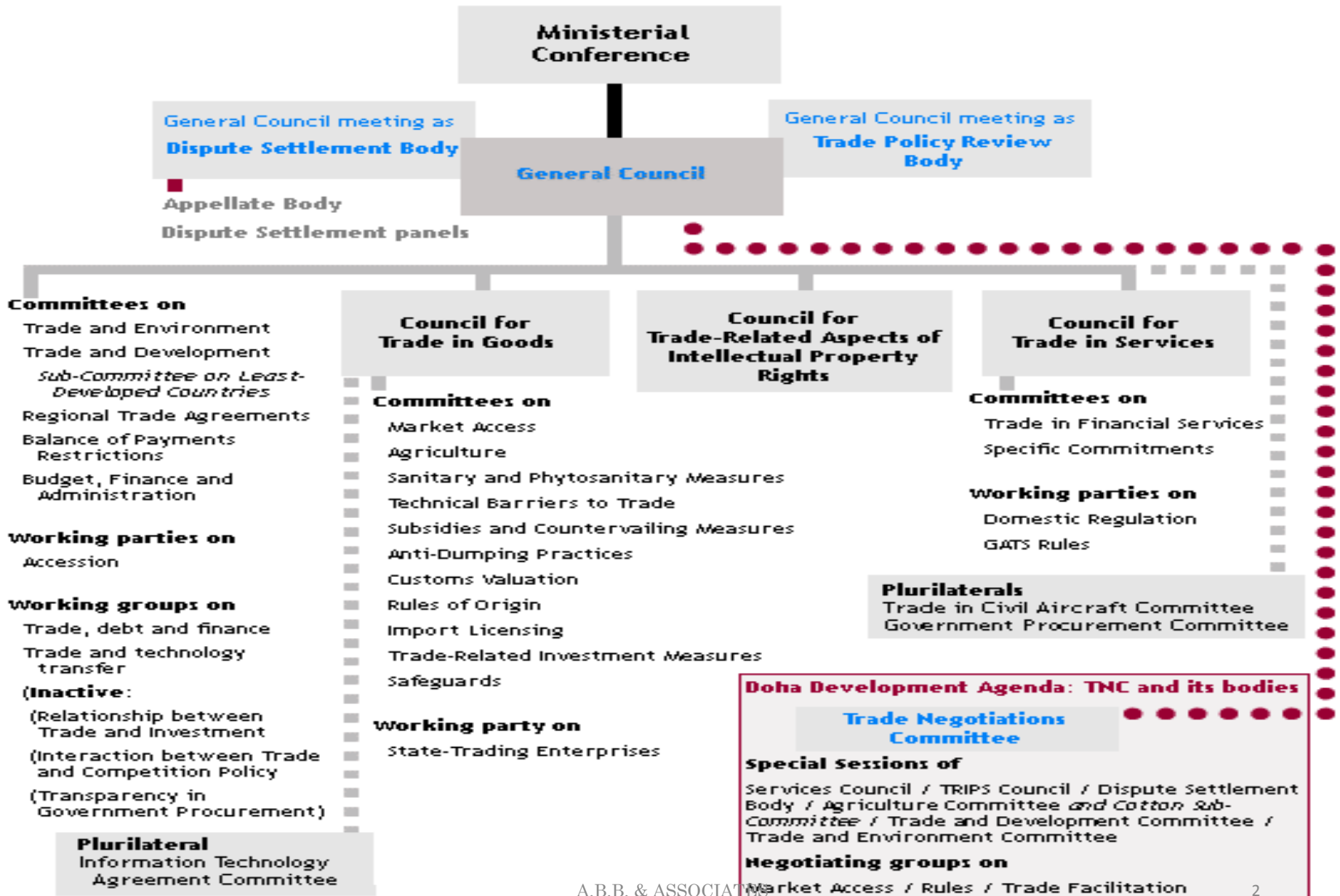


ANTIDUMPING CONCEPTS & PROCEDURES IN INDIA & USA

COMPILATION BY
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(REF. WEBSITES: WTO, DGTR(INDIA), USITC, USDOC, US ACCESS)

