sales, profits, output, market share, productivity, return on investments, utilization of capacity, actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, and the magnitude of the amount of subsidy. However, this list is not exhaustive and other factors may be deemed relevant. In this regard, it is provided that no single factor or combination of factors can necessarily lead to either an affirmative or negative determination, as regards the alleged subsidy. In evaluating the injury to the domestic industry, the investigating authorities are required to consider whether there has been significant price undercutting in respect of the subsidized imports as compared to the price of the like product in the domestic industry of the importing country. In this regard, the investigating authorities are also required to consider whether the purpose of the article being subsidized is to depress prices of like products in the domestic industry to a significant degree or to prevent the increase in price of such products, which otherwise would have occurred, to a significant degree.

- **Causal Link**

4.24 As regards the establishment of material injury, it needs to be demonstrated that there is a causal relationship between the article that is alleged as being subsidized and the injury it seeks to cause to the domestic industry manufacturing or producing like product. In this regard, the demonstration has to be based on an examination of all relevant evidence, though the particular factors which may be considered as relevant in evaluating the evidence of such causal link, is not specified. In this regard, the investigating authorities are required to consider for factors that can cause injury other than by virtue of it being subsidized. For eg. Factors such as change in technology, change in pattern of demand, etc., also cause injury but they may not be by virtue of the subsidy. Accordingly, analysis of such 'other factors' which may cause injury are important in the establishment of evidence against material injury, as they need to be excluded in evaluating the injury on account of import of subsidized article. In this regard, the investigating authorities are required to develop analytical methods for determining what evidence is or may be relevant in a particular case and for evaluating that evidence, to take into account other factors which may also cause injury but not as a result of subsidy. Accordingly, only those factors which may be said to have a causal link between import of subsidized goods and its consequent injury to the domestic industry are required to be factored, considered and evaluated.

- **Cumulative Analysis**

4.25 In certain cases, a subsidized article may be found imported from more than one country. In this regard, it is possible to undertake a cumulative analysis of import of the subsidized article from more than one country for assessing whether such article is causing material injury to the domestic industry. In this regard, it is provided that the authorities must be required to determine the amount of subsidy from each country and that such subsidy is not less than

1%, ad valorem for each country and that the volume of imports from each country is not negligible. Further, the investigating authorities are required to assess whether cumulative assessment is appropriate in light of the conditions of competition between the imported products per se and the conditions of competition between the imported products and the like domestic product.

Anti-subsidy, assessment of countervailing duty

Calculations of the amount of subsidy

4.26 The law does not decisively specify the manner in which the amount of subsidy given by another country is to be computed, but it contains certain guidelines for calculating the amount of subsidy under different circumstances including an illustrative list of certain kinds of subsidies. In this regard, the following guidelines have been provided for the investigating authorities in calculating the amount of subsidy:

- (a) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Member;
- (b) Loan given by the Government shall not be considered as conferring a benefit, unless there is a difference between the amount payable on the Government loan and the amount payable on a comparable commercial loan if taken from the market. In this case the benefit shall be the difference between these two amounts;
- (c) Loan guarantee given by the Government shall not be considered as conferring a benefit, unless there is a difference between the amount payable on a loan guaranteed by the Government and the amount payable on a comparable commercial loan obtained without the Government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;
- (d) The purchase of goods or services from, or supply to, a Government shall not be considered as conferring a benefit unless the purchase is made for less than adequate remuneration, or the supply is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for such goods or services considering factors such as price, quality, availability, marketability, transportation and other conditions of purchase or sale.

Anti-subsidy, procedural requirements

Provisional Measures

- 4.27 The investigating authorities are allowed to take certain provisional measures in the form of levy of provisional countervailing duty on import of subsidized article. These provisional measures are allowed only when the following conditions are fulfilled:
- (i) The investigating authorities have initiated the investigation giving proper public notice and interested parties have been given adequate opportunities to submit information and make their comments;
 - (ii) The investigating authorities have a preliminary affirmative determination in favor of subsidy and its consequent injury to the domestic industry; and
 - (iii) The investigating authorities judge that such provisional measures are necessary to prevent injury being caused during the investigation period.
- 4.28 The investigating authorities can apply the provisional measures only after 60 days from the date when the investigations were initiated. Further, the provisional measures are required to be limited to as short period as possible but in no case can extend to a period beyond four months.

Price Undertakings

- 4.29 The Central Government is empowered to accept price undertakings either from the subsidizing member nation or from the exporters of the article alleged as subsidized, in lieu of the imposition of countervailing duty on subsidies articles. In this regard, the term 'Price Undertaking' refers to a voluntary undertaking given by (a) the government of the exporting Member by agreeing to eliminate or limit the subsidy or take such other measures concerning its effects; or (b) the exporter agreeing to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. For this purpose, price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. However, the price undertakings from subsidizing member nation or the exporters, as the case may be, would be acceptable only after the investigation authorities have made a preliminary affirmative determination that subsidy exists and that consequent to the said subsidy, injury has also been caused to the domestic industry. This is for the reason that price undertakings are always to be linked with the quantum of subsidy and in the absence of affirmative evidence towards the quantum of subsidy, an undertaking of this kind, would not be judiciously acceptable in international transactions.

- 4.30 The investigating authorities are required to complete their investigation on the quantum of subsidy and its consequent injury, in the event it is desired by the exporter or the importing member or by the investigating authorities despite accepting the price undertakings. In case the investigation leads to a negative determination of subsidy or injury, then the price undertaking given shall automatically lapse and in case of the contrary, the undertaking would continue consistent with its terms and the provisions agreed upon.

Imposition and Collection of Duties

- 4.31 The decision to impose countervailing duty on subsidized articles is made by the importing country based on the determination by the investigating authorities, either provisionally or finally, of the amount of subsidy and its consequent injury. In this regard, when countervailing duty on subsidized articles is imposed in respect of any product, then such duty shall be collected appropriately in each case and on a non-discriminatory basis on imports of such product from all sources found to provide subsidy and causing injury, except in cases where price undertakings have been accepted. In any case, the amount of countervailing duty on subsidized articles shall not exceed the amount of subsidy as has been established by the investigating authorities.

Retroactivity or retrospective imposition of duty

- 4.32 As regards the levy of countervailing duty on subsidized articles, the general principle is that both provisional and final duties may be applied only from the date on which the determinations of the amount of subsidy, its consequent injury and the establishment of causal link between the two. However, recognizing that injury may have occurred during the period of investigation or that exporters may have taken actions to avoid the imposition of countervailing duty on subsidized articles, there is a provision for the retroactive (retrospective) imposition of countervailing duty in specified circumstances. In case the imposition of countervailing duty on subsidized articles is based on a finding of material injury, as opposed to threat of material injury or material retardation of the establishment of a domestic industry, the countervailing duty on subsidized articles may be collected as of the date when the provisional measures were imposed. In this regard, if provisional duties collected are higher than the amount of the final duty or if the imposition of duties is based on a finding of threat of material injury or material retardation, a refund of provisional duties is required. In specified circumstances, the investigating authorities may levy a definitive countervailing duty on subsidized articles on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures. In this regard, such duty can be levied when the injury is caused by massive imports of a product benefiting from subsidies paid or bestowed inconsistently with GATT in a relatively short time, which in the light of the timing and the volume of the imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive countervailing duty on

subsidized articles. In this regard, the concerned importers should be given an opportunity to comment. In any case, duty cannot be levied retroactively on products that have entered for consumption prior to the date of initiation of the investigation.

CHAPTER 5

5. Safeguards; the national perspective

Safeguards, the legislation

- 5.1 The provisions governing the levy of safeguard duty is contained in the Customs Tariff Act, 1975 (*hereinafter referred to in this section as 'Act'*) and the Rules made thereunder. Section 8B of the Act, provides for levy and collection of safeguard duty on import of articles from a country outside India to protect its domestic industry from serious injury. In this regard, the Government has issued Notification No. 35/97 – Cus (NT), dated 29-07-1997, providing for rules to determine the identification of articles for levy of the duty and the manner in which the duty is to be collected and assessed under the Act. These rules are called Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (*hereinafter referred to in this section as 'Rules'*). Section 8C of the Act provides for levy of specific safeguard duty on imports from the Republic of China, where the imports cause or threaten to cause market disruption to domestic industry. The provisions which apply to safeguard duty under Section 8B would equally apply to Section 8C and therefore they are discussed separately. Thus, Sections 8B and 8C together with the Rules referred to above, contain the provisions governing levy of Safeguard Duty in India.

Safeguards, under the WTO

- 5.2 WTO allows a member nation to restrict imports of a particular product when the domestic industry is injured or threatened with injury to be caused by the surge in imports of any product into its country. However, to justify any action (referred to as 'safeguard'), by the member nation against such surge in imports, the injury would need to be serious. In order to lay down the manner and use of safeguard measures, member nations at WTO have entered into an agreement called the "Agreement on Safeguards" (*hereinafter referred to in this section as 'Agreement'*). However, the WTO discourages its member nations from entering into bilateral negotiations outside the auspices of GATT either by adopting to restrain exports 'voluntarily' or by agreeing to other means such as sharing of markets, etc.
- 5.3 The WTO agreement sets out the criteria for assessing whether "serious injury" was caused or threatened to be caused and the factors, which must have been considered in determining the impact of imports on the domestic industry. The surge in imports may be considered to be either real increase in imports i.e. absolute increase in value or volume or it may be a relative increase in imports i.e. say an increase in the share of imports in a market which is shrinking. WTO provides that any safeguard measure when imposed should be applied only to the extent necessary, so as to prevent or give remedy to the serious injury which has been caused or is threatening to

cause. Further, when quantitative restrictions (quotas) are imposed, the measure should be such that would not normally reduce the quantities of imports below the annual average for the last three representative years, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

- 5.4 The WTO agreement sets out the requirements for conducting safeguard investigations by national authorities. The agreement requires the national authorities to be transparent and to follow established rules and practices, avoiding thereby any arbitrary methods in safeguarding the interest of domestic industry. Further, the authorities conducting investigations have to announce publicly when hearings are to take place and provide other appropriate means for interested parties to present evidence. The implementation of the safeguard measure should not in principle be targeted at imports from a particular country but quotas may be allocated among supplying countries in the manner described in the agreement, including in the exceptional circumstance. A safeguard measure which has been implemented by a member nation, should not last for more than four years, although the safeguard measure can be extended for a further period up to eight years, subject to a determination by competent national authorities that the safeguard measure are considered necessary in the interest of industry. Normally, when a country restricts imports in order to safeguard its domestic producers, it must give something in return to the exporting country. WTO provides the manner in which the imposing country needs to compensate the exporting country. However, WTO provides certain concessions to developing countries against imposition of safeguard actions. WTO has also constituted a Safeguards Committee to oversee the operation of the agreement and to also take the responsibility for surveillance of members' commitments. In this regard, member nations have to report each phase of a safeguard investigation and related decision-making for review by the said committee.

Safeguards, general rule

- 5.5 The safeguard measures can be applied when the following conditions are satisfied:
- The product has been imported into India;
 - The import is in such increased quantities, absolute or relative to domestic production;
 - The import is made under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products

Safeguards, determination of injury

- 5.6 The determination of injury for purposes of undertaking safeguard measures shall be based on positive evidence, which would normally be based on objective examination of all relevant factors and in quantifiable manner. The investigation authorities are required to determine whether the increased imports have caused or are threatening to cause serious injury to a domestic industry. The term "domestic industry" has been defined to mean "the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products". In certain circumstances, it may not be appropriate to include all producers of the like product in the domestic industry. In this regard, it would be considered as appropriate to exclude from the domestic industry, producers who are related to the exporters or importers of the product under investigation and producers who are themselves importers of the allegedly dumped product. In this regard, a producer can be deemed as "related" to an exporter or importer of the allegedly dumped product if there is a relationship of control between them and if there is reason to believe that the relationship causes the domestic producer to behave differently from non-related producers.
- 5.7 The determination of serious injury to the domestic industry of the importing country is an essential pre-requisite for undertaking safeguard measures. In this regard, the term "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry and the term "threat of serious injury" shall be understood to mean serious injury that is clearly imminent. The determination of the existence of a threat of serious injury must be based on facts and not merely on allegation, conjecture or remote possibility, which would mean positive evidence i.e. there should be evidence in favor of serious injury/ threat to the domestic industry. Further, the manner in which the evidence is examined should be objective, considering all relevant factors and the examination of the causal link between the imports, the injury and domestic industry. In this regard, detailed guidance on how these factors are to be evaluated or weighed or on how the determination of causal link is to be made, has not been provided. However, it lays down certain factors to be considered in the evaluation of threat in respect of serious injury. These include rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. But it does not make further elaboration on these factors that are to be evaluated. Nevertheless, the determination of the threat in respect of serious injury is required to be based on facts and not merely on allegation, conjecture, or remote possibility.

Safeguards, application of measures

- 5.8 In order to prevent serious injury to the domestic industry, duty may be levied as a safeguard measures only to the extent it is considered necessary and to

prevent or remedy the serious injury. Upon determination, whether provisionally or as final, the duty is required to be levied on a non-discriminatory basis, with respect to all imports of the said article irrespective of the sources or the place from which they have been imported. In the event that the safeguard duty is collected based on provisional investigation and on final determination, it appears that the amount of duty collected is in excess of the duty collected, then such excess is required to be refunded to the importer.

Safeguards, procedural requirements

Provisional Measures

5.9 The investigating authorities are allowed to take certain provisional safeguard measures in case it is considered that delay in enabling measures could cause damage, which would be difficult to repair. The provisional measures may take the form of increase in the customs duty payable on import of goods that are considered to cause serious injury to the manufacturers of like goods in the domestic industry and would be allowed only when the following conditions are fulfilled:

- (i) The investigating authorities have initiated the investigation giving proper public notice and interested parties have been given adequate opportunities to submit information and make their comments;
- (ii) The investigating authorities have a preliminary affirmative evidence that increased imports have caused or are threatening to cause serious injury; and
- (iii) The investigating authorities judge that such provisional measures are necessary to prevent injury being caused during the investigation period.

The period of provisional measures are required to be as short as possible but in no case can exceed a period of 200 days.

Duration, Termination and Review of Measures

5.10 The Agreement provides that the safeguard measures shall be for a period as is considered necessary to prevent or remedy the serious injury. In this regard, the safeguard measures shall not normally exceed a period of four years unless it is considered that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. However, the total period of application of a safeguard measure including the period of application of any provisional measure and any extension thereof, shall not exceed ten years (*it may be noted that the WTO Safeguard Agreement provides for a maximum period of eight years*). In case the duration of the measure exceeds three years, the Member nation applying such a measure is required to review the situation

not later than the mid-term of the measure and if appropriate, withdraw it or increase the pace of liberalization.

Special Status

5.11 The law provides for special status to export oriented units including units in free trade zone and in special economic zone. In this regard, the notifications issued for the purpose of levy of safeguard duty on import of articles would not be applicable when made by export oriented units unless the intention to levy on their imports is specifically stated in the notification. The meaning of the term 'export oriented units' would be the same as is assigned in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944. The meaning assigned to them under the Central Excise Act, is given below:

- (i) "free trade zone" means a zone which the Central Government may, by notification in the Official Gazette , specify in this behalf;
- (ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;
- (iii) "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Safeguards, illustrative notifications

Notification issued for levy of safeguard duty

Safeguard duty on Tapioca Starch imported from countries other than developing countries except Thailand and Vietnam

[Notification No. 40/2005-Cus., dated 2-5-2005]

WHEREAS in the matter of import of Tapioca Starch, falling under sub-heading 1108 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (here-in-after referred to as the said Act), the Director General (Safeguards), in final findings *vide* number G.S.R.180 (E), dated the 17th March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 17th March, 2005, has come to the conclusion that increased imports of Tapioca Starch into India have caused and is further threatening to cause serious injury to the domestic producers of Tapioca Starch and it will be in the public interest to impose safeguard duty for a period of three years on imports of Tapioca Starch into India;

NOW THEREFORE, in exercise of the powers conferred by sub-section (1) of section 8B of the said Act, read with rules 12 and 14 of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, the Central Government after considering the said findings of the Director General (Safeguards), hereby imposes on Tapioca Starch, falling under heading 1108 of the First Schedule to the said Act, when imported into India, a safeguard duty at the rate of -

- (a) 33% *ad valorem*, when imported from the 2nd day of May, 2005 to 1st day of May, 2006 (both days inclusive);
- (b) 23% *ad valorem*, when imported from the 2nd day of May, 2006 to 1st day of May, 2007 (both days inclusive); and
- (c) 13% *ad valorem*, when imported from the 2nd day of May, 2007 to 1st day of May, 2008 (both days inclusive).

Nothing contained in this 2. notification shall apply to imports of Tapioca Starch from countries notified as developing countries under clause (a) of sub-section (6) of section 8B of the said Act, other than Thailand and Vietnam.

CHAPTER 6

6. Frequently Asked Questions

Anti-dumping

GENERAL CONCEPT

Q.1. What is the meaning of dumping?

In international transactions, the activity of throwing goods at less than its normal value into a country of another is called dumping and it becomes categorized as such when by reason of it being dumped, it causes or threatens to cause material injury to domestic industry of the importing country. Dumping is recognized as an unfair trade practice because of its nature to distort trade between and among nations.

Q.2. What is anti-dumping?

Anti-dumping, as is also suggested by its name, is a measure adopted by the importing country to prevent unfair dumping. In other words, the action undertaken by the importing country to counter the effect of dumping is called or referred to as 'anti-dumping'.

Q.3. What are the popular myths surrounding dumping?

There are certain myths which surround the meaning of the term 'dumping'. Dumping does not mean excessive imports into a country nor does it mean import of cheap or low priced goods. When goods are imported in excessive quantities (*say consequent to its demand in importing country*) or at a price which is lower than the price of similar goods in the importing country (*but not lower than the normal price in the exporting country*), then such transactions would not be regarded as dumping but considered to be ordinary in international transactions. In this sense, dumping may be said as relative to its normal value in the exporting country but may not be so in absolute terms, when compared to the price or quantity in the importing country.

