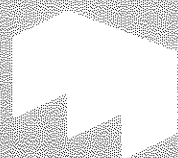


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Imprint

ANTIDUMPING, COUNTER VAILING DUTIES AND SAFEGUARD MEASURES IN ARGENTINA: WHAT DOMESTIC AND FOREIGN PRODUCERS SHOULD NOT IGNORE*

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Dumping

Within the World Trade Organization (WTO) context, "dumping" is considered incompatible with the principles of free trade. Dumping takes place when a company exports a product at a price lower than the price it normally charges on its own home market.¹

How can domestic producers protect themselves from this practice? They may ask their government for antidumping action, which means charging extra import duty on the particular product from the particular exporting country in order to bring its price closer to the "normal value" and to remove the injury to domestic industry in the importing country. In fact, "to dump" means to put something into a place where rubbish may be unloaded or left. According to the AD, as a requirement of anti-

dumping actions taken by the government, domestic producers must demonstrate that there is dumping, injury and causation, that is to say, dumped imports are causing the injury identified in order to have these kinds of duties.²

When we speak about dumping we must necessarily refer to the idea of dumping margin: how much lower the export price is compared to the exporter's home market price. A fair comparison shall be made between the export price and the normal value, at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. This is the way to calculate the dumping margin:

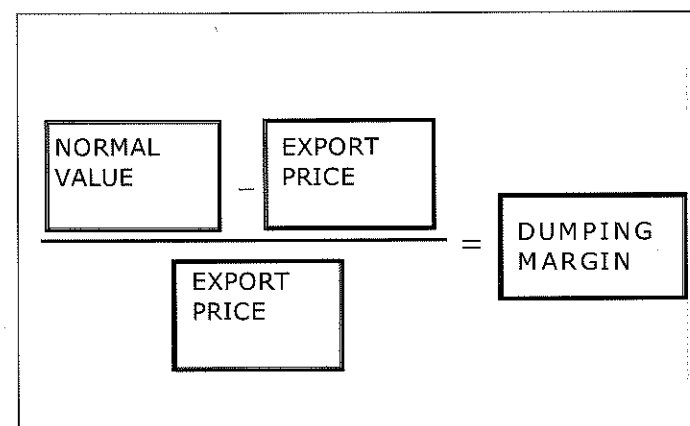


Fig. 1: Calculation of the dumping margin

The dumping margin is expressed as a percentage of the export price. The AD states that there are three ways of identifying the "normal" value of the product, and thus to decide whether a particular product is being dumped.³

* I'd like to thank Victor Insausti for his help in reading a previous version of this article.

¹ According to the Antidumping Agreement (henceforth AD) of the WTO, a product is to be 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 exported 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 (Art. 2.1).

² Art. 3.5 states that it must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities.

³ Art. 2.2. and 2.3

- The first one is the price in the exporter's domestic market. If this cannot be used, two alternatives are available:
- either the price charged by the exporter in another country or
- the calculation based on the combination of the exporter's production costs, other expenses and normal profit margins.

The determination of injury must be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.⁴

With regards to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.⁵

Antidumping duties are only applied through an investigation that will lead to the determination of the existence, degree and effect of any alleged dumping.⁶

The antidumping procedure involves an initiation of the investigation, though a written application, during which parties must have the opportunity to present evidence and in which there is an evaluation of all relevant economic factors that have a bearing on the state of the industry in question.⁷

After the initiation, all interested parties shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.⁸ Domestic producers, exporters and foreign producers should receive questionnaires and shall be given at least 30 days for reply.⁹

The investigation may end if the margin of dumping is insignificantly small (less than 2 % of the export price of the product)

and if the volume of dumped imports is negligible (i.e. if the volume from one country is less than 3 % of total imports of that product). Investigations can proceed if several countries, each supplying less than 3 % of the imports, together account for 7 % or more of total imports.¹⁰ Antidumping duties can last a maximum of five years.¹¹ Investigations shall, except in special circumstances, be concluded within one year and in no case more than 18 months, after their initiation.¹²

2. Subsidies

Subsidies may play an important role in increasing the export competitiveness of an industry. In particular, in developing countries and in the transformation of centrally-planned economies to market economies, subsidies may play a crucial role in the countries' policy.