WTO STRUCTURE



WTO WEBSITE STATISTICS OF TOTAL AD CASES INITIATED TILL 31/12/2019 WORLDWIDE

Anti-dumping Initiations: by Sector 01/01/1995 - 31/12/2019

HS section name	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
I Live animals and products	1	2	2	6	8	3	2	10	2	10			1	1	3		2		4	1			2		1	61
II Vegetable products		5	2	4	1	7	8	3	1	6	3	3	1	5	1	1	1	1	2	4	2			2	1	64
III Animal and vegetable fats, oils and waxes							4	2	2	1	2	3								1						15
IV Prepared foodstuff; beverages, spirits, vinegar; tobacco	13	6	4	8	2	3	2	3		1	2	7			2	1	5		6	1	6	3	5		3	83
V Mineral products	1	4	3	4	9	9	15	8	5	1		2	2	2	1	4	2	2		1	2	8	3	4	2	94
VI Products of the chemical and allied industries	32	42	21	24	74	63	67	95	73	49	37	39	56	34	47	44	29	34	48	53	38	51	64	32	31	1177
VII Resins, plastics and articles; rubber and articles	21	26	36	33	40	24	56	40	27	44	37	24	16	23	31	24	13	40	41	45	23	37	28	30	39	798
VIII Hides, skins and articles; saddlery and travel goods		3									2															5
IX Wood, cork and articles; basketware	1	4	11	3	1	5	4		11	11	3	2	1	9	7	5	13	1	5	1	3	2	4	1	3	111
X Paper, paperboard and articles	3	14	36	7	18	5	7	7	20	8	6	17	19	2	8	21	11	6	12	3	8	18	11	12	5	284
XI Textiles and articles	1	23	8	28	36	17	27	7	11	21	26	17	12	37	20	6	2	12	21	7	9	16	26	12	14	416
XII Footwear, headgear; feathers, artif. flowers, fans	6	1		4	2	3	2	3			4	3		1	3						3					35
XIII Articles of stone, plaster; ceramic prod.; glass	4	11	12	12	8	6	6	11	11	8	10	12	3	4	11	12	14	13	23	5	12	16	6	8	10	248
XIV Pearls, precious stones and metals; coin							1																			1
XV Base metals and articles	43	39	64	111	109	109	138	96	53	39	39	31	23	70	52	43	58	76	97	89	105	129	81	81	78	1853
XVI Machinery and electrical equipment	24	33	34	10	30	30	24	9	12	16	16	30	28	16	22	10	8	18	22	17	7	14	7	10	12	459
XVII Vehicles, aircraft and vessels	3	3	1		4	5		3	2	2	4	2	1	3	3	1	6	4		5	2	2	2	7	3	68
XVIII Instruments, clocks, recorders and reproducers	1	5	9	5	2		3	3	2	1	1	5		6	3	1	1		1	2	7		4	2		64
XX Miscellaneous manufactured articles	6	5	4	5	13	7	6	11	2	3	7	6	2	5	3			1	5	1	2	2	6	1	5	108
Total	160	226	247	264	357	296	372	311	234	221	199	203	165	218	217	173	165	208	287	236	229	298	249	202	207	5944

Note: All actions notified to the WTO that are taken at the level of a customs union (European Union, Eurasian Economic Union, Southern African Customs Union, Gulf Cooperation Council) are counted one time each.

WTO STATISTICS (SELECTED REFERENCE) ON USER OF AD INVESTIGATION CASES

Reporting Member	2014	2015	2016	2017	2018	2019	Total Since 01.01.95 to 31.12.19	Highest User Ranking
Argentina	6	6	23	8	19	17	388	5
Australia	22	10	17	16	12	7	351	6
Brazil	35	23	11	7	7	1	418	4
Canada	13	3	14	14	14	6	247	8
China	7	11	5	24	16	14	288	7
Egypt	9	4	14		1	6	107	15
European Union ⁶	14	11	14	9	8	11	521	3
India	38	30	69	49	32	52	972	1
Indonesia	12	6	7	1		6	142	13
Korea, Republic of	6	4	4	7	5	5	152	12
Mexico	14	9	6	8	3	6	161	11
Pakistan		12	24	3	8	6	135	14
South Africa ¹¹	2				3		234	9
Turkey	12	16	17	8	6	2	229	10
United States	19	42	37	55	34	33	728	2
Total of above Top 15 countries who initiated more than 100 cases during 01/01/95 to 31/12/19	209	187	262	209	168	172	5073	85.35%
Total of All WTO Members	236	229	298	249	202	207	5944	100.00%

WTO ANTIDUMPING AGREEMENT

○ WTO AD Agreement Regulates

- Procedural aspects of initiation, conduct and conclusion of anti-dumping investigations, including duty imposition
- Substantives aspects of anti-dumping determinations

○ AD Agreement does not regulate

- Detailed methodological guidance on *certain* substantive aspects
- Detailed rules or guidance on *certain* procedural aspects
- *These aspects are addressed by domestic anti-dumping legislations and regulations*

WHEN ANTI DUMPING?