Q.4. When is importing nation allowed to take action against dumping?

The importing country would be allowed to take action against dumping, when the following conditions are satisfied:

- Dumping should not only be said but be also shown to have taken place;
- On the basis of dumping, being said to exist, the importing country is able to establish from reliable information and considering all possible factors that such dumping has actually caused or could cause, material injury to its domestic industry; and

- Lastly, as a reasonable justification for any action against dumping, the importing country should be able to present the calculation stating the extent of dumping i.e. the difference between the export price and the normal price in the exporter's home country.

The guiding factor for an anti-dumping action is the protection of the domestic industry manufacturing like products from the injury which is said to result as a direct cause from the dumping.

Q.5. Whether WTO recommends the levy of anti-dumping duty?

WTO recognizes that dumping of goods in international transactions hinders free trade and therefore specifically authorizes its member nations to take preventive steps which limit its effect when goods are being dumped into a country of another causing thereby serious injury to the domestic industry of the importing nation. The role of the WTO is not to pass judgments on anti-dumping but to lay down the principles on how a Nation should or should not react to dumping.

Q.6. Whether anti-dumping is a measure to protect domestic industry?

Anti-dumping, as a measure, is not for solely protecting the domestic industry. In case injury is caused to domestic industry by import of products which have a competitive edge on account of technology, price or such other features, then anti-dumping cannot be levied on account of such inherent advantage which these imported goods contain. The underlying principle is that "trade in goods between and among nations should be free and no nation should be allowed to protect its domestic industry at the cost of free international trade". However, if goods are sold in the export market at prices lower than the price prevailing for them in its domestic market, with the intention to cause serious injury or distort the domestic industry of the importing nation, then anti-dumping duty can be levied by the importing nation, to prevent such injury. Accordingly, though the measure is to protect the domestic industry, it is only in the restrictive sense and not generally.

Q.7. Whether anti-dumping duty is a form of customs duty? Whether normal customs duty is leviable when anti-dumping duty is levied?

In India, anti-dumping duty is levied and collected under the Customs Tariff Act, 1975. Despite this fact, it is entirely different from the normal customs duties levied under the Customs Act, not only in the concept and substance but also in its purpose and operation. The following are the main differences between the two duties:

- Anti-dumping and the like measures, in their essence are linked to the notion of fair trade. The object of these duties is to guard against the situation arising out of unfair trade practices while customs duties are levied as a means of raising revenue and for the overall development of the economy.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti-dumping measures are there as trade remedial measures.

- The object of anti-dumping duties is to offset the injurious effect of international price discrimination while customs duties have implications for the government revenue and for overall development of the economy.
- Anti-dumping duties are not necessarily in the nature of a tax measure inasmuch as the Authority is empowered to suspend these duties in case of an exporter offering a price undertaking. Thus such measures are not always in the form of duties/tax.
- Anti-dumping duties are levied against the import of particular product from a particular country inasmuch as they are specific to the country and product as against the customs duties which are general and universally applicable to all imports irrespective of its country of origin and the exporter.
- Anti-dumping as a duty is rather temporary and contingent (*i.e. existence of injury*), whereas customs duty is rather permanent and based on the fiscal policies of the Government.
- The revenue collected from anti-dumping duty is allocated to the Ministry of Commerce and Industry, whereas the revenue collected from customs duty is allocated to the Ministry of Finance.

Thus, there are basic conceptual and operational differences between the customs duty and the anti-dumping duty, though they both are levied under the provisions of Customs Law. The anti-dumping duty is levied under an independent code and is over and above the normal customs duty chargeable on the import of goods in question.

PARAMETERS PERTAINING TO DUTY

Q.8. What are the parameters used for the assessment of anti-dumping duty?

The essential factors for the assessment of anti-dumping duty are given below:

- The assessment of the margin of dumping i.e. difference between the normal value (*comparable price in the exporting country*) and the export price of such or like goods;
- The assessment of injury caused or sought to be caused on the domestic industry manufacturing or producing like article;
- The establishment of the fact that the margin and the injury is significant enough to impose anti-dumping so as to counter the effect or limit the consequences thereof including the prevention of any injury or the continuation thereof.

Q.9. How the margin of dumping is determined or calculated?

The margin of dumping is the difference between normal value and export value of goods alleged to be dumped. The comparison between the normal value and export value is made considering factors such as conditions and terms of sale, levels of trade, taxation, physical characteristics, quantity, etc., and they are generally made

at the ex-factory level of goods which are similar if not identical in all material respects. The margin of dumping is generally expressed as a percentage of the export price.

Illustration:

The normal value of subject goods = US\$ 250 per kg

The export value of subject goods = US\$ 200 per kg

Thus, the margin of dumping in the above case is US\$ 50 per kg., i.e. 25% of the export price. Further, the normal value and export value, being the two variables for calculation of the margin of dumping, must be calculated at the same level i.e. at the ex-factory price.

Q.10. In the context of the margin of dumping, how is the export value determined?

The export value of the goods allegedly as being dumped would mean the price at which such goods are being exported into the country of another. It is generally the CIF value of goods less adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the ex-factory price (*in the exporting nation*).

Q.11. In the context of the margin of dumping, how is the normal value determined?

In relation to goods exported from a country and which are considered as being dumped into a country of another, the normal value would be the comparable price at which the article (same article) or in its absence, any 'like article', is sold 'in the ordinary course of trade' in the domestic market of the exporting country. In this regard, the term 'like product' means any product, which is alike in all material respect and has characteristics that closely resemble to the product under consideration. In case the normal value cannot be determined by means of the domestic sales, then the following two alternative methods may be employed to determine the comparable price:

- Price at which goods are exported to an appropriate third country, which may be said as comparable;
- Constructed normal value, i.e. the cost of production in the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.

Q.12. With respect to determining the normal value, which are the transactions relevant?

In respect of the computation of the normal value, if certain sales are made below their cost, then they are to be ignored for computation purposes and the normal value would be determined based on remaining sales, provided they are sufficient for consideration. The remaining sales would normally be considered as sufficient if they constitute 5% or more of the export sales made to the country conducting the

investigation against dumping. In certain cases, a lower ratio may also be accepted if the volume of domestic sales nevertheless is of such a magnitude, which could enable a fair comparison between export price and normal price.

Q.13. In the context of export value, what is the meaning of surrogate exports?

A situation may arise where products are not imported directly from the country of manufacture but from an intermediate country. The intermediate country i.e. the country of export, is referred to as the surrogate country and exports made therefrom are called surrogate exports. In such cases, the normal value is to be determined on the basis of sales in the market of the originating country unless this may result in an inappropriate or impossible comparison.

Q.14. What is the meaning of the term 'like product' or 'like article'?

The term "like product" is defined as "a product, which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under consideration". In simple words, a product would be regarded as a like article, when they are commercially substitutable for each other.

For eg. A "Yellow Maruti Car" of model name Zen Version V2 would be said to be identical to "Red Maruti Car" of the same model and version. In this regard, the colour of the car whether red or yellow is not material and therefore for the purpose of comparison they would be said to be identical for all practical purposes. Similarly, the product "Tiger Biscuits" manufactured by Britannia Industries Limited can be said as similar to the product "Glucose Biscuits" manufactured by Parle G, for they are alike in all material respects such as they use the same or nearly the same ingredients, the market to which they cater is same, the manufacturing process adopted by them is similar, etc. Thus even though they have been manufactured by two different suppliers, the products are similar because they are alike in all material respects.

Q.15. What is the conversion factor with respect to foreign currency?

The comparison of the normal value with that of export price would require conversion of currency. Normally, when the base currency is different from USD or Euro, they are converted into USD or Euro for the purpose of calculations. In such cases, the exchange rate to be used should be one on which the material terms of sale were established i.e. date of sale (date of contract, invoice, purchase order or order confirmation, etc.). In case of a forward currency sale, where it is directly linked to the export sale, then the exchange rate adopted for the forward transaction should be used for conversion.

Q.16. What are the factors for initiating an anti-dumping investigation?

The following factors are regarded as essentials for initiating anti-dumping investigation:

- there is sufficient evidence on goods being dumped;
- there is injury to the domestic industry; and
- there is a causal link between the dumping and the injury, that is to say, injury is caused because the goods are being dumped.

The application for initiating investigation is normally made by the domestic producers who support the levy anti-dumping duty. In this regard, the application would be accepted only when such producers constitute not less than 25% of the total production of the like article by the domestic industry. Further, the application is deemed to have been made by or on behalf of the domestic industry, if such application is supported by producers whose collective output constitute more than 50% of the total production of the like article, whether as seeking support or making opposition, as the case may be, to the levy of anti-dumping duty. The domestic producers making the application should provide sufficient evidence, as is available, in support of or in opposition thereto, of the dumping, the consequent injury and the causal link between them. The application is required to be made before the designated authority.

Q.17. What are the parameters used in determining injury to the domestic industry?

The broad parameters on the basis of which injury is normally analyzed are the effect on account of volume and in price which the imported goods alleged as being dumped would have on the domestic industry manufacturing like articles. In this regard, broad economic indicators that could have a bearing upon the state of industry are considered, such as the magnitude of dumping, the decline in sales, selling price, profits, market share, production, utilization of capacity, etc.

Q.18. What is non-injurious price?

Dumped goods have a significant impact on the price of the like goods in the domestic industry. Consequent to the dumped article being available at lesser than normal price, the domestic industry may be forced to reduce its price to withstand the consequent impact it may have including the threat of the loss of market for its product.

In this regard, non-injurious price (NIP) is that level of price which the domestic industry could have been expected to recover under normal circumstances from sale of its products. This is without prejudice to the price at which the goods are being dumped in the domestic market. The NIP should be such as would enable reasonable recovery of cost of production and profit after nullifying adverse impact of those factors of production which could have adversely effected the company to which dumped imports can't be held as responsible. In the calculation of the amount of injury, proper determination of non-injurious price is most significant.

In this regard, the Authority calls for costing information from the domestic industry in the prescribed proforma for the period of investigations and for three previous years. Accounting records maintained on the basis of Generally Acceptable Accounting Principle (GAAP) form the basis for estimating non-injurious price. In the estimation of non-injurious price for the domestic industry, the Authority makes appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption etc., and factors such as the investments, capacity utilization etc. The non-injurious price for domestic industry is finally determined considering the reasonable return on the capital employed thereon.

Q.19. What is injury margin? How is it worked out?

The injury margin, referred normally in terms of a value, is the amount of injury suffered by the manufacturers or producers of like articles in the domestic industry of the importing country. It is calculated as the difference between the non-injurious price and the landed value of the dumped imports. In this regard, landed value is taken as the assessable value under the Customs Act including the applicable basic customs duty but not the countervailing duty or the special additional duty or other special duties

Q.20. What is causal link and how is it established?

In the anti-dumping proceedings, it is essential to establish that consequent to dumping the domestic industry has suffered injury. It is similar to the relationship which fire has to the loss of goods. If fire has resulted in loss of goods then fire is said to be the cause for loss. In the same manner, if the loss of goods is on account of some other reason but not fire then fire cannot be said to be the cause for loss. Similarly, dumping should result in injury for enabling any action against dumping. In case injury is on account of reasons other than dumping, then anti-dumping actions cannot be taken. The relationship which injury has with dumping is called as the causal link. Accordingly, causal link has to be established before initiating any action against dumping.

The causal link is normally established considering the effect of the following on like goods manufactured or produced in domestic industry:

- Volume effect
- Price effect

The volume effect, normally referred to in terms of percentage, is the effect which dumping has on the market share (in terms of quantity) of like goods manufactured or produced in the domestic industry. The price effect, is the effect which dumped article has on the price of the like goods manufactured or produced in the domestic industry and in this regard to consider whether there has been a significant price under cutting in respect of article being dumped or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increase which otherwise would have occurred to a significant degree. Thus, the link is established based on the examination of the price effect and volume effect of the article being dumped with that of like article in domestic industry.

PARAMETERS DETERMINING LEVY

Q.21. What is the methodology adopted to counter anti-dumping?

The action of dumping is undertaken by the exporter of another country, in respect of whom, the importing nation may not have any control. Further, such actions do not constitute the action of the exporting nation but is undertaken in the individual capacity as an exporter in such country. Accordingly, as the importing nation would not have direct control over the actions of such individual entities, the normal practice is to levy a duty to such an extent as would enable counter the effect of the injury. In this regard, anti-dumping duty is levied to the extent of the margin of dumping i.e. the difference between the normal value and the export price. In terms of the WTO agreement, to which India is also a signatory and in terms of the legislated law in India on anti-dumping, the quantum of duty levied to counter the effect of dumping should in no case exceed the amount of dumping margin. In case the amount levied exceeds the amount of dumping, the legislature is required to refund the excess duty collected back to the importer.

Q.22. What is the minimum level of imports (*de-minimis margins*) from a country/ individual exporter for initiating anti-dumping investigation?

Anti-dumping investigations are conducted based on the concept of materiality. Further, this is based on the principle that any counter action would be justified only when the impact is significant or material. In this regard, anti-dumping investigations would not be initiated when:

- Individual exporter wise: Any exporter whose margin of dumping is less than 2% of the export price
- Country of export wise: Any country where the volume of the dumped imports from such country, whether actual or potential, accounts for less than 3% of the total imports of the like product. However, in such a case, the cumulative imports of the like product from all these countries from where the article is being dumped and who individually account for less than 3% should not exceed 7% of the total imports of the like product.

In case the level of transactions is lesser than the percentage specified above, then the anti-dumping investigations are not to be initiated or when initiated, they are not be continued even if there is evidence on the existence of dumping, the injury and the causal link thereon. Such transactions are normally referred to *de-minimis* and are to be ignored.

Q.23. Whether the relief is always in the form of imposition of anti-dumping duty?

The relief provided to manufacturers of like product in the domestic industry is normally in the form of imposition of anti-dumping when the investigations conducted by designated authority conclude that there is sufficient injury so as to recommend

such imposition. In this regard, the duty imposed is specific to specified exporters and to products originating/ exported from specified country.

However, the remedy against dumping is not always in the form of imposition of anti-dumping duty. The Authority may terminate or suspend investigation after the preliminary findings if the exporter concerned furnishes an undertaking to revise his price so as to remove the dumping or the injurious effect of such dumping. In such cases, anti-dumping duty would not be recommended/ imposed on such exporters from whom the designated authority has received a price undertaking and which has been accepted by them.

Q.24. Whether domestic industry can seek interim relief pending determination of anti-dumping duty?

The designated authority has the power to recommend the levy of provisional duty based on its preliminary findings made pursuant to the application filed by the manufacturers of like product in domestic industry, for investigation into injury suffered by them, as an interim relief to such manufacturers pending finalization and determination of anti-dumping duty. In cases where the authority considers it is adequate and necessary to provide such interim relief, then it may recommend to the Central Government for the levy of provisional anti-dumping duty. The Central Government may, based on such recommendations, decide by Notification to levy provisional anti-dumping duty pending finalization and determination of the amount of anti-dumping duty. The provisional anti-dumping duty cannot be levied earlier than 60 days from the date of initiation by the designated authority of proceedings for levy of anti-dumping duty. In cases wherever the designated authority considers it necessary and adequate for providing an interim relief, it recommends for levy of provisional anti-dumping. In this regard, the recommendation is normally made between 60 to 90 days from the date of initiation of investigation. Further, as normal investigation may take a year to complete, interim relief may become necessary when the authority considers that there is a fit case for levy of anti-dumping duty.

Q.25. What are the implications when final duty is not equivalent to provisional duty already levied?

The final duty determined by the authority may be higher or lesser than the amount of provisional duty levied by the Central Government. The implications in such cases with respect to imports made subsequent to levy of provisional duty but prior to the imposition of final duty are discussed below.

- Final duty determined is lesser than the provisional duty:

The difference between the amount of duty paid provisionally and as determined finally, is liable to be refunded to the importer.

- Final duty determined is higher than the provisional duty:

Importer is not liable to pay the difference between the amount of duty determined finally and as paid provisionally.

- Provisional duty withdrawn based on final findings:

The amount of provisional duty collected from the importer is liable to be refunded to the importer.

Q.26. Whether anti-dumping duty can be levied retrospectively?

Anti-dumping duty is normally leviable prospectively i.e. from the date of issue of the Notification by the Central Government. However, under certain exceptional circumstances, the duty can be levied retrospectively, when it is found that:

- there is a history of dumping of the alleged goods and such dumping has caused injury or that the importer had knowledge of the practice of the exporter to dump goods and that such dumping would cause injury; and
- the injury has been caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty if levied prospectively.

However, in any case, anti-dumping duty is not allowed to be levied retrospectively for a period being prior to 90 days from the date when a Notification is issued imposing such duty.

Q.27. What is the legal framework with respect to imposition of anti-dumping?

The provisions governing the levy of anti-dumping duty are contained in the Customs Tariff Act, 1975 and the Rules framed thereunder. Section 9A provides for levy and collection of anti-dumping duty on import of articles considered as being dumped into India from a country outside India. The Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, provide the rules to determine the manner in which the articles liable for anti-dumping duty are to be identified, the manner in which export price, normal price, the margin of dumping is to be determined and the manner in which the duty is to be collected and assessed under the Act.

There are separate provisions providing for refund in certain circumstances, the circumstances under which levy under Section 9A would not be applicable and the procedure for appeal. These are contained in Section 9AA, Section 9B and Section 9C of the Act, respectively. Accordingly, Sections 9A, 9AA, 9B and 9C together with the rules referred to above, contain the provisions governing Anti-dumping in India. These provisions have been framed in accordance with the WTO Agreements on anti-dumping.

PROCEDURAL MATTERS

Q.28. Which is the authority administering action against dumping?

Anti-dumping in India is administered by the Directorate General of Anti-dumping and Allied Duties (DGAD) functioning in the Department of Commerce under the

Ministry of Commerce and Industry. The Directorate is headed by the Designated Authority, which conducts the anti dumping investigation and makes recommendations to the Government on imposition of anti-dumping duty. The function of the designated authority is only to recommend the levy of anti-dumping duty. The decision, whether to levy or not is finally taken by Central Government. Thus, while the Department of Commerce recommends the levy of anti-dumping duty, it is the Ministry of Finance, which levies such duty.

