



# ANTI-DUMPING PROCESS IN TURKEY

**T** HIS ARTICLE IS ABOUT STUDYING THE PRACTICE and judicial review of the legislation and legal procedure of the process of anti-dumping and subsidy. In view of this, first the terminology, second the investigation process and procedure and lastly judicial review is explained.

The word **Dumping** is the act of importing goods of lower price or quality into Turkey for the purposes of pushing the local competitors outside the market. It is not possible to determine whether a product is dumped or not from the export price, in that there may be products sold in Turkey at a lower price although not being dumped. The determination of a dumped product is made through the

difference between the export price and the regular price of a similar product in the exporting country. If the export price is lower than the regular price it is considered that the product has been dumped.

The word **subsidy** on the other hand differs from anti-dumping, involving a direct financial contribution from the exporting or importing country. This contribution could be seen as direct financial input of government authority, tax immunity and etc.

**Regular value** is the price of a similar product that is consumed in the exporting country under normal commercial circumstances by independent purchasers. In cir-

cumstances where there is no such price, regular value is determined by adding the cost of a similar product in the country of manufacture, sale and admin expenses and a fair profit or by the comparable price of a similar product exported to a third country.

In order to determine dumping, first the term **similar product** must be clarified and price comparison must be made in the same group of products that carry similar properties. Same approach goes for the determination of the losses in the dumped/subsidized products.

In matters relating to dumping or subsidizing, similar products should be taken as and determined by their physical properties and purpose of use, whether they are interchangeable, distribution routes and manufacturer and consumer perception.

## Price Comparison and Dumping Margin

In order to calculate the dumping margin, the comparison between the export price and regular value should be made at the same commercial stage, generally at ex-works, and as much as possible during the same period of time. Adaptations are made to defeat the situations that affect price comparison, such as sale terms and conditions, payment by instalments, tax, commercial stages, quantities and the physical properties of the products.

## Measures against Dumping and Subsidization

Not every dumping or subsidization claim in Turkey receives a measure of precaution. In order for a measure in relation to dumping or subsidization to be taken, the following circumstances must occur:

- a. The existence of an import of dumping
- b. Economic loss to the domestic production sector
  - i. The import that is the subject of dumping or subsidization must have caused financial damage to a production sector in Turkey
  - ii. The threat of material loss, or
  - iii. Causing the delay of a production sector.
- c. Causation between the import of dumping and the material loss to the domestic production line.

In the absence of one or more of the above conditions, it is not possible to take any measures against the dumping/subsidized import. Therefore, the relevant authorities when carrying out anti-dumping investigations examine the existence of dumping and the damage (or threat of damage) and the quantification, together with the relative causation, if necessary apply measures to prevent dumping or to indemnify the causes.



The Concept of Loss

Material Loss

Material loss can be described as (i) increase in the dumping import in relation to the domestic production or consumption, (ii) price of dumping import being below the domestic product or forcing the domestic prices to come down, (iii) dumping import causing actual or potential negative effects on the economic charts of domestic production sector.

Threat of Material Loss

The threat of material loss to a production sector caused by dumping or subsidization must be based on concrete evidence:

- a. Significant increase in dumping or subsidized import, displaying a possibility of substantial increase in import,
- b. Exporter having sufficient capacity to direct to Turkey,
- c. Import prices being below the domestic prices,
- d. Stocks of product those are subject to investigation.

Causation

Causation is one of the main features of anti-dumping/subsidization procedure. Therefore, the causal link between the dumped or subsidized import and the loss suffered by the domestic production sector must be based on evidence. In other words, loss suffered due to causes other than import must be attributable to the products that are subject of dumping/subsidization.

Investigation of Dumping/Subsidization

Anti-dumping investigations, under normal circumstances begin on written application by or on behalf of the domestic production sector. Nevertheless, authorities that have power to carry out anti-dumping investigations, could commence the investigations without the need of any application. In both circumstances, sufficient evidence regarding dumping, loss and causation between them is a precondition of commencing investigations. Therefore, in order to take measures regarding dumping or subsidization, investigations must be carried out in accordance with the regulations and following the investigations;

- a. Dumping or subsidization
- b. Loss in the domestic production sector
- c. Causation between the import and the loss must be put forth.

As stated above, only an import that is the subject of dumping or subsidization which causes material loss or threat of loss to a production sector, is not sufficient to claim dumping/subsidization. There must also be a causal link between the imports that is subject of dumping or subsidization and the loss suffered by the domestic production sector and this causation must be based on some sort of evidence. Therefore, first of all to take measures against an import that is subject to dumping or subsidization, an investigation must commence and to commence such investigation a claim must contain sufficient evidence in dumping/subsidization, loss and causation. Thus a claim that is not based on domestic and concrete evidence will not qualify as a claim and not be sufficient for commencing an investigation.