ADA allows countries to impose antidumping duties to protect their producers from injury caused by imports of dumped goods. How?

- Export Price < normal value.
- Normal Value- comparable price, in ordinary course of trade, for like product in exporting country.
- Home market sales is the Default option for Normal Value determination.

KEY TEST

- a) Dumping; b) Injury; c) Causation

ARTICLE 5 ADA - APPLICATION FOR AD INVESTIGATION

Pre-initiation procedure

- Application for investigation -
 - (a) by the domestic industry; or
 - (b) suo moto initiation
- Single Investigation Team for both dumping and injury
 - A two member team
- Pre-initiation examination
 - Determination of domestic like product
 - Examination and collection of data on domestic industry
 - Standing of domestic industry
 - Accuracy/adequacy of evidence on both dumping and injury

ARTICLE 5 ADA - APPLICATION FOR AD INVESTIGATION

- Obligation on Investigating authority to examine the ‘adequacy’ and ‘accuracy’ of evidence in application before initiation-Art. 5.3
- Standing requirement for making application-Art. 5.4
 - Test of 50% support
 - Test of 25%-domestic producers making application to account for 25% production of the product in the home country.
- EC – Salmon (Panel)
- It is permissible to define the "domestic industry" in terms of domestic producers of an important, serious or significant proportion of total domestic production.
- Not requirement to define the "domestic industry" in terms of domestic producers representing the majority, or 50+ per cent, of total domestic production.
 - See also Argentina – Poultry (Panel)

STANDING DETERMINATION- DOMESTIC INDUSTRY

APPLICATION MUST BE SUPPORTED BY

(two cumulative and mandatory thresholds)

- the domestic producers whose production of the like product is more than 50 per cent of the production of the domestic producers expressing opinion; and by
- the domestic producers whose production of the like product is equal or more than 25 per cent of the total production of the like product by the domestic industry.

THREE TYPICAL SCENARIOS

- Applicants' production of the like product accounts for more than 50 per cent of the total domestic production
- Applicants' production of the like product accounts for less than 50 per cent but more than 25 per cent of the total domestic production
- Applicants' production of the like product accounts for less than 25 per cent of the total domestic production

STANDING DETERMINATION: DOMESTIC INDUSTRY

○ Threshold I

$$\text{Standing test I} = \frac{[A_p + S_p]}{[A_p + S_p + O_p]} > 50 \text{ per cent}$$

○ Threshold II

$$\text{Standing test II} = \frac{[A_p + S_p]}{[A_p + S_p + O_p + N_p]} \geq 25 \text{ per cent}$$