Q.29. Who can make an application for initiation of anti-dumping investigation?

The domestic industry that claims to have suffered significant injury on account of alleged dumping can make an application to the designated authority. The application for an investigation into the alleged would be treated as valid, when it is made by those petitioners/ domestic producers who expressly support the levy of anti-dumping duty and who collectively account for more than 25% of the total domestic production of the like article so produced in India.

In this regard, an application is deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.

In considering the eligible applicants, such producers who are related to the exporters or importers of the article alleged as being dumped or who are themselves importers need to be excluded. In other words, a domestic producer who is related to the exporter or importer of the article being dumped or who is himself an importer thereof, may not be treated as part of the domestic industry even if he files or supports an anti-dumping petition.

Q.30. Who are the parties said to be interested in an anti-dumping investigation?

An interested party is a person who would be concerned or said to be affected with any decision taken by the designated authority. The following parties may be said to be interested in an anti-dumping investigation:

- the domestic industry on whose complaint the proceedings are initiated;
- The exporters or the foreign producers of the like articles and which is the subject matter to investigation;
- The importers of the article alleged as being dumped into India;
- The Government of the exporting country/ countries;
- The trade or business associations of the domestic producers/ importers/ user industries of the article alleged as being dumped.

Q.31. Who is authorized to appear/ represent in anti-dumping cases?

Any representative duly authorized by the petitioner/ interested party/ association etc., is allowed to appear in respect of the anti-dumping cases to represent the matter before and make submission to the investigating authorities.

Q.32. What are the essential conditions for initiation of anti-dumping investigation?

The designated authority would not normally initiate any anti-dumping investigation unless it receives a well-documented application/ petition, which would enable the authority to determine:

- that the domestic producers/ petitioners filing the petition and/or expressly supporting the petition account for at least 25% of total domestic production of the like article in question.

In this regard, the application is deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application; and

- that sufficient evidence is furnished by the petitioner(s) regarding;
 - the evidence that goods are being dumped;
 - that there is injury to the domestic industry; and
 - that there is a causal link between the dumping and the consequent injury

Q.33. Whether designated authority has the power to initiate anti-dumping investigations suo-motto?

The designated authority would ordinarily initiate the proceedings for anti-dumping based on the petition received from the domestic industry. However, the designated authority has the power to initiate the investigations on its own account i.e. suo-motto, on the basis of information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source. In such case, the Authority has the power to initiate the anti-dumping investigation on its own motion and without any complaint/ petition filed. However, in such cases, the designated authority should be satisfied that sufficient evidence exists as to the existence of dumping, injury and the causal link between the dumped imports and the alleged injury. Further, once an investigation has been initiated, whether on own account or on the basis of an application, the procedure for investigation would be the same and in terms of the Rules framed.

Q.34. In respect of the application for investigation against dumping, what is the information required to be submitted to the designated authority?

An application for investigation into any alleged dumping would be filed by the aggrieved domestic industry. The said application would need to contain sufficient evidence establishing in respect of the alleged dumping and its consequent injury. In this regard, the application may contain evidence in the nature of relevant copies of the bill of entry, invoices, letter from the Indian Embassy in the subject country, data from secondary sources like specialized commodity journals, etc., as to be able to prove the existence of dumping from reliable sources, in relation to the goods being alleged as dumped and the manner in which such goods are causing or threatening to cause material injury to the domestic industry producing like goods or is such that would materially retard the establishment of an industry.

The application containing the requisite information for the proceedings must be made in the prescribed format devised by the Directorate General of Anti Dumping and Allied Duties, which also contain the guidelines for the manner in which the application is required to be filled. The format of the application proforma and information questionnaire to be submitted by the importer/ exporter is given in as **Appendix A** to the book.

Q.35. What is the period of investigation in anti-dumping cases?

All the information and evidence furnished in the application in relation to dumping, injury and causal link must pertain to a definite period, which is called the period of investigation. Normally the period taken for investigation is not lesser than six months nor is more than eighteen months. In this regard, the guiding principle is that the period undertaken for consideration should be representative and as recent as possible. Normally, the desired period of investigation is a financial year provided that such period is reasonably proximate to the date of filing the application. As regards the application filed by the domestic industry, in order to have a proper analysis of injury, the domestic industry is required to submit information for a period of past three years.

Q.36. Do interested parties get sufficient opportunity to represent their case?

The investigation conducted under the anti-dumping proceedings are considered to quasi-judicial in nature, accordingly, the designated authority is normally expected to follow the principle of natural justice before making a final recommendation for or against the imposition of anti-dumping duty to counter the effect of dumping. In this regard, the interested parties to the investigation are given opportunity to represent their case at many stages during the investigation process.

The first opportunity is provided after the initiation of proceedings, wherein the authority considers the submissions of all the interested parties while giving its preliminary findings. After the imposition of provisional duty, the interested parties file their responses to the preliminary findings and an opportunity is provided to them to submit the facts stated in person. Further, the authority holds a formal public hearing before making the final determination where further opportunity is provided

to all interested parties to make their submissions. The authority considers all these submissions and issues a statement making disclosure of all essential facts, which would form the basis for its final findings. All interested parties are given a final opportunity to respond to the disclosure statement and represent their case before the authority makes its final findings. In this manner, the interested parties get several opportunities to present their matter before the authority.

Q.37. Which authority decides on imposition of duty, whether as provisional or final?

The investigation in respect of anti-dumping duty is conducted by the Directorate General of Anti-dumping and Allied Duties (DGAD) functioning in the Department of Commerce under the Ministry of Commerce and Industry and headed by the Designated Authority. Though, it is designated authority which receives the application and conducts the proceedings in respect of the investigation into the alleged dumping, it does not have the power to issue a notification levying anti-dumping duty. Accordingly, the designated authority can only recommend for the levy of anti-dumping duty based on its findings/ investigation. Considering such recommendation, the Department of Revenue, under the Ministry of Finance, if it so considers, would issue Notification normally within a period of 3 months, imposing anti-dumping duty on import of specified goods from specified country.

Q.38. How are recommendations of the Designated Authority made known to public?

The recommendations of the designated authority with respect to initiation, preliminary findings, final findings, etc., are notified in the official Gazette of the Government of India. Further, the Press Information Bureau under the Ministry of Commerce & Industry also issues a Press Release on such subjects from time to time. The recommendatory Notifications are also made available on the official website of Ministry of Commerce and Industry, Government of India at <http://commin.nic.in/>. The final notifications issued by the Ministry of Finance, based on the recommendations of the designated authority, are made available at <http://finmin.nic.in/> or at <http://www.cbec.gov.in/>.

Q.39. Which are the appealable orders with respect to anti-dumping duty?

In respect of anti-dumping, matters arising from an order of determination of existence, degree and effect of dumping are appealable before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Preliminary findings are distinct from final determination of anti-dumping duty. In this regard, only an order arising from final determination is appealable before CESTAT and recommendatory findings of designated authority cannot be appealed before CESTAT.

The Appeal is to be filed in Form CA.3 within 90 days of the order of determination to be appealed against. In this regard, the Tribunal has constituted a special bench, called as 'Anti-dumping bench' to hear and dispose off matters pertaining to anti-

dumping. The Bench comprises of member not less than two with one as judicial member and one as technical member.

Q.40. What are circumstances under which anti-dumping investigations are terminated?

The circumstances under which the investigations initiated by the designated authority may be suspended or terminated are given below:

- when the domestic industry (applicant) makes a request in writing; or
- in the absence of sufficient evidence with respect to dumping or its injury; or
- when the margin of dumping is less than 2% of the export price; or
- when the volume of dumped imports from a country is less than 3% or collectively from all such countries is less than 7% of the total imports of like article into India; or
- when the injury determined from dumping is negligible

MISCELLANEOUS

Q.41. Whether anti-dumping provisions are prejudicial to the interests of the end-consumers?

The underlying principle with respect to anti-dumping provisions is the gain of the larger interest of public than the interest of a few. Anti-dumping duties, in general, seeks to eliminate price discrimination in goods which causes injury to the manufacturers of like products in the domestic industry of the importing country and to re-establish open and fair competition in international trade.

As a consumer, one may presume to benefit from the reduced price of imported goods, but such benefit is not real and may be temporary. On a long-term perspective, the intention of the exporter to supply goods at discriminated prices in the importing country is normally to distort the domestic market or to prevent the establishment thereof. Accordingly, in international transactions, such price discriminations are considered to be artificial forces that would be unfair in the larger interest of the Country.

Thus, the objective for the imposition of anti-dumping duty is to remove the unfair advantages gained by the overseas exporters through dumping of goods and to protect the domestic industry from suffering injury. Further, the imposition of anti-dumping duty does not in any manner restrict imports from the subject country and therefore would not hinder the consumers' access to the imported goods. It only seeks to create an international market that is free and fair.

Q.42. What is the validity period for the duty imposed?

Anti-dumping would normally remain in force for a period of five years from the date of its imposition. However, the designated authority may review the continuation of

such duty anytime before the expiry of the said period. In this regard, the review may be done on the basis of a request received from an interested party in view of a change in the circumstances or for such other reasons, which the authority considers it to be necessary for review.

The review may result in the withdrawal of the duty or in the variation of the amount of duty depending upon the current circumstances. Normally, an interested party is allowed to file a request for review only after the expiry of one year from the date of its imposition. In this regard, the designated authority would, to the extent possible, conduct the review in the same manner and following the same procedure as is prescribed for investigation of a fresh case.

Q.43. Whether levy extends to all imports of a product on which duty is levied?

Anti-dumping duty is levied based on investigations that lead to a finding that particular importers from particular country are dumping goods into the country. Accordingly, the levy of anti dumping duty is both exporter specific and country specific. In case anti-dumping is specific to imports made from a particular person in a particular country, then such duty would not extend to imports made from other countries or from persons other than those notified.

Q.44. Whether there are any exemptions under anti-dumping duty?

Anti-dumping duty is not payable with respect to imports made against the Advance License scheme or by 100% Export Oriented Units or units in Export Promotion Zone or in Special Economic Zone, even if such imports have been notified for the purpose of levy of anti-dumping duty.

Q.45. Whether anti-dumping duty and anti-subsidy measures can be applied simultaneously?

In terms of the GATT agreement and in terms of enacted provisions in India, the domestic industry claiming to be injured is permitted to file for relief under the anti-dumping provisions or seek imposition of countervailing duties on subsidies. However, it is provided that no article would be subjected to both, i.e. countervailing duty on subsidy and anti-dumping duty so as to compensate for the same situation of dumping or export subsidization.

Anti-subsidy

GENERAL CONCEPT

Q.46. What is subsidy?

'Subsidy' has been defined to mean any financial contribution provided by a Government or a Public Body in the form of transfer of funds, tax incentives,

provision of goods or service or any other form of income or price support by which a benefit is conferred.

Q.47. When subsidy is considered to be unfair?

Subsidy is a benefit provided to a particular class of persons when they meet a certain specified criteria. The subsidy would become unfair, when by virtue of the benefit so provided, it creates an unfair advantage to such class of persons, providing better than needed competitive advantage and diluting the level playing field in internationally competitive price sensitive market.

Q.48. What are the different kinds of subsidies?

Subsidies are generally of two types, namely prohibited subsidies and actionable subsidies. The meaning of the terms is given below:

- **Prohibited subsidies:** Subsidies that require the recipients to meet certain export targets or to use domestic goods instead of imported goods would fall under the category of prohibited subsidies. They are prohibited because they are specifically designed to distort international trade and are therefore likely to hurt trade between countries.
- **Actionable subsidies:** Subsidies which have an adverse effect on the interest of the complaining country, which may or may not be the importing country but whose interest are said to be affected adversely. An actionable subsidy may be of three types i.e. those which arise when any subsidy hurts the domestic industry of importing country, or is such which has the effect of reducing the share of the competing country in the competing export market, or is such which make the imported goods uncompetitive to domestic goods.

Q.49. How is dumping different from subsidy?

Dumping is an action adopted by individuals or enterprises and whereas, subsidy is action adopted by the Government or supported by the action of the Government. WTO is an organization formed by negotiations between member nations to promote free international trade. In this regard, member nations have signed an undertaking and where necessary have also made necessary legislative provisions to seek consistency with common international agreements and negotiations. Accordingly, subsidy being an action of the Government, it becomes easier for the member nations to seek enforcement of the provisions that deviate from the undertakings and negotiations entered into between them. However, as dumping is an action of an undertaking in the country of another, member nations cannot normally seek enforcement but are permitted to take counter measures, which can prevent the intended damage.

PARAMETERS DETERMINING COUNTERVAILING MEASURES

Q.50. What are the types of subsidies and against which action is permitted?

Action against subsidy is normally in the form of levy of countervailing duty by the importing country, which would be equivalent to the amount of subsidy provided by the exporting country. In this regard, subsidies that are specifically provided to an enterprise or industry or group of enterprises or industries are restricted and against which action is permissible. This is for the reason that subsidies of such nature can distort the allocation of resources within an economy and accordingly is subjected to discipline. In case a subsidy is widely available within an economy, then such a distortion in the allocation of resources is presumed not to occur. Accordingly, only subsidies that are specific are subjected to the levy of countervailing duty.

Q.51. What are the types of specific subsidies?

Specific subsidies are normally of four types, which are given below:

Specific Subsidy	Particulars of Subsidy
Enterprise	Government targets a particular company or companies for subsidization
Industry	Government targets a particular sector or sectors for subsidization
Regional	Government targets producers in specified territory for subsidization
Prohibited	Government targets export goods or to using domestic inputs for subsidization

Q.52. With respect to actionable/ prohibited subsidies, are there any exceptions?

The following subsidies have been exempted even if they are considered to be specific:

- research activities conducted by or on behalf of persons engaged in the manufacture, production or export; or
- assistance to disadvantaged regions within the territory of the exporting country; or
- assistance to promote adaptation of existing facilities to new environmental requirements

Q.53. When can an action be taken against subsidy?

In case subsidy has been provided by a member nation of WTO, then the complaining member may request the member, providing subsidy to come for consultations so as to clarify on the facts and to arrive at a mutually agreed solution.

In case where mutually agreed solution is not reached within 30 days of the request for consultations, any Member, party to such consultations may refer the matter to the Dispute Settlement Body ("DSB"), which on investigation if found that the measure in question is a prohibited subsidy, then it would recommend that the subsidizing Member should withdraw the subsidy without delay. In the event that the subsidizing member does not follow the recommendations of the DSB, within the time-period specified by the panel, then the DSB would grant the complaining Member specific authorization to take countervailing measures.

In case subsidy is provided by a non-member nation of the WTO, then the nation is allowed to take appropriate countervailing measures without following the procedure of consultation or through the dispute settlement body.

Q.54. When does a nation resort to countervailing measure?

Countervailing measures would mean levy of countervailing duty on import of specified subsidized articles. The countervailing measures would be resorted only when the subsidizing nation refuses to remove/ withdraw the specific subsidy. Further, countervailing measures are levied only when subsidies are of such nature that causes serious injury to the domestic industry.

Q.55. How is injury determined?

The determination of injury for purposes of levy of countervailing duty against subsidy would be based on positive evidence, which would normally involve an objective examination of (a) the volume of the subsidized imports and the effect it has on the prices in the domestic market for like products and (b) the consequent impact of these imports on domestic producers of such products.

Q.56. In the context of determination of injury, has the term 'injury' been defined?

The term "injury" has been defined to mean either (i) material injury to a domestic industry, (ii) threat of material injury to a domestic industry, or (iii) material retardation of the establishment of a domestic industry. Thus, there needs to be either an actual injury or a threat of an injury, in respect of an established domestic industry or injury significant enough to retard its establishment.

Q.57. What is causal link?

With respect to determination of injury, it needs to be demonstrated that there is a causal relationship between the article that is alleged as being subsidized and the injury it seeks to cause to the domestic industry manufacturing or producing like product. In other words, it needs to be established that the injury to the domestic industry is consequent to import of subsidized article and not otherwise. If the injury is for reasons other than import of subsidized articles, then countervailing measures would not be imposed on the article.

Q.58. How is the assessment of subsidy made?

The law does not decisively specify the manner in which the amount of subsidy given by another country is to be computed, but it contains certain guidelines for calculating the amount of subsidy under different circumstances including an illustrative list of certain kinds of subsidies. In this regard, the investigating authorities are expected to use analytical methods for consideration of these factors, which may be regarded as relevant in the light and circumstances of each case.

Q.59. What are the guidelines for determination of subsidy?

The following guidelines have been provided for the investigating authorities in calculating the amount of subsidy:

- (a) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Member;
- (b) Loan given by the Government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the Government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;
- (c) Loan guarantee given by the Government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the Government and the amount that the firm would pay on a comparable commercial loan absent the Government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;
- (d) The provision of goods or services or purchase of goods by a Government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

PROCEDURAL MATTERS

Q.60. Who can make an application for investigation into countervailing measures?

The investigations against alleged subsidy is normally initiated on the basis of a written request submitted "by or on behalf of" a domestic industry when domestic

producers expressly supporting the application account for less than 25% of total production of the like product produced. However, the application would be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion in the domestic industry, either expressing supporting or opposing the application. The proforma of the application is given in as **Appendix B** to this book.

Q.61. Should the application contain any evidence?

The Application is required to include evidence of (a) subsidy, and if possible, its amount, (b) injury within the meaning of Article XVI of GATT 1994 and (c) the causal link between the subsidized imports and its alleged injury. Further, the application should submit reasonable evidence and it should not be a simple assertion or of evidence, that is unsubstantiated.

Q.62. What are the contents of the application?

The application is required to contain the following information, for consideration by the investigation authorities:

- (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
- (ii) a complete description of the allegedly subsidized product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (iii) evidence with regard to the existence, amount and nature of the subsidy in question;
- (iv) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

Q.63. How does the investigation authority process the application?