In this context, the domestic manufacturers that make a claim must fill in a questionnaire prepared to guide them to comply with containing sufficient evidence rule in line with legislation and international agreements.

Investigation Stage

Initiating Investigations Ex-Officio

As stated before, it is possible to initiate investigations ex-officio regarding imports subject to dumping or subsidization. In line with the legislation and WCO (World Customs Organization) rules ex-officio investigations can be initiated;

- a. In special situations where the sector is inconsistent, and only,
- b. When the relevant authority holds sufficient evidence regarding dumping, loss and causation.

The domestic manufacturing line must provide sufficient evidence to the relevant authority for an investigation to be initiated ex-officio or upon complaint. Thus only the domestic production sector itself is able to provide the necessary information regarding the loss it has suffered.

Initiating Investigations upon Complaint

Complaints must be made in a petition together with the answers to questions in the application form.

Investigation Procedure

General Directorate of Imports, upon receipt of the full and complete complaint, completes investigations within forty five (45) days and presents a proposal to the committee whether to initiate investigations.

a. If the decision is to initiate an investigation, first notification will be made to the exporting country regarding the subject and the country representative is informed in line with this. Investigation commences with a notification in the official gazette. The opening statement of the investigation and the unclassified summary of the complaint are sent to the representative of the exporting country and together with the exporters they are given an opportunity to defend themselves.

b. Investigation questionnaires are sent to the known importers and exporters of the product and they are given a period of thirty seven (37) days. This period can be extended under necessary circumstances. Besides the questionnaires may also be given to domestic manufacturers.

c. The information obtained through dumping or subsidization investigations cannot be used for any other purposes. Information delivered as classified will remain classified unless a reason is provided for it to be an unclassified summary.

d. If one of the parties does not provide the relevant information within the time limit, refuses to provide information or provides misleading information it will be regarded as not agreeing to cooperate. In this circumstance temporary or final decision will be made according to the information acquired whether negative or positive. Where the domestic manufacturer that initiated the complaint does not cooperate, investigations may come to an end.

e. Where the Ministry considers necessary, a meeting for public hearing may be held to hear all sides on the matter. During investigations the parties may request a meeting for a hearing to voice their views.

f. As long as the parties are given an opportunity to defend themselves and temporary decisions on the subject of dumping and loss has been made, earliest within sixty (60) days of the commencement of the investigation, temporary injunction as much as maximum dumping margin (temporary tax in the form of bond) could be requested to prevent loss during the investigation period. The temporary measure is limited to nine (9) months. The verdict of temporary measure and information and findings that are fundamental to the decision will be notified in the Official Gazette giving regard to the confidentiality principle.

g. Before any final decision is made on the investigation, information and findings that are fundamental to the decision will be reported to the domestic manufacturers, importers, exporters and exporting country representatives bearing in mind the confidentiality principle.

h. Investigation will be completed within one (1) year except in special circumstances. This time limit may

be extended six (6) months when necessary.

i. The final verdict at the end of the investigation and information and findings that are fundamental to the verdict will be notified in the Official Gazette giving regard to confidentiality principle. Final measures are applied as tax against dumping or indemnifying tax for subsidization. The taxpayer is the importer of the product. Temporary or final measures become effective on the day of notification in the Official Gazette and are applicable proactively.

The measures against dumping and subsidization are applicable for five (5) years. However, before the end of the period where it has been found that temporary investigation is to commence and as a result of the investigation it has been found that lifting the precautions will cause the dumping/ subsidization and the loss to continue or to re-occur, the measures will continue.

Price Undertaking

The exporter manufacturer of the product subject to investigation has the right to make a declaration to readjust the price according to the market conditions or to end the export, after predetermination on the loss due to dumping-subsidization and causation. In such case the action and process of the office can be stopped by the authority carrying out the dumping investigations. The exporting party's declaration and agreement in increasing the prices must be in proportion with the loss occurred. Otherwise investigations and actions regarding dumping will continue.

Judicial Review

Decisions and administrative actions taken in anti-dumping and subsidization inquiries and investigations can be reviewed by the legal and/or administrative bodies and/or courts or arbitration institutions of the importing country. However, it is essential for the authorities that carry out the said processes to be independent. All the investigations that are handled legally aid the correct application of the legislation and procedure by the parties named in the investigation, including the authorities and offices. Therefore, incorrect-arbitrary applications, abuse of authority and similar actions should be reviewed to ensure they are lawful.

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