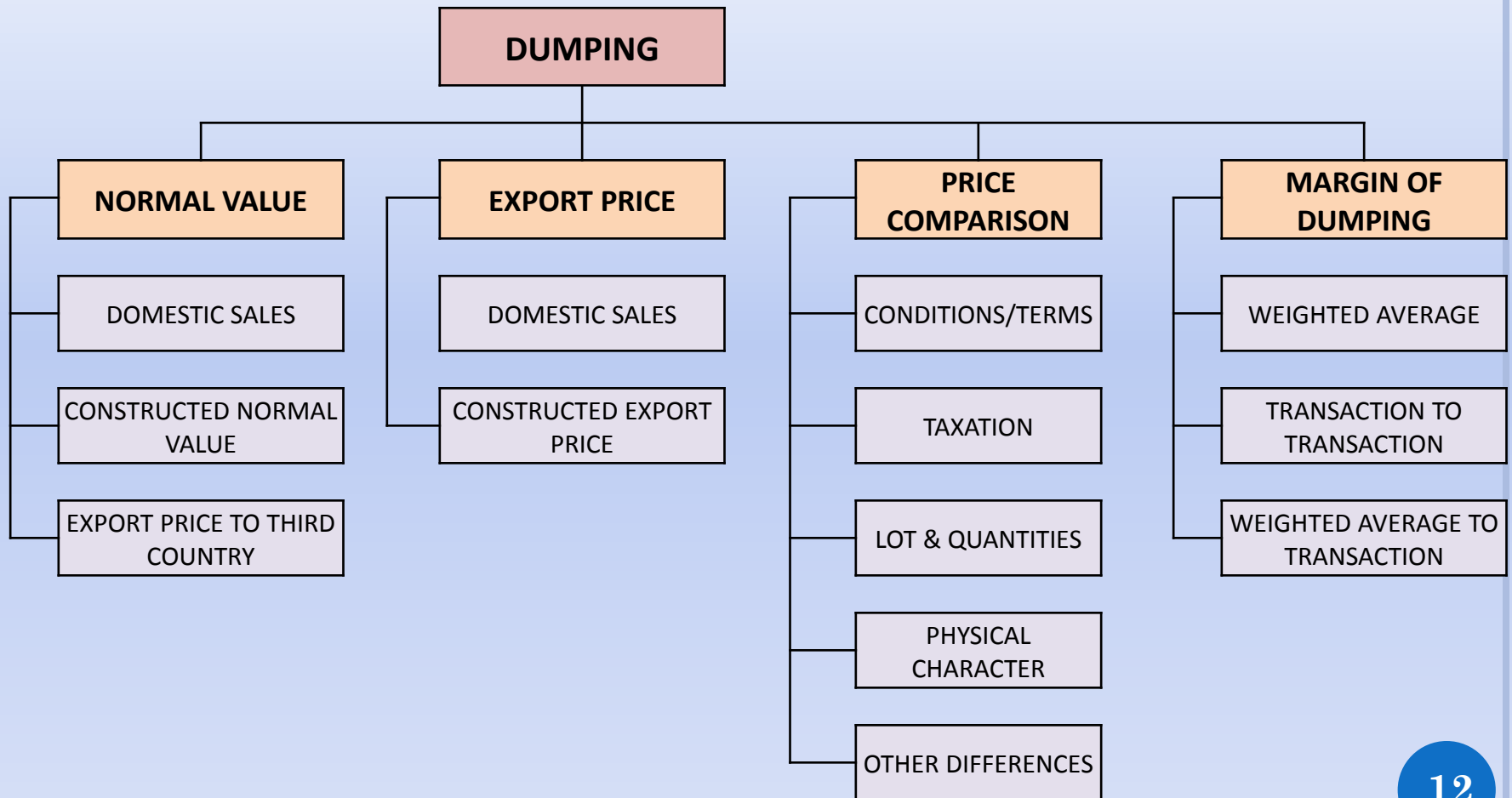
○ **Note**

- p = production of the like product, A = applicants, S = supporters
- O = producers with opposing views
- N = producers whose opinions on the petition you don't know

DUMPING DETERMINATION TESTS

- Sufficiency test- Home Market sales 5% or more of export of the product under consideration during IP.
- If No home market sales or insufficient, then other two options for Normal Value.
 - A. Comparable price of like product when exported to an appropriate Third Country, provided that this price is representative
 - B. Cost of production in country of origin plus reasonable amount for SGA and profits.

DUMPING MARGIN CALCULATION-OVERVIEW



CONSIDERATION FOR 'EXPORT PRICE' DETERMINATION

○ Export price to third country

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

○ Constructed value

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

○ Comparison of Domestic Price to Export Price

- The comparison must be made at the same level of trade, normally at the ex-factory level, and in respect of sales made as nearly as possible at the same time
- Due allowance must be made for differences which affect price comparability, including differences in:
 - Conditions and terms of sale
 - Taxation
 - Quantities
 - Physical characteristics
 - Levels of trade
 - Any other differences which are demonstrated to affect price comparability

DETERMINATION OF DUMPING MARGIN

- Normally to be established on Weighted Average to Weighted Average comparison of NV with EP
- Transaction to transaction comparison of NV and EP
- Weighted average normal value with individual export transactions in certain situations- export prices differing in regions, purchasers or time periods.
- Zeroing of negative dumping margin?