On receipt of the application the investigating authorities would examine the accuracy and adequacy of the evidence provided for determining whether there is

sufficient evidence to justify the initiation of an investigation. On being satisfied with the documents presented but before initiating the investigation, the investigating authorities would be required to notify the exporting country of its intended investigation.

Q.64. Whether application from domestic industry is necessary to initiate investigation?

The investigating authorities can also initiate the investigation suo moto i.e. on their own, if they consider that they have sufficient evidence of the existence of subsidy, its injury and the causal link.

Q.65. Whether investigation is to be initiated in all cases?

In order to ensure that investigations without merit are not continued, it is provided that the investigation should be terminated immediately if it found that the amount of subsidy is less than 1%, ad valorem (for developing nations, it is 2%) or the volume of subsidized imports from a country or the actual or potential injury, is negligible (for imports from developing nations, the volume of imports should be less than 4% when taken individually or 9% when considered collectively).

Q.66. Is there any time-limit to conduct the investigation?

In order to minimize the trade-disruptive effect of investigations, it is specified that the investigations should be completed within one year and in no case, more than 18 months after initiation of investigation.

Q.67. How is transparency ensured in the investigation process?

In order to ensure that there is transparency in proceedings, the authorities are also required to disclose the information on which determinations are to be based, to all interested parties and to provide them with adequate opportunity to make or provide their comments. In this regard, the term 'interested party' has been defined to include (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and (ii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member. The definition of 'interested party' is meant to be inclusive and not exhaustive.

Q.68. What is the legal framework with respect to imposition of anti-subsidy?

The provisions governing the levy of anti-subsidy duty or countervailing duty is contained in the Customs Tariff Act, 1975 and the Rules made thereunder. Section 9 of the Act, provides for levy and collection of countervailing duty on import of subsidized articles into India from a country outside India. The Customs Tariff

(Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, provide for rules to determine the manner in which the subsidized articles liable for countervailing duty are to be identified, the manner in which subsidy provided is to be determined and the manner in which the duty is to be collected and assessed under the Act. There are separate provisions providing for the circumstances under which the levy under Section 9 would not be applicable and the procedure for appeal. These are contained in Section 9B and Section 9C of the Act, respectively. Accordingly, Sections 9, 9B and 9C together with the Rules referred to above, contain the provisions governing Anti-subsidy.

Q.69. What is the manner under which the investigation is conducted?

The procedural matters are common for anti-dumping and anti-subsidy. Accordingly, the provisions with respect to the governing authority for conducting investigation, the procedure adopted by them for investigation, the procedure adopted for determination of the amount of countervailing duty, whether provisionally or finally, the persons authorized to represent, retrospective powers of the authority, the appeal provisions, etc., has already been covered in the section pertaining to anti-dumping and accordingly they have not been repeated herein.

Safeguards

Q.70. What is the meaning of 'safeguards'?

Safeguards are steps taken by a nation to restrict imports of a particular product when the domestic industry is injured or threatened with injury to be caused by the surge in imports of any product into its country.

Q.71. When are safeguard measures applied?

The safeguard measures can be applied when the following conditions are satisfied:

- The product has been imported into India;
- The import is in such increased quantities, absolute or relative to domestic production;
- The import is made under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products

Q.72. What is the principle with respect to determination of injury?

The determination of injury for purposes of undertaking safeguard measures would be based on positive evidence, which would normally be based on objective examination of all relevant factors and in quantifiable manner. There are no definite guidelines but the investigation authorities are required to determine whether the

increased imports have caused or are threatening to cause serious injury to a domestic industry.

Q.73. How are the measures applied?

The safeguard measure adopted by the Government for preventing serious injury to the domestic industry by the surge seen in imports of a particular product, consequent to which the domestic industry has suffered injury, is by way of imposition of a duty, called safeguard duty, when such goods are imported. The duty is levied only to the extent it is considered necessary and to prevent or remedy the serious injury. The measures may be applied, whether provisionally or finally, based on investigation. However, upon determination, the duty is required to be levied on a non-discriminatory basis, with respect to all imports of the said article irrespective of the sources or the place from which they have been imported.

Q.74. What is duration of the measure applied?

The safeguard measures shall be for a period as is considered necessary to prevent or remedy the serious injury. However it shall not normally exceed a period of four years unless further period is considered necessary. In this regard, the total period of application of a safeguard measure including provisional measure and any extension thereof, shall not exceed ten years (*though WTO Safeguard Agreement provides for a maximum period of 8 years*).

Q.75. Are there any exceptions/ exemptions from the levy?

Export-oriented units including units in special economic zone have been exempted from the levy of safeguard duty for imports made by such units unless the intention to levy on their imports is specifically stated in the notification.

Q.76. What is the legal framework with respect to imposition of anti-subsidy?

The provisions governing the levy of safeguard duty is contained in the Customs Tariff Act, 1975 and the Rules made thereunder. Section 8B of the Act, provides for levy and collection of safeguard duty on import of articles from a country outside India to protect its domestic from serious injury. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, provide for rules to determine the identification of articles for levy of the duty and the manner in which the duty is to be collected and assessed under the Act. Section 8C of the Act provides for levy of specific safeguard duty on imports from the Republic of China, where the imports cause or threaten to cause market disruption to domestic industry. Thus, Sections 8B and 8C together with the Rules referred to above, contain the provisions governing levy of Safeguard Duty in India.

Q.77. What is the manner under which the investigation is conducted?

The procedural matters are common for anti-dumping and safeguard measures. As they have already been covered in the section pertaining to anti-dumping, they have not been discussed herein. In this regard, the format of the application proforma and the information questionnaire to be given by the domestic producers, importers and exporters is given in as **Appendix C** to the book.

Q.78. Which is the authority administering action against dumping?

Safeguards in India are administered by the Directorate General (Safeguards) functioning under the Department of Revenue under the Ministry of Finance. The Directorate conducts the investigation and makes recommendations to the Standing Board of Safeguards, which is chaired by the Commerce Secretary. The function of the Directorate General is only to recommend the levy, while the decision is taken by the Central Government.

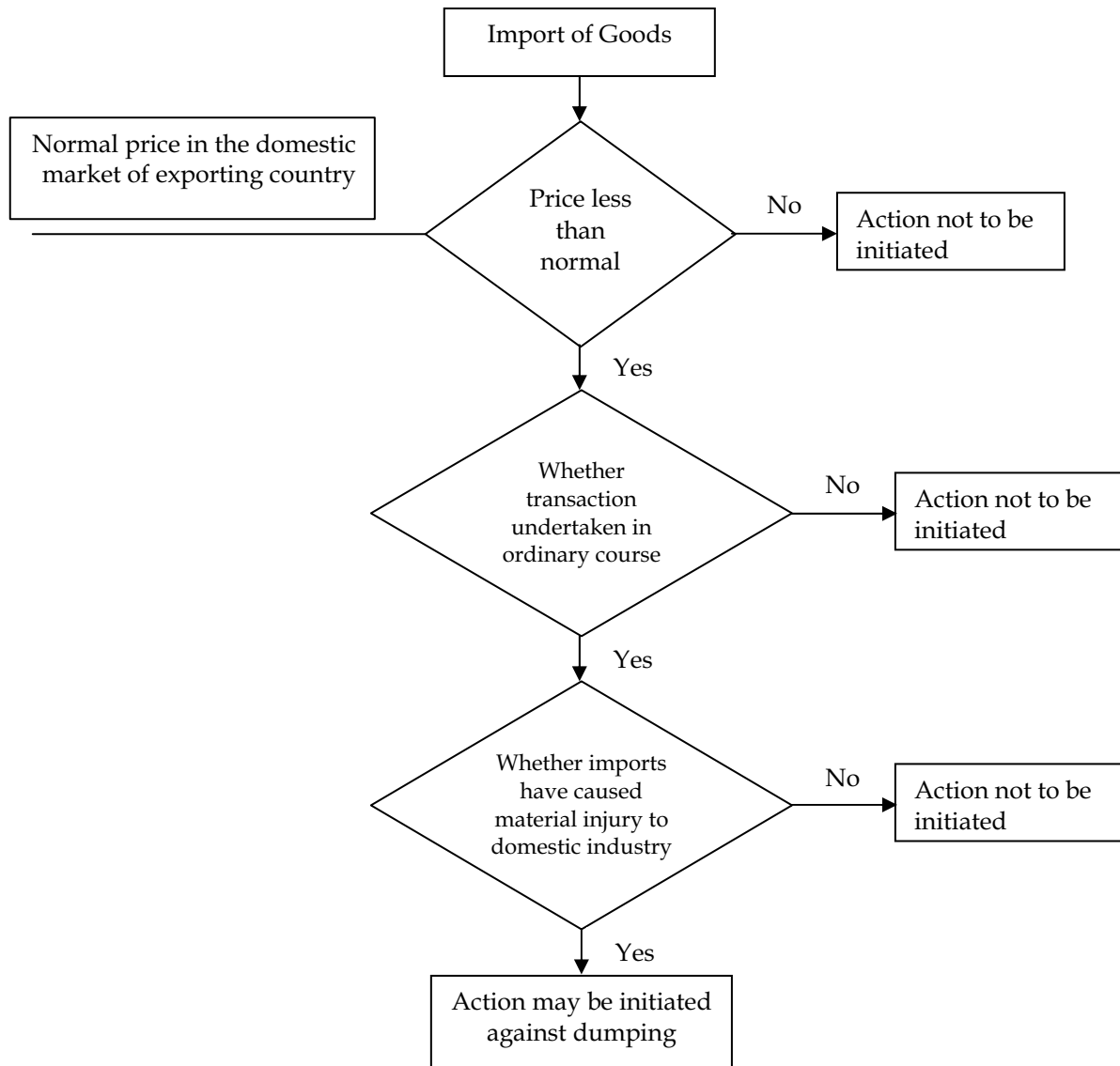
Q.79. Anti-dumping duty, countervailing duty and safeguard duty, how differentiated?

Anti-dumping duty	Countervailing duty	Safeguard duty
Levied when goods are imported at dumped prices and cause or threaten to cause material injury or material retardation of the establishment of domestic industry	Levied when goods are subsidized in the country of export and cause or threaten to cause material injury or material retardation of the establishment of domestic industry	Levied when goods have entered in increased quantities and cause or threaten to cause serious injury to the domestic producers of like or directly competitive products