A subsidy is a financial contribution by a government or a public body of the exporting country or country of origin such that it confers a benefit on the producer or exporter. The legal framework for subsidies within the WTO context is the Agreement on Subsidies and Countervailing Measures.¹³ While dumping is an action by a company, when we come to subsidies, it is the government or a government agency that acts, either by paying out subsidies directly or by requiring companies to subsidize certain customers.

What can domestic producers do against subsidized exporters? They can ask for countervailing measures, provided sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury and (c) a causal link between the subsidized imports and the alleged injury.¹⁴

The ASCM states that countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this agreement.¹⁵ The procedure is very similar to the one explained as regards antidumping measures, with a written application, questionnaires, presentation of evidence and evaluation of all relevant economic factors that have a bearing on the state of the industry in question.¹⁶

3. Safeguards

Safeguards are applied when a product is being imported into the country, in such increased quantities, absolute or relative to domestic production, and under such conditions, so as to cause,

⁴ Art. 3.1

⁵ Art. 3.2

⁶ Art. 5.1

⁷ Art. 5.1

⁸ Art. 6

⁹ Art. 6.1.1

¹⁰ Art. 5.8

¹¹ Art. 11.3

¹² Art. 5.10

¹³ Henceforth ASCM

¹⁴ Art. 11

¹⁵ Art. 10

¹⁶ Art. 11.1

or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

According to the WTO Agreement on Safeguards, they are emergency measures against imports of certain products, regardless of their source,¹⁷ applied only for such a period of time as may be necessary to prevent or remedy injury to facilitate adjustment. They are applied in a non discriminatory way against all origins. The agreement states that a WTO member may restrict imports of a product temporarily if its domestic industry is seriously injured or threatened with serious injury caused by a surge in imports.¹⁸

These kinds of measures are aimed to create a certainty condition, allowing the domestic producers to start retrofitting programs and structural adjustments to allow the industry to become competitive in the international trade.

Is it possible to request safeguard measures against an unfair trade practice? No, it isn't, because each problem has a specific procedure and measure. In the case of safeguards, foreign exporting companies compete "fairly", the problem is the lack of competitiveness of the domestic industry against imports.

Safeguards may take the form of an increased import duty or a quantitative restriction (quota). The necessary elements to apply a measure are:¹⁹

- an affirmative determination of serious injury to the domestic industry,
- a causal link between increased imports and serious injury,
- an adjustment programme, which means a plan for the improvement of the domestic industry competitiveness. It must establish the effort to be put into in order to achieve this goal, should also quantify the objective proposed and an execution schedule.

Serious injury to apply a safeguard measure means a significant overall impairment in the position of a domestic industry, while threat of serious injury is a serious injury that is clearly imminent, shown by facts and not based on mere allegation, conjecture or remote possibility.²⁰

A WTO member country may apply a safeguard measure only following an investigation by the competent authorities of that country. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the

¹⁷ Art. 2.2
¹⁸ Art. 2.1
¹⁹ Art. 2.1
²⁰ Art. 4

opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest.²¹

The measures can last four years as a maximum.²² When countries apply safeguard measures, they must give something in return, that is to say, seek compensation through consultations. If no agreement is reached, the exporting country can retaliate, which means taking equivalent action, for instance, it can raise tariffs on exports from the country that is enforcing the safeguard measure.²³

4. The Application in Argentina²⁴

In the 1990s, Argentina, like many developing countries, opened its domestic market to imports and created governmental offices involved in dumping, subsidies and safeguards investigations. Nowadays, these governmental offices in charge of this type of investigation, is the Ministry of Economy and Production, the Secretariat of Industry, Trade, and Small and Medium Enterprise, the Under-secretariat of Trade Policy and Management and the National Foreign Trade Commission.