ARTICLE 5 ADA - APPLICATION FOR AD INVESTIGATION

- Mandatory requirement to inform government of the exporting country before initiation- Art. 5.5
- Article 5.8- De Minimis provisions:
 - De Minimis margin of dumping <2%
 - Negligible volume of imports-De minimis <3% of total imports in importing country.
 - Individually <3% but together with other countries >7%-not treated as De Minimis or negligible.

ARTICLE 6 ADA- EVIDENCE

- 6.1 -exporters are generally given 30 -35 days time to furnish **questionnaire response**. Extensions allowed on cause shown.
- 6.2- All interested parties full rights to defend their interests.
- 6.3 - **oral hearings**.
- 6.4- Obligation on Authority to provide timely opportunity to all to see the information- maintenance of Public file.
- 6.5- Confidential information- to be treated confidential on good cause shown
- 6.5.1-Non-confidential summaries- sufficient details and meaningful.
- 6.5.2- If confidentiality not warranted/parties not willing to make information in sufficient non confidential form, Authority may disregard such information BUT cannot make such information public.
- 6.7- **Exporter's verification** Annex I

ARTICLE 6 ADA- EVIDENCE

- 6.8-Use of 'Facts Available' in case of non-cooperation by interested parties.
 - Annex II gives guidance.
- 6.9- Disclosures of 'essential facts'
 - an important mile stone of the investigation.
 - probably last chance to offer comments.
- 6.10-Limited Examination or 'sampling'.
 - Exporters, producers, importers or types of products so large.
 - Statistically valid sample or selection of exporters which can reasonably be investigated but to cover largest volume of exports from the country.
- 6.11- Interested Parties - exporter, foreign producer, importer, trade or business association, governments of the exporting country, producers in the importing country.
- 6.12 Industrial Users of the product-
 - right limited to give information relevant to the investigation.

ARTICLE 7 PROVISIONAL MEASURES

- 7.3- Not before 60 days from the date of initiation.
- Where preliminary affirmative determination of dumping, injury & causal link. Such measures necessary to prevent injury being caused during investigation.
- Provisional measures in force for 4 to 6 months or in case of members following Lesser Duty , these periods are 6 to nine months.

ARTICLE 8- PRICE UNDERTAKINGS

- 8.1 - Proceedings can be suspended or terminated on voluntary price undertakings.
- 8.2 - Acceptance after preliminary affirmative findings of dumping & injury.
- 8.3 - Refusal, if impractical or as a general policy- Reasons to be given.
- 8.6 - Periodical information of export prices. In case of violation of undertakings, investigation recommences and provisional measures come into effect.

ANNEX I CONDUCT OF EXPORTERS' VERIFICATION (ON SPOT INVESTIGATION)

- Conducted in new investigations and in review investigations for cooperative exporters.
- Usually at the post-preliminary stage
- However, a verification may be conducted earlier depending on the circumstances of the case or in a situation where notification of a preliminary findings may not be appropriate.
- **Forwarding of Exporters' Questionnaire**
- **Analysis of replies received**
- **Sending of deficiency letters**
- **Organization of visits**
 - **Informing and obtaining agreement from the companies and informing the authorities of the country visited.**
- **Actual on-site Verification**

The replies furnished to the exporters questionnaire are verified including –

- **Technical specifications and manufacturing process** of product investigated
- **Cost of production**
- **Corporate structure ; related & associates across globe**
- **Sales quantity (domestic and export sales to India)**
- **Pricing and related information**
- **Export prices and adjustments claimed on domestic and export sales**
- **Affiliation**
- **Any other information deemed necessary**

NON MARKET ECONOMY

- Art 2.7 ADD, ad note to Art VI of GATT – no reference to “non-market economy”
- Ad note 1.2 to Art VI of GATT
 - “It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade **and** where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.”
- No country, with the possible exception of North Korea, is still an NME under these conditions

SPECIAL PROVISIONS FOR IMPORTS FROM CHINA

- Article 15 of Protocol
 - In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
 - the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession
- Must provide exporters opportunity to show they are operating under market condition
- Protocol requirement extends to whole industry of the like product
- EU before *EU – Fasteners* applied on company-specific basis, i.e. if the individual exporter can show it is operating under market conditions, then treated as any exporter in a market economy (called MES)