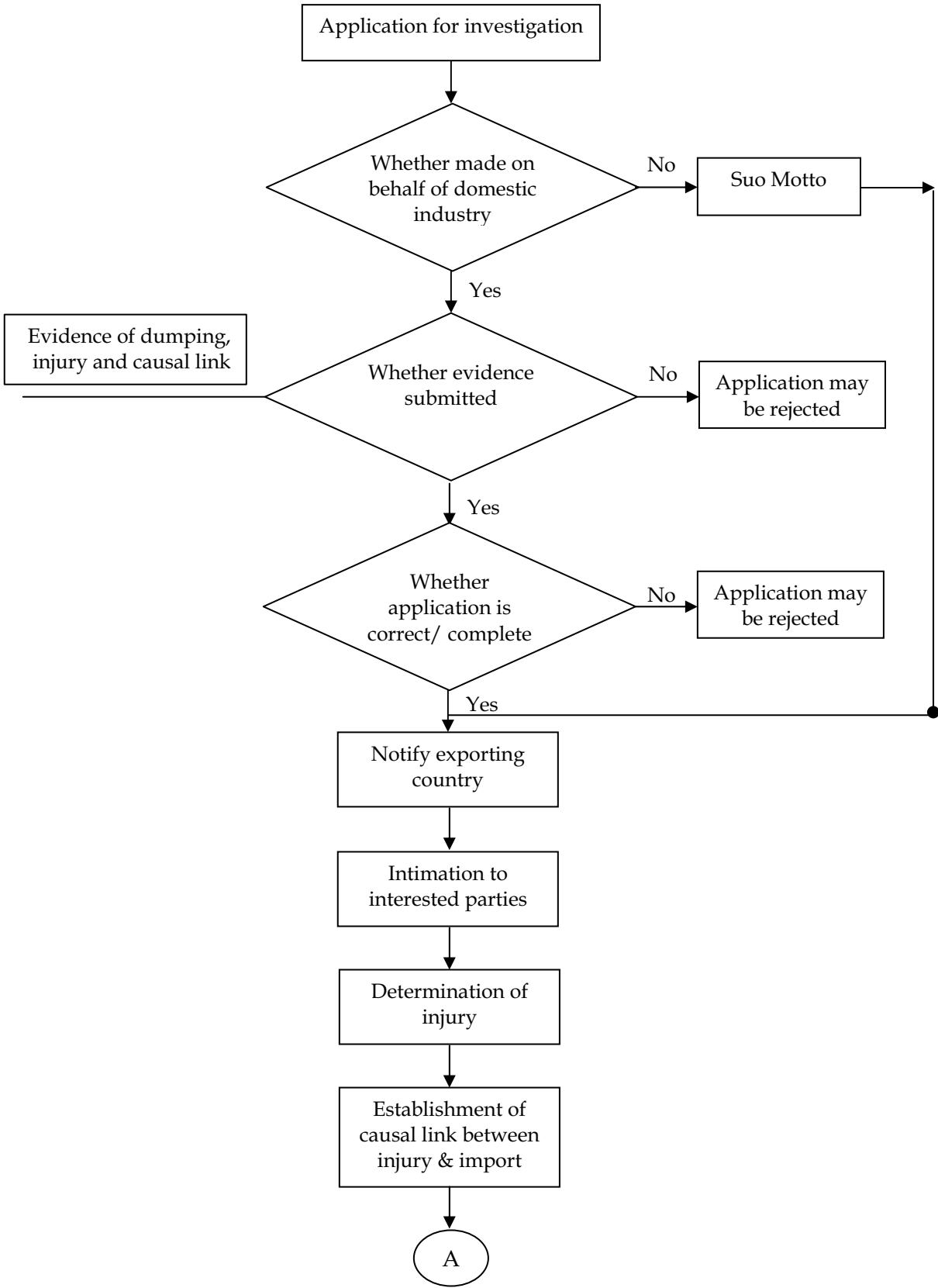
CHAPTER 7

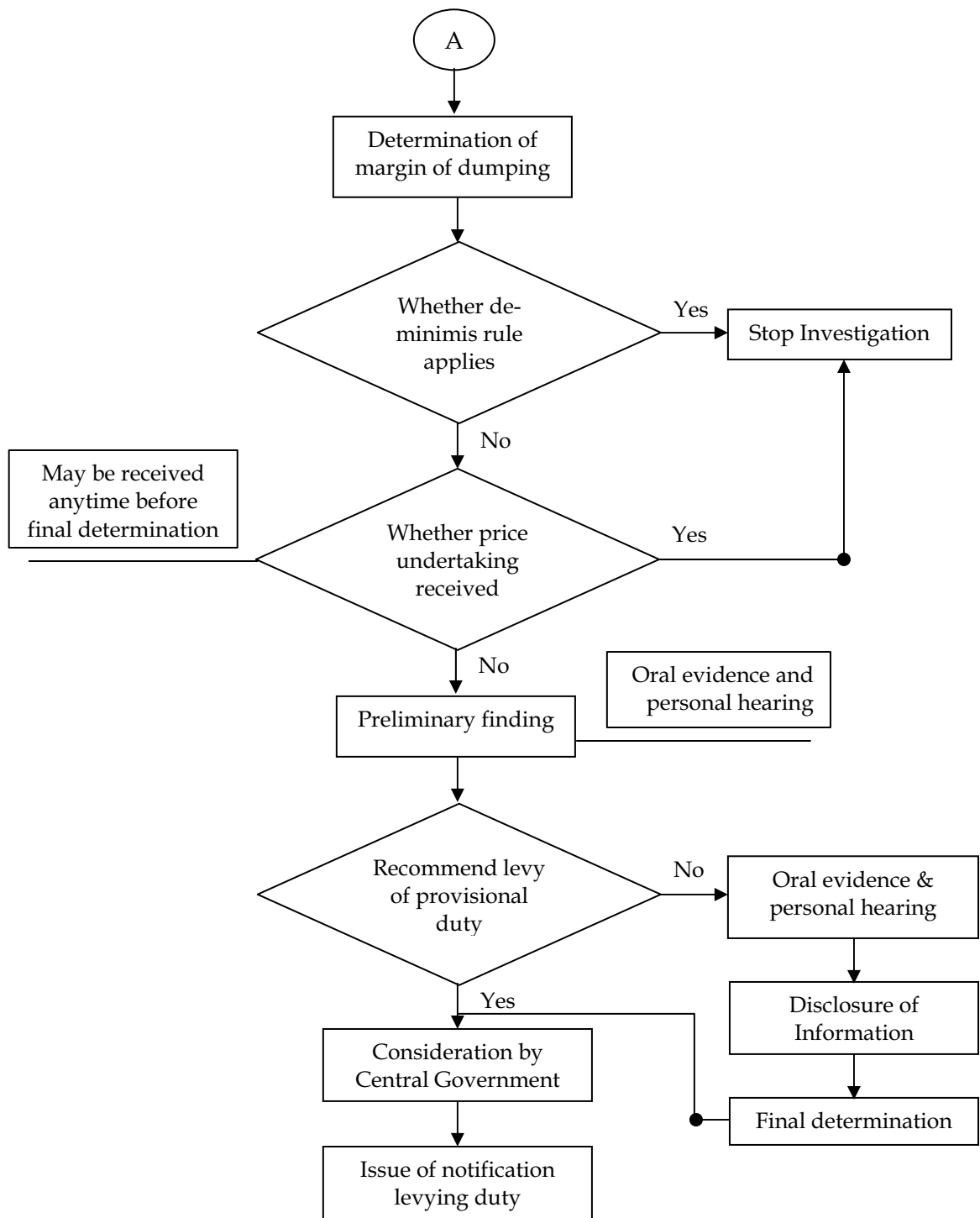
7. Flowchart

Anti-dumping, for initiating action

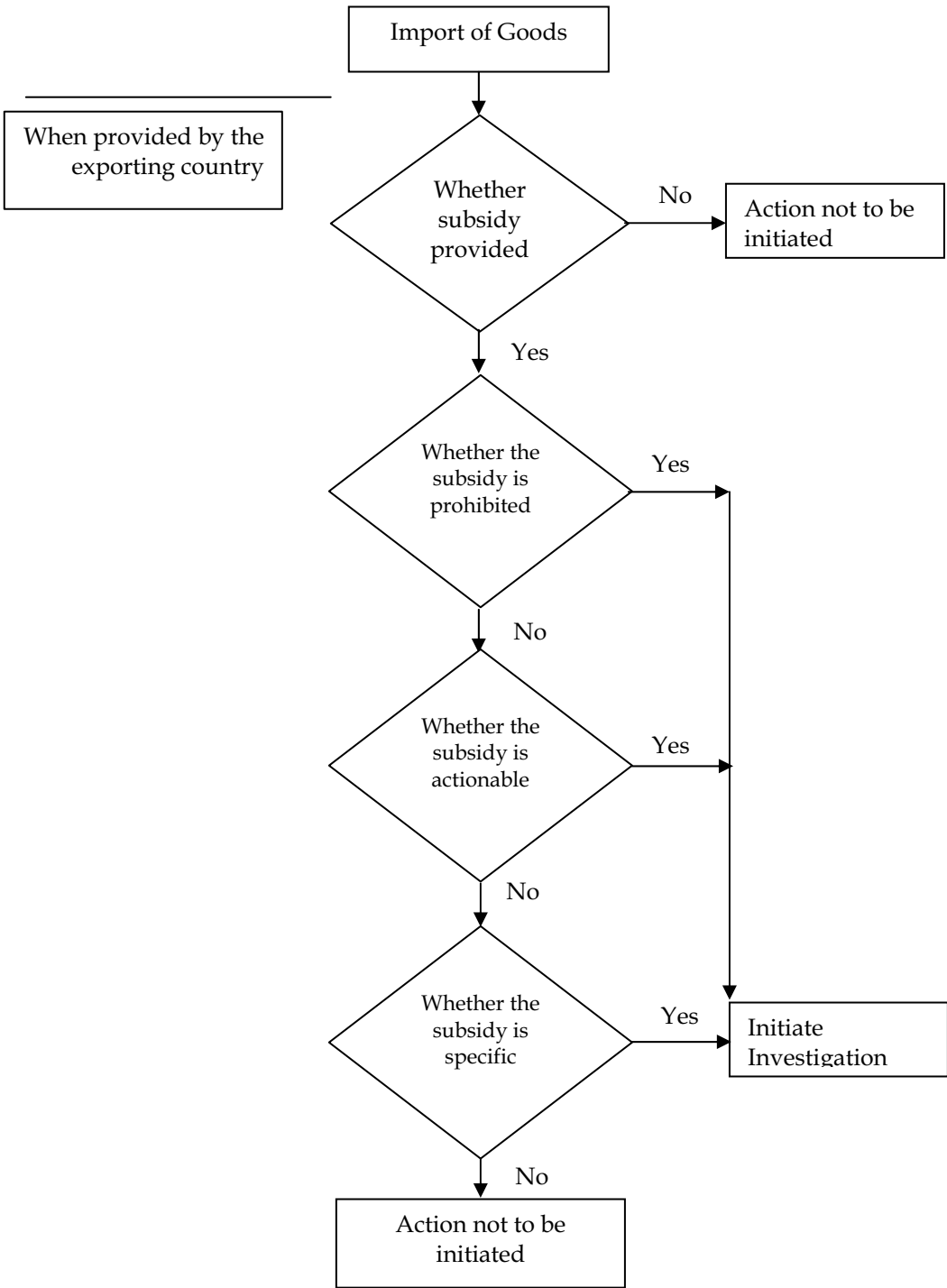


Anti-dumping, procedure during investigation

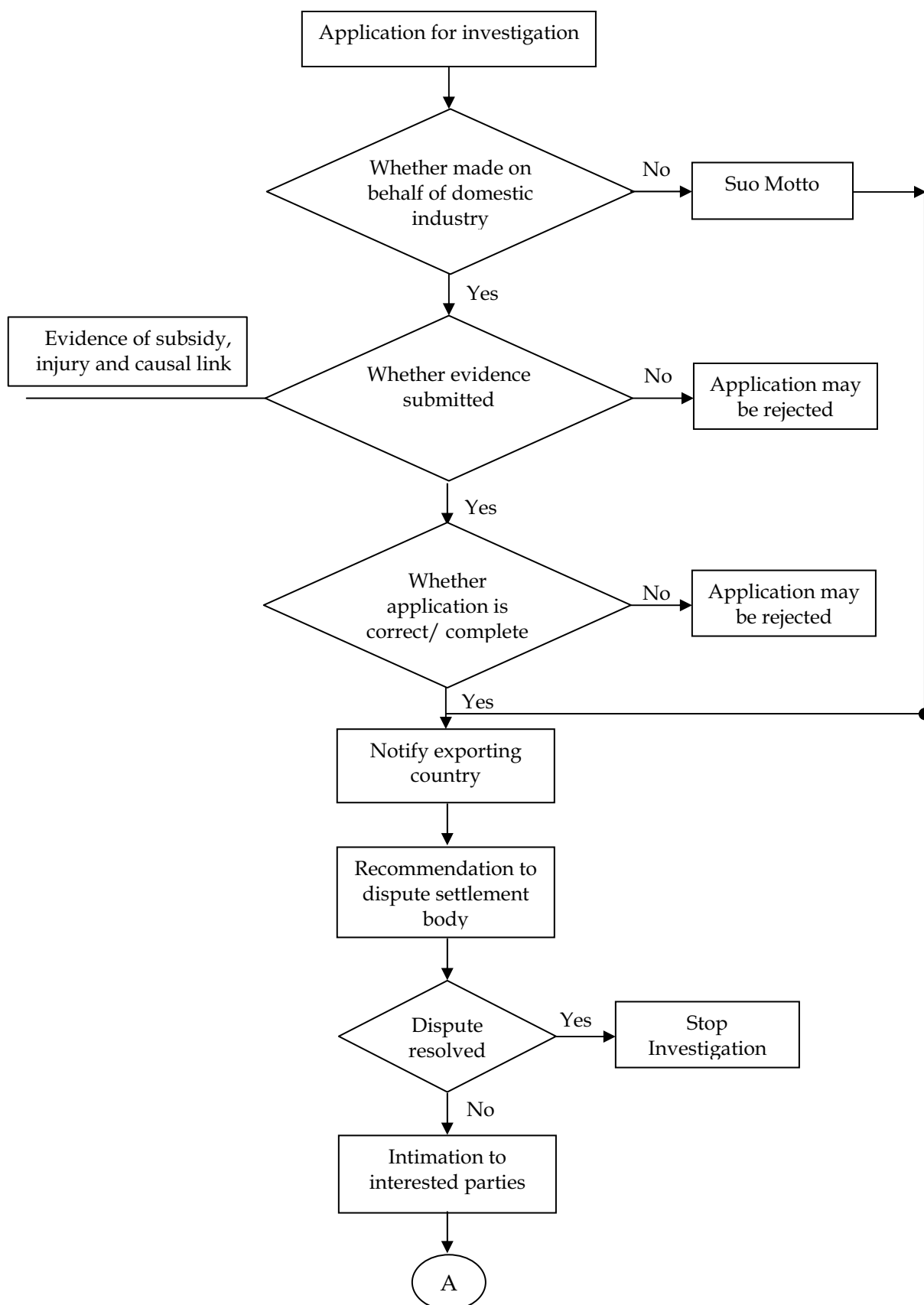


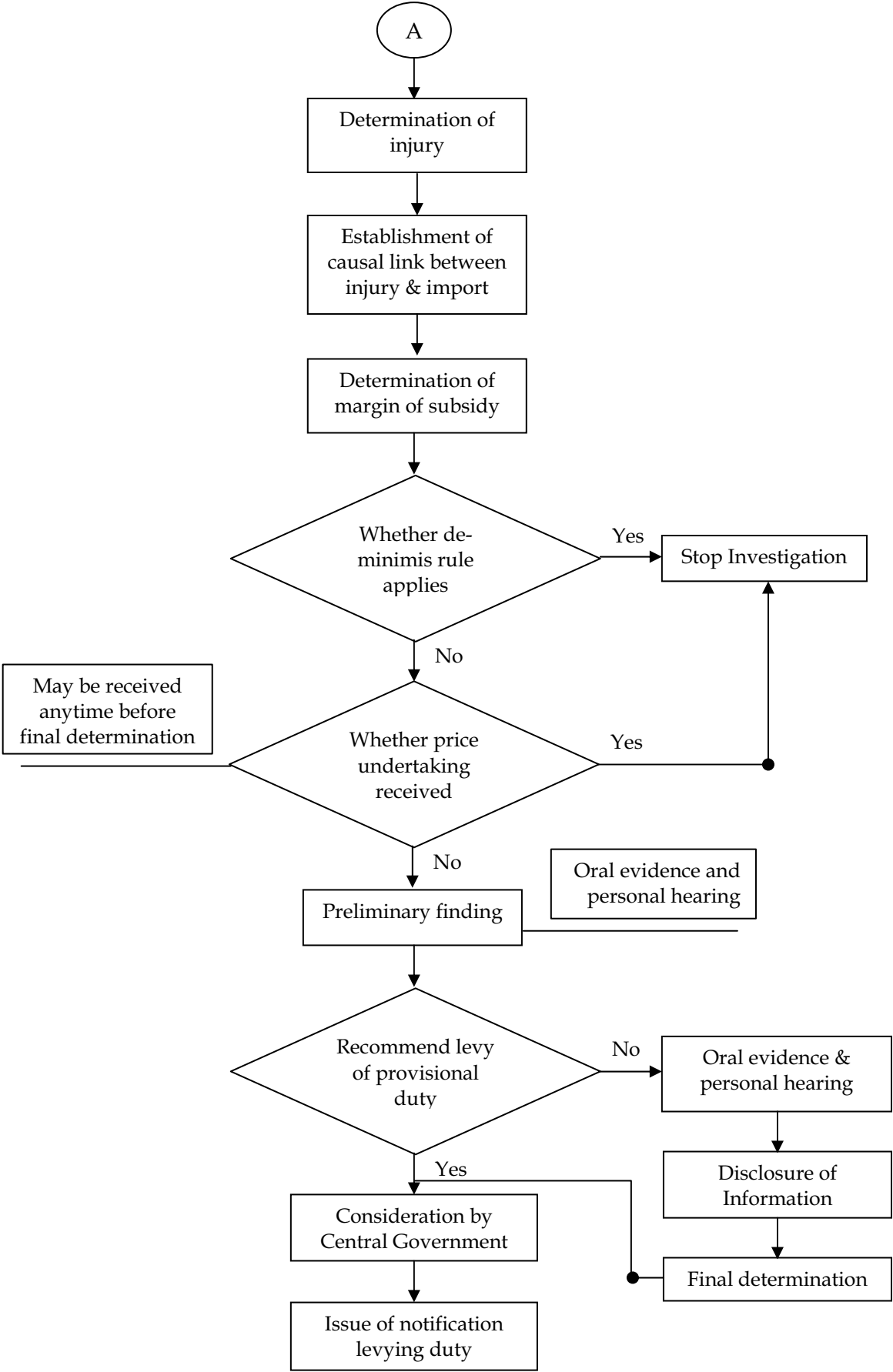


Anti-subsidy, for initiating action

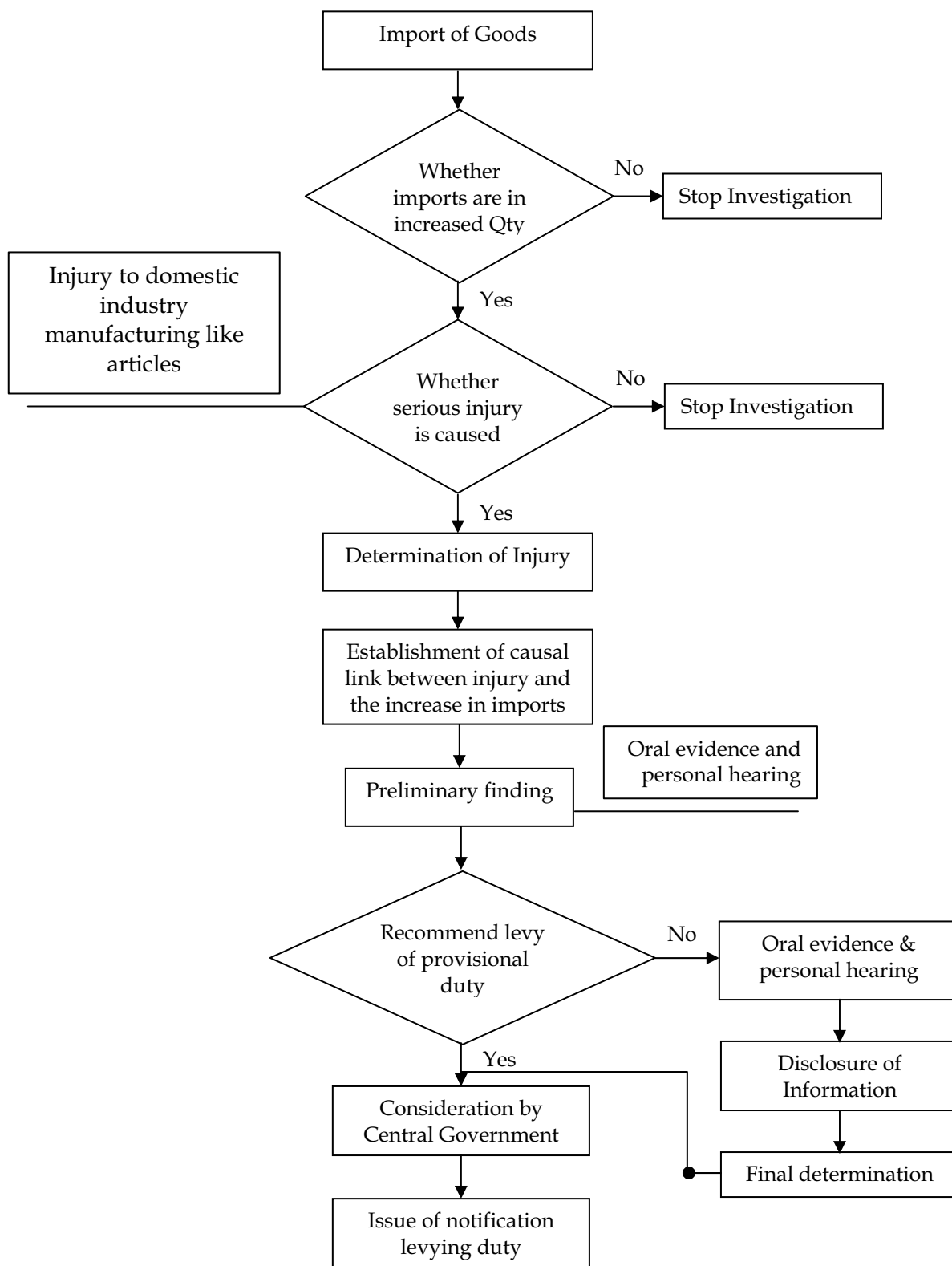


Anti-subsidy, procedure during investigation





Safeguards, investigation procedure



CHAPTER 8

8. To whom these measures apply

Anti-Dumping measures are discriminatory duties imposed against (a) individual exporters and (b) against any country found to be engaged in dumping practices after due compliance of investigation procedures as laid down under the domestic laws.

The relief to the domestic industry against dumping of goods from a particular country is in the form of anti dumping duty imposed against those country/countries, which could go upto the dumping margin. Such duties are exporter specific and country specific.

The targets of anti-dumping measures are either the exporters, the foreign producers of the like articles which are the subject to investigation or the Government of the exporting country/ countries.

Countervailing duties are duties to offset export subsidies granted by the government of an exporting country and are imposed against imports of specific products and imports from specified countries.

CHAPTER 9

9. Authorities implementing trade remedy measures under International Laws

The basic principles of the Safeguards, Countervailing and Anti-Dumping measures are provided in the Article of GATT 1994.

Article VI: Anti-dumping and Countervailing Duties

Article XIX: Emergency Action on Imports of Particular Products

Article XVI: Subsidies

There are separate multilateral agreements entered into by WTO member Countries which provide for the basic frame work for the implementation of the principles laid down under the GATT agreements. The member Countries has also drafted their domestic Laws in consonance of the multilateral agreements with respect to Safeguards, Countervailing and Anti-Dumping measures .India being one of the founder member of the erstwhile GATT has drafted its Statutes/amended its pre-existing Statutes for imposition of Safeguards, Countervailing and Anti-Dumping measures in compliance of the Multilateral Agreements .The multilateral Agreements entered into by the member countries on Safeguards, Countervailing and Anti-Dumping measures are as follows-

1. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994(Agreement on anti-dumping measures)
2. Agreement on Subsidies and Countervailing measures and
3. Agreement on Safeguards.

Article 16 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and Article 24 on Agreement on Subsidies and Countervailing measures and Article 13 on Agreement on Safeguards provides for the formation of respective committees under each of the agreements.

1. Committee on Anti-Dumping Practises under Article 16 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Committee shall be comprised of representative from each of the member Countries. The WTO Secretariat shall act as the secretariat of the committee. The committee shall elect its own Chairman and shall meet not less than twice a year or as envisaged by the agreement at the request of any member.

The committee shall have the power to set up such subsidiary bodies as appropriate for its functioning.

Committee and subsidiary body under it may seek information from any source it may deem appropriate but it shall inform the member country from whose jurisdiction the information is collected.

Member shall report without delay all preliminary and final dumping action taken to the committee.

Each member shall notify the committee

- (a) as to which of its authorities are competent to initiate and conduct investigation under the Agreement
- (b) its domestic procedures governing the initiation and conduct of anti-dumping investigations.