Producers that seek trade remedies must submit a petition at the Secretariat of Trade and Small and Medium Enterprise. It can also be submitted by Chambers, Trade Associations or Federations, enclosing the corresponding supporting documentation. It is important to note that petitioners must meet at least 25 % of domestic production of the subject product (technically, to fulfill this provision is to be "representative" of the industry).

After the filing of the petition, if the Under-Secretariat finds indications of dumping or subsidy, the Commission finds indications of injury to the domestic industry and causal link between them, the Secretary of Industry can decide the initiation of the investigation. This decision is published in the Official Bulletin.

After due notification in the Official Bulletin, the Under-secretariat of Trade Policy and Management and the Commission send questionnaires to all known domestic and foreign producers, importers and exporters, to collect information for the purpose of finding evidence of the existence of the unfair practice, injury and causation. The information collected is referred to data of the firms, legal status, the "scope product", the "like product", dumping margins, domestic and international markets, all quantitative variables of injury, amount of imports, prices and arguments for and against the existence of dumping, injury and causal link between dumping and injury.

²¹ Art. 3
²² Art. 7.1
²³ Art. 8
²⁴ The legal framework for investigations used to be Decree 1326/98, and from October 2008 on, Decree 1393/08

In case the Under-Secretariat and the Commission find dumping or subsidy, injury to the domestic industry and causal link between them, the Minister of Economy may impose provisional measures in order to prevent a further deterioration of the condition of the domestic industry during the investigation.

During the investigation, verifications of the information submitted in the questionnaires and hearings can be held, in order to check the information provided and to inquire the parties in relation with questions arising from the records, so that the parties can question or object their counterparts regarding the information, data and evidence submitted, and to inquire third parties about their opinions on the subject matter.

With all information verified and data collected both the Under-Secretariat and the Commission issue their final dumping and injury determination. If the Under-Secretariat finds dumping or subsidy and the Commission finds injury to the domestic industry and the causal link between them, the Minister of Economy may impose antidumping or countervailing duties.

Measures can be imposed for a maximum term of five years, with annual reviews and may be imposed retroactively to the period when provisional measures were imposed, provided that all legal requirements are fulfilled. It is important to point out that although Commission and Under-Secretariat Reports are the technical basis for the application of measures, an affirmative determination does not necessarily mean that the Minister is forced to impose duties. In determining the final decision, the Minister may take into account other relevant factors, such as public interest or consumer interest, or the interest of product end-users.

Argentina is the sixth country in the WTO as regards the number of investigations initiated in 2007. The first place corresponds to India (46 investigations), the second to the United States (29), the third to Korea (15), the fourth to Brazil (13) and the fifth to the EC (9).

Starting January 1995, up to December 2007, it imposed 58 antidumping measures, with a media duration of five years. Only a few were imposed for three years and one for two years. As regards safeguards, only one measure is in place: a specific duty on recordable compact discs. No countervailing duties are still on.

While Argentina has applied these measures, also the countries' exporters were hit by the actions of other WTO member states. During the period 2007 to 2008, Peru opened an anti-dumping procedure on Argentinean vegetable oil and Chile did the same on wheat flour and in 2006, Chile had imposed a safeguard measure on milk and Gouda cheese and dumping duties on wheat flour.

OECD countries	Newly industrializing and developing countries	Eastern European and former Soviet countries
Japan 2 Australia 1 Canada 1 European Union 1	China 16 Chinese Taipei 4 Korea 3 India 3 Indonesia 3 Malaysia 2 Thailand 2 Vietnam 1 Brazil 7 Uruguay 1 South Africa 1	Russia 1 Kazakhstan 1 Slovak Republic 1 Ukraine 2

Fig. 2: List of exporting countries which were affected
(The number refers to the amount of measures imposed against that country.)

5. Conclusion

For domestic producers, ensuring the implementation of an anti-dumping or a countervailing duty can be of great relief. Nevertheless, producers should be aware that they must be ready to supply the necessary and accurate data. At the same time, governmental offices in charge of the investigation, must know that investigations should be developed according to international standards because otherwise, they would have to face the Dispute Settlement Procedure.

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http://www.wto.org/spanish/tratop_s/adp_s/adp_s.htm