INJURY DETERMINATION

- Injury determination based on positive evidence.
- Material Injury
 - “harm which is not inconsequential, immaterial, or unimportant”
- Threat of Material Injury
 - “clearly foreseen and imminent”
 - Lesser used provision. Used along with Material Injury claim
- Determination of ‘volume effect’ and ‘price effect’ of the dumped imports on the domestic industry
 - Volume effect: Significant rise in imports in absolute terms or relative to total imports and demand in the country
 - Price effect: Consequent impact on prices; Significant Price undercutting, underselling, price suppression and/or price depression

IMPOSITION AND FORMS OF DUTY

- Fixed Duty
- Variable Duty
- Ad Valorem Duty

ARTICLE 9 IMPOSITION & COLLECTION OF DUTIES

- 9.1 Duty less than dumping margin-optional. Some members including India, EC, NZ Land, Australia follow Lesser Duty Rule.
- 9.3.1- Retrospective assessment system.
Determination of final liability on actual export transactions.
- 9.3.2-Prospective assessment system- refund applications in cases of duty paid in excess of actual dumping margin.

ARTICLE 11-REVIEWS

- Article 11.1 provides that an AD duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury;
- 11.2- If there is a changed circumstance in which either dumping or injury to the domestic industry ceased or changed any interested party can request for an interim review
- Article 11.2 – (Rule 23)– **Changed circumstances** or revocation review
- Article 11.3 – [Section 9A(5)] - Expiry or sunset review

NEW SHIPPER REVIEW: OUTCOMES

If Exporter Qualifies for New Shipper Review, Outcomes of Dumping Margin Calculation May become More / Less than De minimis or Negative

Dumping Margin is Positive:

Option of Price Undertaking Available

Duty below the level of the residual rate

Lower duty collected retroactively

Duty above the level of the residual rate

Duty collected retroactively

Dumping margin is *de minimis*

Exporter excluded from the scope of the measure and reimbursed or guarantees returned

Exporter does not qualify

Existing residual rate imposed retroactively

Exporter fails to cooperate

Existing residual rate imposed retroactively

Exporter withdraws

Existing residual rate imposed retroactively

ACCESS TO CONFIDENTIAL INFORMATION

- AD Agreement – in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order *may* be required
- Members' practice varies

USA (Allows)	<ul style="list-style-type: none">▪ On the basis of APO▪ To whom? Counsel and their consultants (e.g., economists) on service list (other experts on case-by-case basis)
Canada (Allows)	<ul style="list-style-type: none">▪ On the basis of individual confidentiality agreements▪ To whom? Counsel for “parties to the proceeding” and expert witnesses in Tribunal proceedings)
Not Allowed	India, Brazil, South Africa, EU, New Zealand, China (within the scope of the anti-dumping proceeding)
Brazil, South Africa	Allowed on judicial review and upon judicial request

US SYSTEM OF AD & CVD INVESTIGATION

- Applied Legislations: US Tariff Act & 19 CFR
- Comprehensive and keeps respondents always busy. Need to be 365 days alert
- In majority both AD & CVD Investigations hold simultaneously.
- Injury Determination: US ITC
- AD & CVD Duty Determination: US DOC
- Appellate Authority: US CIT
- Normal Length of Original Investigation: 15 months
- Administrative Reviews: 12 months there after
- Interested Parties:
 - USA: Petitioners in USA, Importers in USA
 - Foreign countries: Exporters/ Central & State Governments/ US Embassy of Exporting country in USA, Industry Association & Export Promotion Council

US AD & CVD DOCUMENTATION

- PDF Files & Excel Files allowed for uploading in US ACCESS Website
- PDF file size not to exceed 10 MB each & must be OCR enabled. (Optical Characteristic Recognition)
- PDF files should not have External Links active
- Excel Files must not exceed 25 MB each
- Classification of Documents
 - BPI Documents under [[]]
 - BPI Documents under []
 - Public Documents / Public Version of BPI Documents
- PV documents to be uploaded within 1 day of original BPI Submission of such documents. One Day lag submission of BPI allowed if Bracketing is not finalised, to be simultaneously uploaded with PV documents
- Serving of All BPI Documents to Persons in APO Service List and PV/ Public Documents to Persons in Public Service List is mandatory and as per law, need to be done by First Class Courier services prior to uploading of Documents in ACCESS.
- Permission may be taken from such interested parties for serving of documents uploaded by Email / We Transfer / Secured Server of Interested Party