2. Committee on Subsidies and Countervailing Measures and Subsidiary bodies under Article 24 on Agreement on Subsidies and Countervailing measures.

Committee shall be comprised of representative from each of the member Countries. The WTO Secretariat shall act as the secretariat of the committee. The committee shall elect its own Chairman and shall meet not less than twice a year or as envisaged by the agreement at the request of any member.

The committee shall have the power to set up such subsidiary bodies as appropriate for its functioning.

The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the field of subsidies and trade relations.

Member shall report without delay all preliminary and final dumping action taken to the committee.

The experts will be elected by the committee and one of them will be replaced every year

The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4(The PGE may be required to review the evidence by a member of the use of a prohibited subsidy and make recommendation to the Dispute Settlement Board). The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

The PGE may be consulted by any Member for an advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that Member. But such an opinion will be confidential and may not be invoked in proceedings under Article 7.

Committee and subsidiary body under it may seek information from any source it may deem appropriate but it shall inform the member country from whose jurisdiction the information is collected.

3. Committee on Safeguards under Article 13 on Agreement on Safeguards. Committee under the Agreement on Safeguards has been give a more significant and a broader role than the committees under Anti-dumping and CVD.

The Committee will have the following functions:

- (a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;
- (b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;
- (c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;
- (d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;
- (e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;
- (f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and
- (g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Table 9.1		
Authorities responsible for conducting investigations		
Country	Designated Authority	Constitution of the Designated Authority
Argentina	The National Commission for	The Commission is directed

	Foreign Trade - a decentralized agency of the Secretariat of Industry, Trade and Mining of the Ministry of Economic and other Public Works.	by a Board whose Members are elected on the recommendation of the Ministry of the Economy and Public Works and Services.
Mexico	The Secretariat of Trade and Industrial Development (SECOFI)	
Brazil	BRAZIL The Secretary for Foreign Trade (SECEX) of the Ministry of Industry, Trade and Tourism.	
Canada	Dumping : the Deputy Minister of National Revenue (DM) Injury: The Secretary of the Canadian International Trade Tribunal	The Tribunal is an independent quasi-judicial body that reports to Parliament through the Minister of Finance
United States	The U.S. Department of Commerce conducts investigations on dumping The U.S. International Trade Commission ("ITC") investigates injury.	The U.S. International Trade Commission ("ITC") is an independent federal agency. It is composed of six Commissioners who are appointed by the President with the advice and consent of the Senate.
EC	The EC has three institutions to deal with anti-dumping investigations. These are the European Commission (EC), the council of Ministers and the Advisory Council. Dumping and injury determination are now split between Commission's Directorates-General I.C (dumping) and I.E (injury)	European Commission (EC) – an independent institution who takes a decision regarding initiation of an investigation. The commission is required to consult the Advisory Committee on the issues concerning dumping determination The Advisory Committee consists of representatives of member states.
Korea	KOREA the Trade Commission under the Minister of the Finance and Economy	
Source : WTO		

CHAPTER 10

10. Authorities implementing trade remedy measures under Indian Laws

All these three measures are administered by the Central Government by the following two authorities:

1. Director General (Safeguard), officer under Department of Revenue, Ministry of Finance, Government of India, and
2. Directorate General of anti-dumping and Allied Duties (DGAD) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry. The anti-dumping & countervailing measures are administered in India by the Directorate General of Anti- dumping and Allied Duties which was set up on 13th April 1998.

Under the Domestic Law the Central Government has the power to impose Safeguards, Countervailing and Anti-Dumping duties. Central Government under Section 8B has the power to impose safeguard duty, power to impose Transitional product specific safeguard duty on imports from People's Republic of China under Section 8C, power to impose Countervailing duty on subsidized articles by way of Notification in the Official Gazette under Section 9 and power to impose Anti-dumping duty on dumped articles by way of Notification in the Official Gazette under Section 9A of The Custom Tariff Act, 1975

In exercise of the powers conferred by sub-section (5) of section 8B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government had notified The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. **Rule 3** provides for the appointment of Director General (Safeguard) by Central Government by notification in the official Gazette. Government may appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the Director General (Safeguard). Director General (Safeguard) is an officer under Department of Revenue, Ministry of Finance, Government of India.

In exercise of the powers conferred by sub-section (7) of section 9 and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government had notified Customs Tariff (Identification and Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995. **Rule 3** provides for the appointment of designated authority by Central Government by notification in the official Gazette. Government may appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the designated authority for the purpose of these rules.

Similarly in exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) and in suppression of the Custom Tariff (Identification and Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985 had made the Customs Tariff (Identification and Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. **Rule 3** provides for the appointment of designated authority by Central Government by notification in the official Gazette. Government may appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the designated authority for the purpose of these rules.

Both Anti-dumping and anti subsidies & countervailing measures in India are administered by the Directorate General of anti-dumping and Allied Duties (DGAD) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry and the same is headed by the "Designated Authority". The Designated Authority's function, however, is only to conduct the anti-dumping/anti subsidy & countervailing duty investigation and make recommendation to the Government for imposition of anti-dumping or anti subsidy measures.

Anti-dumping, anti-subsidies & countervailing measures in India are administered by the Directorate General of Anti-dumping and Allied Duties ("DGAD") functioning in the Department of Commerce in the Ministry of Commerce and Industry and the same is headed by the "Designated Authority". The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the Designated Authority. In India, there is a single authority — DGAD designated to initiate necessary action for investigations and subsequent imposition of anti-dumping duties.

The Designated Authority is a quasi-judicial authority notified under the Customs Act, 1962. A senior level Joint Secretary and Director, four investigating officers and four costing officers assist the DGAD. Besides, there is a section under the DGAD headed by the Section-Officer to deal with the monitoring and coordination of the functioning of the DGAD.

The Designated Authority's function, however, is only to conduct anti-dumping/anti subsidy & countervailing duty investigation and make recommendation to the Government for imposition of anti-dumping or anti subsidy measures. Such duty is finally imposed/levied by a Notification of the Ministry of Finance. Thus, while the Department of Commerce recommends the Anti-dumping duty, it is the Ministry of Finance, which levies such duty.

The law provides that an order of determination of existence, degree and effect of dumping is appealable before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) — a judicial tribunal. It reviews final

measures and is independent of administrative authorities. This is consistent with the WTO provision of independent tribunals for appeal against final determination and reviews. No appeal will lie against the preliminary findings of the Authority and the provisional duty imposed on the basis thereof. The appeal to the CEGAT should be filed within 90 days.

CHAPTER 11

11. Dispute Settlement

Dispute Settlement can occur at both the international and domestic levels. Article 13 of ADA requires provision for domestic judicial review of final determinations and reviews administrative action relating to final determinations. No rules have been prescribed and it is upon members to formulate laws on dispute settlement.

WTO has the power to settle international disputes with binding authority and Dispute Settlement Body is one such mechanism available at the disposal with WTO. The Understanding on Rules and Procedures Governing the Settlement of Disputes gives the WTO unprecedented power to resolve trade-related conflicts between nations and assign penalties and compensation to the parties involved.

Dispute settlement is administered by a Dispute Settlement Body (DSB) that consists of the WTO's General Council. The DSB has the authority to "establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations." The Dispute Settlement system aims to resolve disputes by clarifying the rules of the multilateral trading system; it cannot legislate or promulgate new rules.

When a Member country believes that another party has taken an action that impairs "benefits accruing to it directly or indirectly" under the Uruguay Round Agreements, it may request consultations to resolve the conflict through informal negotiations. If consultations fail to yield mutually acceptable outcomes after 60 days, Members may request the establishment of a panel to resolve the dispute. Panels typically consist of three individuals with expertise in international trade law and policy; these panelists hear the evidence and present a report to the DSB recommending a course of action within six months. The panel can solicit information and technical advice from any relevant source, though it is not required to do so. Only submissions from Members are guaranteed to be heard, although in rare cases, panels have consulted submissions from interested non-governmental organizations. Third-party member nations may also involve themselves in the dispute settlement process. All deliberations and communications are confidential, and only the final panel reports become part of the public record.

After the panel reports have been prepared, they are presented to the Dispute Settlement Body, which either adopts the report or decides by consensus not to accept it. Alternatively, if one of the parties involved decides to appeal the decision, the report will not be considered for adoption until the completion of the appeal.

In the case of an appeal, a three-person Appellate Body chosen from a standing pool of seven persons will assess the soundness of the panel report's legal reasoning and procedure. An Appellate Body report is adopted unconditionally unless the DSB votes by consensus not to accept its findings within 30 days of circulation to the membership.

The primary goal of dispute settlement is to ensure national compliance with multilateral trade rules. Accordingly, the Dispute Settlement Body encourages Members to make their best possible efforts to bring legislation into compliance with the panel ruling within a "reasonable period of time" established by the parties to the dispute. If a Member does not comply with rulings, the DSB can authorize the complainant to suspend commitments and concessions to the violating Member. In general, complainants are encouraged to suspend concessions with respect to the same sector as the subject of the dispute; however, if complainants find this ineffective or impracticable, they may suspend concessions in other sectors of the same Agreement or even under separate Agreements. Ecuador, for example, suspended its TRIPs commitments to the European Union in retaliation against the EU's non-compliance with panel rulings in the goods-based Banana dispute.

In one of the latest meeting of WTO's Dispute Settlement Body (DSB), a panel was established at India's request to examine the US customs bond directive for merchandise subject to anti-dumping/ countervailing duties. India had formally lodged a complaint on June 6 this year against USA as US Commerce Department had imposed 10.17 percent anti - dumping duty on shrimp imported from India without adhering to 'zeroing' principles of anti - dumping duty. Talks between the two countries failed, leaving India with no other option but to bring it to the DSB, and though the US rejected India's first request, the DSB automatically established it in the second instance.

India's complaint to DSB is that the laws and regulations of the US imposed on importers of certain warm water shrimp from India are arbitrary and discriminatory in nature and are inconsistent with several provisions of the Anti-Dumping Agreement, the Subsidies and Countervailing Measures Agreement and the GATT.

CHAPTER 12

12. Case Studies

Anti-dumping

1. Powers of High Court to grant interim relief

Appellant	Association of Synthetic Fibre Industry
Respondent	J.K. Industries Ltd.
Decision date	04-04-2005
Authority	Supreme Court
Citation	2006 (199) E.L.T. (196) (S.C.)
Head note	The power to grant interim relief and the power to exercise the writ jurisdiction of the High Court on anti-dumping proceedings
Brief facts	The Respondent filed a writ before the High Court laying challenge against the levy of provisional anti-dumping duty. The High Court on a prayer made by the Respondent, passed an order that the recommendation made by the designated authority would be subject to the final decision of the High Court. Based on the said order, the Appellant has filed a civil appeal before the Hon'ble Supreme Court.
Decision	The Hon'ble Supreme Court has held that High Court has the power to grant interim relief.
Reasons stated	The Hon'ble Supreme Court observed that the High Court does have the power to grant an interim relief at any stage of the proceedings subject to a case in that regard being made out. The decision of the Central Government in the matter of the levy of anti-dumping duty based on the recommendations of the designated authority would be appealable and also subject to writ jurisdiction on well settled parameters of constitutional law.

2. Powers of the High Court to entertain writ

Appellant	Nitco Tiles Ltd.
Respondent	Gujarat Ceramic Floor Tiles Mfg. Assn and others
Decision date	09-02-2005
Authority	Supreme Court
Citation	2006 (199) E.L.T. (198) (S.C.)
Head note	The judicial discretion of the High Court to entertain Writ Petition against orders passed by designated authority
Brief facts	The Respondents filed writ petition before the Hon'ble High Court of Gujarat against the imposition of provisional anti-dumping duty. The High Court not only entertained the writ petition but also passed an interim relief against the imposition of provisional anti-dumping duty. In its decision, the High Court stated that no reasons were given in support of the interim relief because any observation made was likely to come in the way of the party at the stage of final relief. Against the decision of the High Court, the Appellants filed an appeal before the Hon'ble Supreme Court.
Decision	The Hon'ble Supreme Court in its decision not only set aside the interim relief but also dismissed the order of the High Court.

Reasons stated	<p>The Hon'ble Supreme Court observed that there is no dispute on the fact that economic impact in every case of alleged dumping would necessarily affect people of country at large. If this reason were accepted as a valid basis for exercise of the judicial discretion given to High Court to entertain writ petition in its extraordinary jurisdiction under Article 226 of the Constitution of India, then provisions for appeal against orders passed by designated authority in respect of anti-dumping issues would be rendered otiose and a person aggrieved by final finding of designated authority could, despite express provision of Section 9C of Customs Tariff Act, 1975, invoke writ jurisdiction with impunity.</p> <p>Further, it is well established that orders passed on interlocutory proceedings do not conclude the merits of the matter. We fail to see how observations made at an interim stage could come in the way of either of the parties at the final stage. It is also well established that an interim relief should, particularly when that order may be impugned before a higher authority, contain reasons however brief in support of the grant or refusal thereof. In the absence of such reasons, it is virtually impossible for such higher authority to determine what persuaded the grant or refusal of relief.</p>
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3. Conduct of investigation when volume of imports are negligible

Appellant	S & S Enterprises
Respondent	Designated Authority
Decision date	22-02-2005
Authority	Supreme Court
Citation	2005 (181) E.L.T. (375) (S.C.)
Head note	Whether investigation authorities need to consider the effect of volume or the price of article alleged as dumped in determining whether such imports are negligible

Brief facts	The Appellant imported lead acid batteries from Bangladesh which were found to be less than 3% in terms of volume of the total imports of such batteries but the Respondent continued the investigation on its finding that the total imports, in value terms, from Bangladesh was 6%, which was more than the <i>de minimis</i> limit of 3% provided in Rule 14(d) of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped articles and for Determination of Injury) Rules, 1995.
Decision	The Hon'ble Supreme Court in its decision held in terms of Rule 14(d), it is quantity and not value which needs to be considered under the <i>de minimis</i> rule and the matter is to be regarded as too trivial and the therefore the levy and its investigation is therefore to be ignored.
Reasons stated	The Hon'ble Supreme Court observed that the Rules consciously differentiate the terms 'volume' and 'price' and that volume is to be regarded to mean 'quantity' and cannot be equated to price. For example under Rule 11(2), the Designated Authority is required to determine the injury to the domestic industry taking into account, <i>inter alia</i> , the volume of dumped imports and their effect on the price in the domestic market for like article. Further in Section 14 itself, such distinction is maintained in Rules 14(c) and (d) of particular significance is Annexure II to the Rules which deals with the principles for determination of injury. Therefore, when Rule 14(d) says that the investigation must be terminated if the 'volume' of the dumped imports is less than 3% of the imports of the like product, it must mean that the quantity of dumped imports must account for less than 3% of the total imports. To hold otherwise would mean that if the price is lower than 3% irrespective of the quantity imported, the investigation would be dropped and it would, as submitted by the appellant, lead to the absurd situation that a small number of expensive imports would invite anti-dumping investigation but cheap imports flooding the domestic markets would not. In fact such a situation is exactly what the dumping rules have been framed to prevent.

4. Confidentiality of information

Appellant	Sterlite Industries (India) Ltd
Respondent	Designated Authority

Decision date	25-11-2003
Authority	Supreme Court
Citation	2003 (158) E.L.T. (673) (S.C.)
Head note	Whether information supplied by parties is to be presumed as confidential and whether designated authority has any discretion in this regard. Further, the correct course of action for CESTAT when it observed that the designated authority did not assess the injury correctly.
Brief facts	The Appellants made a complaint that “Optic Fiber” was being dumped into India. Considering the information before it, the designated authority recommended levy of anti-dumping duty on import of such goods. Pursuant to such recommendation, duty was levied vide Notification No. 94/2000, dated 28-06-2000. The CESTAT however, set aside the levy of anti-dumping duty considering the fact that designated authority did not assess the injury correctly. In the civil appeal before Supreme Court, it was observed by the Hon’ble Court that the designated authority had treated all material before it as confidential merely on the application of the party asking it to be treated as confidential.
Decision	The Hon’ble Supreme Court in its decision held that confidentiality of information supplied by the parties is not automatic. Further, Hon’ble Court set aside the order of CESTAT and remanded the matter back for denovo consideration.

Reasons stated	<p>The Hon'ble Supreme Court observed that in terms of Rule 7 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the confidentiality of information supplied by parties is not automatic but is subject to the satisfaction of Designated Authority. In such cases, even when the information is considered as confidential, the non-confidential summary has to be provided and when such summary is not furnished then the party should submit a statement of reason as to why the summarization is not possible. The court held that by not making relevant material available to the other side, it would affect/ handicaps the other side in filing an effective appeal. Further, in terms of Rule 7(3), the Designated Authority has the authority in certain cases, to disregard certain information. In this regard, the court held that CESTAT has the power to look into the relevant file even when the information is declared as confidential by Designated Authority.</p> <p>The Hon'ble Court held that when 'dumping of the goods' and the consequently injury to domestic industry has been established, then CESTAT cannot set aside the order of the Designated Authority imposing the levy of anti-dumping duty. In this regard, when injury has not been properly assessed by the Designated Authority, then CESTAT is required to re-work the figures and decide what, should be the appropriate amount of anti-dumping duty. Accordingly, the Hon'ble Supreme Court set aside the CESTAT order and remanded the matter back for de novo consideration.</p>
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5. Appeal against recommendatory order of designated authority

Appellant	Saurashtra Chemicals Ltd.
Respondent	Union of India
Decision date	11-05-2000
Authority	Supreme Court
Citation	2000 (118) E.L.T. (305) (S.C.)