US AD & CVD INVESTIGATION - STAGES

- US ITC Preliminary Injury Submission
- Product Connun Decision
- Respondent Selection (Mandatory / Voluntary)
 - Mandatory Respondents Advantages:
 - Original Questionnaires are issued at Party name
 - Extension Request for Response Submission Allowed
 - Mandatory Physical Verification
 - Individual Duty determined if AFA not applied (AFA: Adverse Fact Applicable)
 - Right to attend Public Hearing
 - Voluntary Respondent:
 - Self Offer to submit voluntary Responses with hope of getting Individual Company specific duty
 - Supplemental Questionnaires may / may not be issued
 - No Extension granted for responses submission
 - In case Responses rejected mid-way, falls into categories of Other Exporters from same country for whom weighted average duty is applied based upon duties of the Two Mandatory Respondents

US AD & CVD INVESTIGATION - STAGES

- Preliminary Duty Determination
 - Official Order of US DOC
 - Ministerial Comments by Interested Parties
 - Ministerial Order Memo by USDOC
- Physical Verification (Usual Team size vary: 2-5 investigators)
 - Cost Verification Team : Visit at Company Level only
 - Sales Verification Team: Visit at Company Level only
 - Subsidies Verification Team: Visit to Central / State Governments also along with Companies under investigation
- Additional Information Submission
- Case Brief Submission
- Rebuttal Brief Submission
- Final Duty Determination by US DOC
 - Official Order of US DOC
 - Ministerial Comments by Interested Parties
 - Ministerial Order Memo by USDOC
- Final Injury Assessment by US ITC- Leads to Final Duty Imposition / Customs Refund Process as the case may be
- Appeal before US CIT within 30 days: Case may take 2 years time for disposition
- Administrative Review Application: After 12 months with new POI

US AD & CVD INVESTIGATION - STAGES

- Responses Submission Process
- Original Questionnaires
 - Antidumping
 - Section A – 21 Days
 - Section B, C, D – 40 Days
 - CVD
 - Part-I (Organizational Structure/ Related Parties): 15 days
 - Subsidy Programs: 40 days
- Supplemental Questionnaires: Depends from 3 – 14 days
- Additional information: USDOC discretion