Head note	Whether appeal can be filed before CEGAT against recommendatory order of the designated authority
Brief facts	The designated authority issued a recommendatory order for levy of anti-dumping duty, which was pending before the Central Government for determination. The Appellant filed an appeal before the CESTAT against the said recommendatory order. CESTAT issued an order stating that the appeal is not maintainable as the order of the designated authority is recommendatory. The Appellant filed a special leave petition before the Hon'ble Supreme Court against the order issued by CESTAT.
Decision	The Hon'ble Supreme Court in its decision held no appeal lies against recommendatory order of designated authority.
Reasons stated	The Hon'ble Supreme Court observed that in respect of anti dumping matters, the appeal lies only against determination of the levy and such determination under the Customs Act is required to be made by the Central Government. The order issued by designated authority is only recommendatory and is pending before the Central Government for its final determination. Accordingly, appeal against order of designated authority which would be only recommendatory at the time of appeal would not be maintainable before the CESTAT.

6. Withholding of information by interested party

Appellant	Designated Authority
Respondent	Haldor Topsoe A/S
Decision date	20-07-2000
Authority	Supreme Court
Citation	2000 (120) E.L.T. (11) (S.C.)
Head note	Determination of anti-dumping duty when foreign exporter withholds information

<p>Brief facts</p>	<p>The Appellant received a petition that the Respondent was indulging in 'dumping' of six catalysts. Based on its investigation, the Appellant recommended levy of provisional duty which was accepted by the Central Government. Further, the Authority in its final order also confirmed its preliminary findings on the question of dumping as well as on the amount anti-dumping duty payable. This finding was also accepted by the Central Government vide its Notification No. ADD/IW/39/95-96, dated 5-1-1998, and accordingly, anti-dumping duties were imposed on the respondents. During the course of the inquiry, the Authority inter alia held that despite the demand made by it, the respondent had failed to furnish the necessary information in regard to its export price of the said catalysts to other third countries which failure, according to the Authority, significantly impeded the investigation. Consequently, the Authority determined the normal value of the concerned catalysts on the basis of 'best judgment assessment'. On appeal, CESTAT set aside the order the Appellant. The Appellant filed a civil appeal before the Hon'ble Supreme Court.</p>
<p>Decision</p>	<p>The Hon'ble Supreme Court allowed the appeal and set aside the order of CESTAT.</p>
<p>Reasons stated</p>	<p>The Hon'ble Supreme Court in this decision has laid down the following principles when information is withheld by interested parties in respect of determination of anti-dumping duty:</p> <ul style="list-style-type: none"> € The Statute has given wide powers to investigating authorities when interested party withholds information; € Appellate Tribunal cannot restrict the scope of investigation only to material or information produced by the party; € The Investigating Authority has discretion to rely on material made available before it and at same time also not bound by it when it considers that some information is being withheld; € Evidence cannot be restricted on the grounds that anti-dumping duty is manufacturer specific or country specific; € Determination of duty may be based on the comparable price of like articles exported to a third country. In the instant case, article was being dumped from Denmark and information was not available for the price in the domestic market in Denmark and the foreign exporter is not providing information as to price for exports made to third country. As such, normal value was determined based on the price of like article exported from Germany

	to a third country. The Hon'ble Court held that considering the export price from Germany was valid as Germany and Denmark form a Single Unified Market with no Customs barrier under the European Union and the word "territory" in Section 9A(1)(c) of the Customs Tariff Act refers to a larger geographical area than the political boundary of the exporting country.
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7. Writ jurisdiction in cases of alternative remedy

Appellant	Shew Kumar Agarwal
Respondent	Union of India
Decision date	21-12-2001
Authority	Calcutta High Court
Citation	2002 (141) E.L.T. (312) (Cal.)
Head note	Writ Jurisdiction when the petitioner have an alternative remedy under law and its maintainability when the finding is preliminary
Brief facts	The petitioner filed a writ petition even before the publication of the preliminary finding of the designated authority in respect of its finding on levy of anti dumping duty on import of vitrified tiles from China and UAE. The primary ground raised by the petitioner for writ is that the designated authority was required under Rule 6 to issue a public notice after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, notifying its decision and such public notice shall <i>inter alia</i> contain adequate information under Rule 6(1) therein. The petitioner claimed to be an interested party to whom the copy of the said public notice was not forwarded and accordingly raised the ground for violation of principle of natural justice, which remedy was stated as available only through writ.
Decision	The Hon'ble High Court dismissed the writ petition.

Reasons stated	<p>The Hon'ble High Court laid down the following principles while dismissing the writ petition:</p> <ul style="list-style-type: none"> € CESTAT is an appropriate forum for appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping; € Determinations either preliminary or final as per Rule 12 or Rule 17 are appealable orders before the CESTAT; € A finding by the designated authority <i>ipso facto</i> cannot become a ground of appeal unless and until the Central Government accepts the finding and notifies it; € An alternative forum of appeal has been provided in law and the writ jurisdiction would not be available unless the petitioner proves that he has no other remedy in respect of a finding which is bad from the face of it and on its plain reading;
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8. Time Limit for public notice

Appellant	J.G. Impex (P) Ltd
Respondent	Designated Authority
Decision date	15-11-2002
Authority	Madras High Court
Citation	2003 (154) E.L.T. (57) (Mad.)
Head note	Whether insufficient time provided by the designated authority to submit comments can be a ground for writ
Brief facts	<p>The petitioner, being an interested party, received a communication from designated authority for giving its comments on the levy of anti-dumping duty determined by it. The petitioner received the communication on 01-11-2002 and was directed to reply before 15:00 hrs on 05-11-2002. The petitioner filed a writ of <i>mandamus</i> stating that the time provided was insufficient to provide any comments. The petitioner also stated that 02-11-2002 and 03-11-2002 was falling on Saturday and Sunday, while 04-11-2002 was a holiday for Deepawali. The petitioner requested the Hon'ble Court to direct the respondent to provide 30 days from 05-</p>

	11-2002 to reply to the communication from the designated authority.
Decision	The Hon'ble High Court dismissed the writ petition
Reasons stated	The Hon'ble High Court observed that Rule 16 and Rule 17 of Customs Tariff (Identification, Assessment and Collection of anti-dumping duty on dumped articles and for determination of injury) Rules, 1995, require time bound determination of duty. Further, that Rules do not provide for issue of a show-cause notice, but require the Designated Authority, before giving its final findings, to inform all the interested parties of the essential facts under consideration which form the basis for its decision. Therefore, under the said Rule, there is no obligation on the part of the authorities to give any prior notice to interested parties and the procedure not being quasi judicial, the principle of natural justice would not be mandatory. The Hon'ble High Court recognized that the entire process was time bound and therefore the request of the petitioner cannot be heard. Accordingly, the High Court dismissed the writ petition.

9. Anti-dumping; nature of levy and charge

Appellant	J.K. Industries Ltd.
Respondent	Union of India
Decision date	21-04-2005
Authority	Rajasthan High Court
Citation	2005 (186) E.L.T. (3) (Raj.)
Head note	Whether levy of anti-dumping duty is in the nature of tax and when does the charge get created
Brief facts	The petitioner filed a writ petition before the high court against the application filed by Automotive Tyre Manufacturer Association (ATMA) for levy of anti-dumping duty on import of Nylon Tyre Cord Fabric originating or exported from China. In this decision, the Hon'ble High Court discusses various matters regarding maintainability of the writ including the nature and charge created by the levy of anti-dumping duty.

Decision	The Hon'ble High Court has held that anti-dumping duty is a tax and the charge is created when the notification is issued thereunder.
Reasons stated	The Hon'ble High Court has held that anti-dumping duty is in the nature of a tax imposed on determining the existence of certain facts with an object to protect the domestic industry against injury that may be caused to it because of unfair trade practice of exporters from the foreign country in selling their products at less than its normal price at home market to the buyers in India. It is not a tax as is ordinarily understood for the purpose of raising public revenue in generality or in the nature of a compensatory tax for services rendered by the State like road tax, but it certainly falls in the category of tax to regulate import of certain articles by subjecting it to an additional duty on finding existence of certain facts in order to protect the domestic industry from injury caused on account of unfair trade pursuits by the exporters of the goods from foreign country or territory to India. As regards the charge, the Hon'ble High Court held that the imposition is not complete merely by enacting Section 9A, authorizing imposition of Anti Dumping Duty on certain conditions found to exist. The charge to tax comes into existence on the Notification issued by the Central Government as authorized under Section 9A of the Act of 1975. Thus, not only the provision in the principal legislation enacted by the Parliament is legislative but the Notification which ultimately brings the charge into effect, too is legislative in character and is in the nature of delegated legislation

10. Relevant date for levy of anti-dumping duty

Appellant	M.K.P. Fashions
Respondent	Commissioner of Customs (Port), Kolkata
Decision date	06-08-2004
Authority	CESTAT (Eastern Bench)
Citation	2004 (174) E.L.T. (45) (Tri. - Kolkata)
Head note	Whether provisions of Section 15 would determine the relevant date for levy of anti-dumping duty

Brief facts	The Appellant imported Mulberry Raw Silk (2A grade) of Chinese origin. The import and the un-loading of the goods took place at Kolkata Port on 04-09-2002, the goods were warehoused and the bill of entry for home consumption (clearance from warehouse) was filed on 12-05-2003. The duty was assessed on 18-06-2003 and the assessed duty was paid on 20-06-2003. Anti-dumping duty was neither assessed nor paid by the Appellants. The Government issued Notification No. 2/2003, dated 02-01-2003, levying anti-dumping duty on Mulberry Raw Silk of Chinese origin to be effective upto 01-07-2003. The Respondent issued an order demanding anti-dumping duty against which the Appellant filed an appeal.
Decision	The Hon'ble Tribunal held that Section 9A, levying anti-dumping duty is an independent code and provisions of Section 15 would not apply to it.
Reasons stated	The Hon'ble Tribunal observed that Section 15 of Customs Act (<i>determination of rate of duty</i>) would apply to a duty levied under the Customs Act, 1962, which is defined in Section 2(15) of the said Act. In this regard, anti-dumping duty is levied under the Customs Tariff Act and accordingly the provisions of Section 15 would not apply to it. Further, the Tribunal observed that in case the intention of the legislature were to apply the provisions of Customs Act to the levy anti-dumping duty, then similar provisions as contained in Section 3 (<i>for levy of countervailing duty</i>) of the Customs Tariff Act would have been contained in Section 9A. In the absence of such provisions, Section 15 cannot be applied to anti-dumping duty. In this regard, considering the charging section 9A, the Tribunal held that the relevant date for levy of anti-dumping duty is date of import. In the instant case, as goods were imported (<i>in Aug/sep'02</i>), which is prior to the imposition of the levy (<i>in Jan'03</i>), duty will not be leviable.

11. Relevant date for levy of anti-dumping duty

Appellant	Sneh Enterprises
Respondent	Commissioner of Customs, New Delhi
Decision date	07-10-2004

Authority	CESTAT (Northern Bench)
Citation	2004 (178) E.L.T. (764) (Tri. - Delhi)
Head note	When is importation said to be complete; in the context of the relevant date for levy of anti-dumping duty
Brief facts	The Appellants imported 'sealed maintenance free batteries' of Taiwan origin to be used in "UPS" on 16-4-2002 at Mumbai. The goods were transshipped to the I.C.D., Tuglaqabad, New Delhi. In this regard the import general manifest (IGM) was filed on 22-4-2002 and the Bill of Entry was filed on 22-5-2002. The Central Government imposed anti-dumping duty vide Notification No. 55/2002-Cus., dated 22-05-2002 on import of lead acid batteries (Industrial) from China. The Respondent levied anti-dumping duty in respect of which the appeal is filed.
Decision	The Hon'ble Tribunal dismissed the appeal and remanded the matter to adjudicating authority to re-compute the anti-dumping payable by the Appellants
Reasons stated	The Hon'ble Tribunal observed that the Hon'ble Supreme Court in the case of <i>Kiran Spinning Mills [1999 (113) E.L.T. 753 (S.C.)]</i> and in <i>Garden Silk Mills [1999 (113) E.L.T. 358 (S.C.)]</i> have held that the import of goods into India would commence when the same cross into the territorial water but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the Customs barriers and the bill of entry for home consumption is filed. The Tribunal held that as the bill of entry was filed when the levy of anti-dumping duty was in force and therefore the contention of the Appellant that goods were imported prior to filing of bill of entry or that it is warehoused goods, would be incorrect. Accordingly, the Tribunal confirmed that anti-dumping duty would be leviable on import of notified goods.

12. Determination of non-injurious price and injury margin

Appellant	Alkali Manufacturers Association of India
Respondent	Designated Authority
Decision date	23-12-2005

Authority	CESTAT (Northern Bench)
Citation	2006 (194) E.L.T. (161) (Tri. – Delhi)
Head note	Methodology for determination of non-injurious price
Brief facts	<p>The Appellant filed an application before the designated authority alleging dumping of sodium hydroxide (caustic soda) and originating from China and Korea. On the basis of preliminary findings of the designated authority, provisional anti-dumping duty was imposed vide Notification No. 142/2002-Cus, dated 26-12-2002. Further, based on final findings, which were notified on 08-08-2003, anti-dumping duty was imposed for imports from Korea (<i>except from M/s. Hanwah Chemical Corporation</i>) and China under Notification No. 142/2003 dated 23-09-2003. The appeal was filed for exclusion of M/s. Hanwah Chemical Corporation, Korea, from the levy. However, M/s. National Aluminium Co. Ltd. and M/s. Hindustan Lever Ltd. have opposed imposition of anti-dumping duty.</p>
Decision	The Hon'ble Tribunal held that the non-injurious price and injury margin was incorrectly determined and accordingly remanded the matter back to designated authority
Reasons stated	<p>The Hon'ble Tribunal observed that that the non-injurious price was not correctly determined by the Designated Authority. In case of M/s. Hanwah Chemical Corporation, the cost of production between Caustic soda and Chlorine was segregated at the point of separation of the Chlorine and Caustic soda (<i>considering them as co-products</i>). The same principle should be applied for domestic industry for reasonable and equitable distribution of cost of production between chlorine and caustic soda. In case of domestic industry, the cost of chlorine was not segregated (<i>considering it as by-product</i>). When cost of chlorine is substantial then it should not be taken as bye-product but it should be treated as a co-product. Since this has not been done and this has lead to incorrect fixation of non-injurious price, and consequently anti-dumping duty. Accordingly, the Hon'ble Tribunal remanded the matter back to designated authority.</p>

13. Levy of duty during the “interregnum period” (pro revenue)

Appellant	Nitco Tiles Ltd.
Respondent	Designated Authority
Decision date	25-11-2005
Authority	CESTAT (Northern Bench)
Citation	2006 (193) E.L.T. (17) (Tri. – Delhi)
Head note	Whether anti dumping duty can be levied for period when the levy of provisional duty has lapsed and final duty determined subsequently.
Brief facts	The designated authority initiated the investigation on the basis of the application filed by M/s. SPL Ceramics Ltd., M/s. H & R Johnson India Ltd. and M/s. Murudeshwar Ceramics Ltd. and notified its preliminary findings by notification dated 03-12-2001 with regard to its investigations concerning imports of vitrified/ porcelain tiles originating in or exported from China and UAE. Based on the investigation, the provisional duties were levied on 02-05-2002 and they were to be effective up to and inclusive of 01-11-2002. Further, based on final findings, a notification was issued on 01-05-2003 under Section 9A (1) of the Customs Tariff Act imposing anti-dumping duty retrospectively w.e.f. 02-05-2002. The Appellant has challenged the retrospective levy and the applicability of anti-dumping duty during the “interregnum period” from 02-11-2002 to 30-04-2003, when there was no provisional duty.
Decision	The Hon’ble Tribunal dismissed the appeal

Reasons stated	The Hon'ble Tribunal observed that in terms of Rule 20(2)(a) of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the commencement of the levy of anti-dumping duty in case where provisional duty is levied, would be from the date of imposition of provisional duty. Accordingly, when an anti-dumping duty is imposed under Section 9A(2) on provisional estimates, it operates during the pendency of final determinations of normal value and margin of dumping under the rules. The contention that no anti-dumping duty was intended to be imposed during the period after provisional anti-dumping duty ceased, as determinations could not be finally made in that short period, goes against the very purpose of the statute. Accordingly, the Tribunal dismissed the appeal and held that anti-dumping duty would be leviable during the "interregnum period".
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14. Levy of duty during the "interregnum period" (pro assessee)

Appellant	Commissioner of Customs, Cochin
Respondent	Raghav Enterprises
Decision date	28-07-2005
Authority	CESTAT (Southern Bench)
Citation	2005 (189) E.L.T. (461) (Tri. - Bangalore)
Head note	Whether anti dumping duty can be levied for period when the levy of provisional duty has lapsed and final duty determined subsequently.

Brief facts	The Government issued Notification levying provisional anti-dumping duty on import of CFL Lamps from China. This Notification was valid until 20-06-2002. Subsequently, the Government, based on final determination, imposed definitive anti-dumping duty vide Notification No. 138/2002 - Cus, dated 10-12-2002 for all import of CFL Lamps from China & Hong Kong. However, the duty was imposed retrospectively from 21-12-2001 (<i>i.e. from the date of levy of provisional duty</i>). The respondent imported CFL Lamps from China prior to the levy of the definitive anti-dumping duty but after the period when the levy of provisional duty lapsed. The bills of entry were also assessed without anti-dumping duty. The respondent received a demand, which was confirmed by lower adjudicating authority. On appeal, the Commissioner (Appeals) set aside the order of lower adjudicating authority.
Decision	The Hon'ble Tribunal rejected the revenue appeal
Reasons stated	The Hon'ble Tribunal confirmed the view of the Commissioner (Appeals) that during the interregnum period, there was no charging provision for levy of provisional anti-dumping duty. To put in different words, there is no levy at all. The case would be different if the provisional anti-dumping duty has not lapsed. Even though there is a provision to extent the provisional anti-dumping duty to 9 months on the request of exporters, nothing has been done. Under these circumstances, the importers cleared the goods without payment of anti-dumping duty. Further that the Notification determining final anti-dumping duty is repugnant to Rule 13 and Rule 20 of the above Rules. Accordingly, the revenue appeal is set aside.

Note: This decision has been relied by the CESTAT in the case of GM Exports Vs. Commissioner of Customs, Bangalore [2006 (198) E.L.T. 354 (Tri. - Bang.) decided on 07-12-2005].

15. Determination of causal link and injury

Appellant	Videocon Narmada Glass
Respondent	Designated Authority
Decision date	15-11-2002
Authority	CESTAT (Northern Bench)

Citation	2003 (151) E.L.T. (80) (Tri. - Delhi)
Head note	The manner of establishment of causal link and injury between imported article and like article manufactured by domestic industry
Brief facts	The appellant is a manufacturer of glass TV shells (panels and funnels) for colour picture and has been importing Strontium Carbonate (in granular form), one of the chemicals used as basic raw material for the manufacture of its product. M/s. TCM Ltd. which is the only manufacturer of Strontium Carbonate (in powder form) in India filed a complaint on behalf of domestic industry against import of Strontium Carbonate from China P.R. and Germany. Based on the application, Notification No. 70/2001-Cus, dated 26-06-2001 was issued imposing anti-dumping duty on import of "Strontium Carbonate in all its forms" originating in and exported from China @ US \$ 213.37 PMT. It is contended by the appellant that world wide, TV glass shell (panels and funnels) part manufacturers, use prilled/ small granular Strontium Carbonate for manufacture of glass shell and Strontium Carbonate in said form is not manufactured by M/s. TCM, accordingly they cannot be said to be injured by import of granular Strontium Carbonate. Hence this appeal.
Decision	The Hon'ble Tribunal allowed the appeal in favor of Appellants.
Reasons stated	The Hon'ble Tribunal observed that designated authority while imposing anti-dumping duty considering Strontium Carbonate in powder form and granular form as 'like articles'. The Tribunal held that even if they are considered as like articles, imported Strontium Carbonate in granular form cannot be held in commercial competition with the domestically produced Strontium Carbonate, which is in powder form. Further, that domestic industry is not in a position to supply Strontium Carbonate in granular form which is required by the appellant and that "revoking of anti-dumping duty on granular form would not affect them. Accordingly, there is no justification to levy anti-dumping on imported article which is not capable of causing injury to domestic industry.

Note: This decision has been maintained by Hon'ble Supreme Court [2004 (164) E.L.T. A31 (S.C.)].

16. Initiation and termination of investigation

Appellant	Pig Iron Manufacturers Association
Respondent	Designated Authority
Decision date	21-01-2000
Authority	CESTAT (Northern Bench)
Citation	2000 (116) E.L.T. (67) (Tri. – Delhi)
Head note	Whether investigation should continue when certain domestic producers supporting levy withdraw them subsequently and whether production used captively is to be considered in computation for domestic industry
Brief facts	The Government imposed anti-dumping duty on import of metallurgical coke from China, in respect of which the final findings were notified on 27-08-1998. M/s. Rastriya Ispat Nigam Limited (RINL), one of the major manufacturers of met coke, supported the initiation of investigation but subsequently withdrew the support. The question raised before the tribunal was whether in the light of withdrawal of support by one of its domestic manufacturers, initiation of investigation could be continued by the designated authority. Further, RINL manufactured met coke for use by it as captive consumption in the manufacture of its finished product. In this regard, the designated treated RINL as a separate market while computing the domestic production.
Decision	The Hon'ble Tribunal upheld the methodology adopted by designated authority
Reasons stated	The Hon'ble Tribunal observed that under Rules 5 and 14 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the designated authority could initiate investigation based on written application by domestic industry and their subsequent withdrawal does not affect its continuation. Further, the Tribunal upheld the exclusion of the production of RINL from domestic production and treating them as separate market on the basis that the economics of producers for captive consumption and of producers for sale are very different. The former saves on the costs of marketing sales, inventory etc. Therefore, these producers are, justifiably, treated as a separate market while computing domestic industry.

	Tribunal held this as legally correct in the light of proviso to Rule 2(d).
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17. Price Undertaking by exporters

Appellant	P.T. Polysindo Eka Parkasa
Respondent	Designated Authority
Decision date	14-06-2005
Authority	CESTAT (Northern Bench)
Citation	2005 (185) E.L.T. (358) (Tri. - Delhi)
Head note	Whether designated authority can refuse to accept the price undertaking given by the exporter without going into the merits
Brief facts	The Appellant was producing partially oriented yarn (POY) and exporting it from Indonesia to India. Based on the application alleging dumping of POY and originating in or exported from Indonesia, Taiwan, Thailand and Malaysia, the Designated Authority, on investigation, issued a public notice dated 30-03-2001 in the Gazette of India, publishing its preliminary findings. The Appellant, on 09-11-2001, offered a price undertaking envisaged by Rule 15 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury Rules, 1995. The designated authority rejected the price undertaking without going into its merits.
Decision	The Hon'ble Tribunal allowed the appeal

Reasons stated	The Hon'ble Tribunal observed that Rule 15 requires the designated authority to consider the price undertaking given by the exporter. Accordingly, the Tribunal held that part of the impugned Notification and the final findings, in which the price undertaking is held to be not acceptable, is hereby set aside with a direction to the Designated Authority and the Central Government to reconsider the price undertaking offered by the appellant and take a fresh decision considering such undertaking given thereon. The Tribunal also held that refusal to accept the price undertaking and failure to fulfill statutory duty to consider the undertaking on merits amounts to clear violation of fundamental right to equality and the same is appealable as it has a direct bearing on existence, degree and effect of dumping by exporter giving such undertaking. Accordingly, the Hon'ble Tribunal allowed the appeal in favor of the Appellants.
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Safeguards

18. Judicial review of the recommendations of the Director General

Appellant	United Phosphorous
Respondent	Director General (Safeguards)
Decision date	01-02-2000
Authority	Supreme Court
Citation	2000 (118) E.L.T. (310) (S.C.)
Head note	Whether the recommendations made by Director General (Safeguards) is subject to review by Hon'ble Supreme Court

Brief facts	The petitioner, claiming to be a domestic producer, made an application before the Director General (Safeguards), complaining that they have suffered serious injury by way of import of white/ yellow phosphorous. The final findings of the Director General stated “the domestic producers of White/ Yellow Phosphorous have suffered serious injury caused by the increased imports of White/ Yellow Phosphorous. It is, however, not in the public interest to impose Safeguard Duty on imports of White/ Yellow phosphorous. No recommendation to impose Safeguard Duty on White/Yellow Phosphorous imported into India is, therefore, made.” The petitioner filed a writ before the High Court, which was turned down, stating that the Rules empower Director General not to recommend levy of Safeguard Duty despite the finding of serious injury to domestic industry and the causal link. Accordingly, the High Court did not interfere with the decision of the Director General in not recommending for the levy of Safeguard Duty. The Appellant filed a special leave petition before the Supreme Court.
Decision	The Hon’ble Supreme Court dismissed the special leave petition
Reasons stated	The Hon’ble Supreme Court declined to invoke the jurisdiction under Article 136 of the Constitution to what is only a recommendation made by the Director General. Further, that the Court stated that High Court should have also followed the same principle in respect of the writ petition filed by the petitioners. Accordingly, the Hon’ble Supreme Court dismissed the special leave petition.

CHAPTER 13

13. Opportunities; as a chartered accountant

“Opportunities come our way more often than those recognized by us and success of a person is often measured with the number of opportunities which one has recognized”. Practice in anti-dumping is one such opportunity in way for a Chartered Accountant.

In India, the provisions on Anti-dumping were first introduced in 1982, under the Customs Tariff Act, 1975, read with the Rules prescribed in the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985. However, these provisions were lying dormant in the statute books until the major liberation and reforms which took place in the mid 1990's. The rules were also substituted by the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The new rules came into effect from 01-Jan-1995, coinciding with the date of the formation of the World Trade Organisation.

Historically, the anti-dumping action originated in Canada, under an Act of 1904, to protect its domestic manufacturers. Canada was followed by New Zealand (1905), then by Australia (1906), by South Africa (1914), by United States of America (1916), and then gradually by many countries, introducing separate provisions on Anti-dumping and other countervailing measures. Strictly, these provisions were not regulated by any international law, until its adoption under Article VI of GATT, 1947, which specifically condemned dumping. Despite the international agreement, GATT, 1947 was falling short on many aspects to regulate dumping. Considering this, the Kennedy Round (1963), led to adoption of international code on Anti-dumping, under the “Agreement on the implementation of Article VI of GATT”, which came into force on 01-Jul-1968. The objective of the code was to have a common international law on anti-dumping and to ensure that appropriate and prescribed action is undertaken against dumping. The code came to severe criticism on account of certain provisions contained therein and more particularly to do with the methodology for determination of material injury, the treatment of sales made at loss in the domestic market, the matters governing initiation of investigation, etc. Accordingly, the Tokyo Round (1973), revised the “Agreement on the implementation of Article VI of GATT”. This again came to severe criticism by many. Accordingly, in the Uruguay Round, Anti-dumping became the central issue and it also led to the formation of WTO on 01-Jan-1995, the enactment of GATT, 1994, and with an all new agreement for implementation of Article VI, thereby in effect superseding the Tokyo Code.

In the last 10 to 15 years, anti-dumping initiations and its measures have increased phenomenally and this has also consequentially resulted in phenomenal growth in the literature being shared internationally on these

matters. It has been seen that more and more countries have initiated anti-dumping actions and the number of these actions have only grown over the years. These measures have huge impact on the industry and expert knowledge in these areas would help the chartered accountants to capitalize the situation to their gain. The significance has grown over the years and today anti-dumping, is recognized by most, as the key focus or the most sought-after practices. All this has made anti-dumping as an enduring area for practice by Chartered Accountants.

The table below gives the particulars of anti-dumping actions initiated (*but not taken*) during the period 1995 to 2005, with specific reference to major countries and the sectors:

Anti-dumping actions initiated by countries year-on-year basis from 1995

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Egypt	0	0	7	14	5	1	7	3	1	0	12	50
Indonesia	0	11	5	8	8	3	4	4	12	5	0	60
Peru	2	8	2	3	8	1	8	13	4	7	4	60
Korea	4	13	15	3	6	2	4	9	18	3	4	81
Mexico	4	4	6	12	11	6	5	10	14	6	7	85
Turkey	0	0	4	1	8	7	15	18	11	25	12	101
Brazil	5	18	11	18	16	11	17	8	4	8	6	122
China	0	0	0	0	0	6	14	30	22	27	24	123
Canada	11	5	14	8	18	21	25	5	15	11	1	134
Australia	5	17	42	13	24	15	23	16	8	9	7	179
South Africa	16	33	23	41	16	21	6	4	8	6	23	197
Argentina	27	22	14	8	23	45	26	14	1	12	12	204
European Union	33	25	41	22	65	32	28	20	7	30	24	327
United States	14	22	15	36	47	47	75	35	37	26	12	366
India	6	21	13	28	64	41	79	81	46	21	25	425
Total	127	199	212	215	319	259	336	270	208	196	173	2514

Source: WTO Website

Anti-dumping actions initiated by countries during 01-Jan-1995 to 31-12-2005

Sector - >										
Country	Chemical	Plastic	Wood	Textile	Ceramic	Base Metal	Machinery	Misc.	Total	
Egypt	4	13	4	0	3	10	12	4	50	
Indonesia	15	0	9	7	0	17	4	8	60	
Peru	4	2	3	9	2	16	1	23	60	
Korea	22	2	4	6	1	10	20	16	81	
Mexico	14	6	4	5	4	29	6	17	85	
Turkey	7	37	0	21	1	18	5	12	101	
Brazil	35	29	1	1	1	27	2	26	122	
China	73	26	8	4	0	5	3	4	123	
Canada	4	0	4	0	3	89	2	32	134	
Australia	23	57	22	6	11	30	7	23	179	
South Africa	27	34	16	10	24	52	14	20	197	
Argentina	28	16	9	11	8	64	35	33	204	
European Union	51	28	0	38	4	111	47	48	327	
USA	46	29	6	9	2	208	17	49	366	
India	179	67	14	53	9	49	33	21	425	
Total	532	346	104	180	73	735	208	336	2514	

Source: WTO Website

The table below gives the particulars of anti-dumping actions taken during the period 1995 to 2005, with specific reference to major countries and the sectors:

Anti-dumping measures taken by countries year-on-year basis from 1995

Country	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Thailand	0	0	1	2	0	0	0	1	20	1	2	27
Egypt	0	0	0	5	13	0	0	7	4	1	0	30
Peru	2	2	3	0	3	4	1	7	7	8	3	40
Korea	0	5	10	8	0	5	0	1	4	10	3	46
Brazil	2	6	2	14	5	9	13	5	2	5	3	66
Australia	1	1	1	17	6	5	10	9	10	4	3	67
China	0	0	0	0	0	0	0	5	33	14	16	68
Mexico	16	4	7	7	7	6	3	4	7	7	8	76
Canada	7	0	7	10	10	14	19	0	5	8	4	84
Turkey	11	0	0	0	1	8	2	11	28	16	9	86
South Africa	0	8	18	14	35	13	5	15	1	4	0	113
Argentina	13	20	11	12	9	15	15	24	19	1	8	147
European Union	15	23	23	28	18	41	13	25	2	10	21	219
United States	33	12	20	12	24	31	33	25	12	14	18	234
India	7	2	8	22	23	53	38	64	53	29	17	316
Total	107	83	111	151	154	204	152	203	207	132	115	1619

Source: WTO Website

Anti-dumping measures taken by countries during 01-Jan-1995 to 31-12-2005

Sector - >										
Country	Chemical	Plastics	Wood	Textiles	Ceramics	Base Metals	Machinery	Misc.	Total	
Thailand	1	0	0	0	2	23	1	0	27	
Egypt	1	13	0	0	1	8	7	0	30	
Peru	1	1	1	6	2	15	0	14	40	
Korea	14	2	4	0	0	5	18	3	46	
Brazil	16	9	1	1	1	20	2	16	66	
Australia	9	16	14	5	2	15	3	3	67	
China	33	16	6	1	0	5	3	4	68	
Mexico	14	4	1	2	2	41	2	10	76	
Canada	2	0	1	0	2	60	1	18	84	
Turkey	8	33	0	18	1	15	1	10	86	
South Africa	18	20	9	10	11	30	5	10	113	

Argentina	5	10	6	12	5	51	28	30	147
European Union	41	17	0	22	2	80	28	29	219
USA	29	14	3	5	2	140	7	34	234
India	146	53	9	39	4	27	22	16	316
Totals	338	208	55	121	37	535	128	197	1619

Source: WTO Website

The above table shows that India has initiated 425 cases (*Initiated only but in respect of which action is yet to be taken*) during the period 1995 to 2005 and took actions in respect of 316 cases during the same period. India became the largest in the number of cases initiated and the also in respect of the actions taken. Further, the perusal of the table would indicate that the sectors in respect of which anti-dumping actions have been initiated are primarily in relation to chemicals, plastics, base metals, textiles, machinery, etc. Accordingly, the significance as India is concerned, in respect of anti-dumping, cannot be undermined. Despite these opportunities, it is found that not many Chartered Accountants undertake practice in the area of anti-dumping. This may be by virtue of lack of subject knowledge and the manner in which these are practically implemented. Those who have gained good knowledge on these subjects and who have implemented them in practice, have made good for themselves.

As a Chartered Accountant, the following areas may be taken as illustrative subjects in the area of practice of anti-dumping and the related countervailing measures:

1. Assistance in preparation of application, on behalf of the domestic industry, to initiate action against dumping and other countervailing measures;
2. Assistance on behalf of the exporting country to prepare the questionnaire to be submitted to the designated authority;
3. Assistance on behalf of domestic manufacturers to present their resistance against the action initiated or the application filed by the domestic industry;
4. Assistance in the manner of determining injury, injury margin, calculation of export price, ascertainment of comparable price, etc., in respect of the application;
5. Certifications in respect of the value of domestic production, capacity utilization, information on sales, purchases, imports and other details to be submitted in the application;
6. Assistance during personal hearing before the designated authority and acting as authorized representatives;

7. Assistance in preparation of written version to be submitted to the designated authority during the personal hearing;
8. Assistance in making an appeal matters arising on account of initiation of dumping and other countervailing measures, its findings, the order, etc., by or on behalf of the domestic industry or the interested parties;
9. Representation of the case on behalf of domestic exporters in respect of whom anti-dumping actions and countervailing measures have been initiated (against India) by other countries;
10. Advice on various matters governing the subject;

The above list is illustrative and intended to act only as a guide to the practitioner in the available opportunities for practice in the area of anti-dumping, anti-subsidy and safeguard measures.

As advisors and as accountants, attention is invited to following aspects and where necessary, the manner of the accounting treatment being provided in such cases:

- The price adjustments claimed in the normal value declared for sale of like articles in the exporting country;
- The price adjustments claimed in the export value of goods alleged as being dumped;
- The system of costing used for arriving at the direct and indirect cost in respect of goods alleged as being dumped into the country;
- The period in respect of which the information is required for submission and its comparison with audited financial statements, particularly when these periods are different;
- The statements submitted to the designated authority and those of which may be considered as confidential or otherwise;
- The physical, chemical, technical or characteristic differences between the product imported into the country and alleged as being dumped and the like article in respect of which the causal link is being established;
- The particulars of alternative evidence which are submitted or which may be submitted when relevant information is being withheld by interested parties;
- The basis adopted for inventory valuation i.e. LIFO, FIFO, weighted average, etc.;
- The date adopted for conversion of currency i.e. shipment date, invoice date, etc.;

- The methodology and cost treatment to by-products, waste, scraps, etc.,
- The methodology adopted for captive consumption;
- The methodology for apportionment of selling, general and administrative costs;
- The effect of changes in the accounting practices in respect of the information submitted to the designated authority;

In practice, the field is wide open and the complex business scenarios often bring in newer and novel subjects to the practice. It is but for us to recognize them and implement them for the gain of the industry, as a whole, keeping in mind the ethics, the professional code of conduct and upholding of the profession as a Chartered Accountant.

Appendices

Appendix A: Anti-dumping – Questionnaire & Application

Appendix B: Anti-subsidy – Questionnaire & Application

Appendix C: Safeguards – Questionnaire & Application