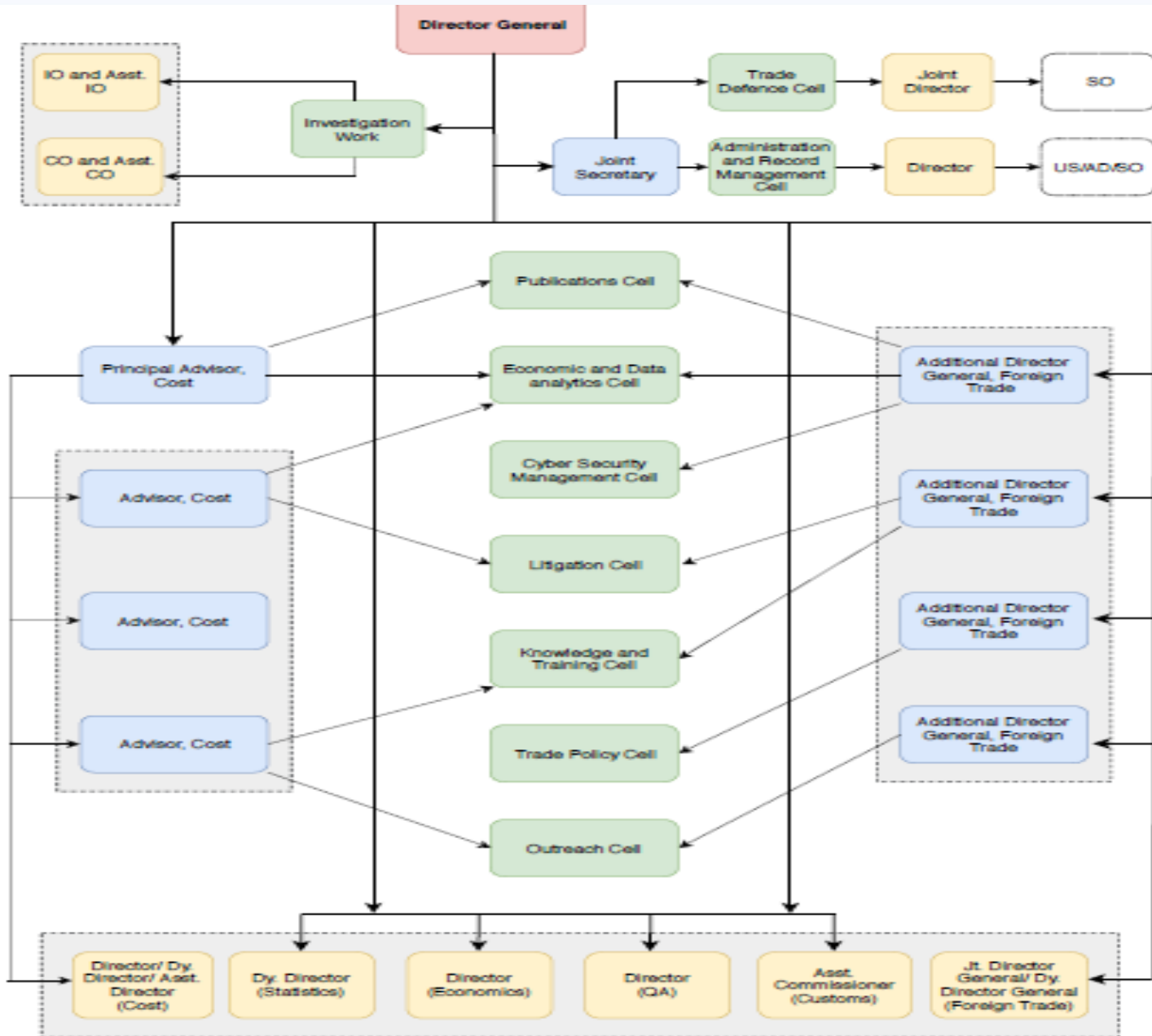
US AD & CVD INVESTIGATION - STAGES

Respondents of Exporting Country	AD Investigation	CVD Investigation
Mandatory Respondents	Yes - Must	Yes - Must
Voluntary Respondents	Yes - Optional	Yes - Optional
Embassy of India	No	No
Government of India	No	Yes
State Governments	No	Attached to GOI
Export Promotion Councils	No	Symbolic
Industry Associations	No	Symbolic
Any other Party	Need to prove their interest in the investigation	

INDIAN TRADE REMEDY REDRESSAL SYSTEM

- Directorate General of Trade Remedies, New Delhi is responsible agency to address trade remedy issues in India
- It conducts following investigations to safeguard interest of Indian Industries
 - Antidumping Investigations
 - CVD Investigations
 - Anti Circumvention Investigations
 - Safeguard Investigations
- DGTR has online portal “ARTIS” for filing of documents online by Indian Producers
- It also has Trade Defense Wing to protect Indian Exporters facing CVD investigations from foreign countries
- It runs a Help Desk & Facilitation Centre to help MSMEs, Domestic Industries of India, Indian Exporters and provide information on Non Tariff Measures world wide

DIRECTOR GENERAL OF TRADE REMEDIES (INDIA)



INDIAN LEGISLATIONS ON TRADE REMEDY

- Customs Tariff Act, 1975
 - Sections 9A, 9B, 9C for Anti-Dumping
 - Sections 9, 9B, 9C for Countervailing Duties
 - Sections 8B for Safeguard Duty
- Customs Tariff Rules, 1995 (AD Rules)
- Customs Tariff Rules, 1995 (CVD Rules)
- Customs Tariff Rules, 1997 (Safeguard Rules)
- Foreign Trade Development and Regulation Act 1992 amended in 2010 (Section 9A -Chapter IIIA on Quantitative Restrictions)
- Quantitative Restrictions Rules, 2012
- Applicable Rules along with the relevant extracts from the GATT Agreement (Article VI and XIX of GATT, 1994)
- The details of formats, questionnaires and notifications concerning respective investigations are available on the website www.dgtr.gov.in

DGTR INDIA : ANTIDUMPING PROFORMAS / QUESTIONNAIRES

- Proforma of Fresh Application by Domestic Industry
- Proforma of Application for Mid Term Review
- Proforma of Application for Sunset Review
- Proforma of Application for New Shipper Review
- Check List for Producers In India for Application Submission
- Exporters Questionnaires
- Importers Questionnaires
- User Industry Questionnaires

DGTR AD INVESTIGATION STAGES- ORIGINAL, MID-TERM & SUNSET REVIEWS

Stages	Process	Department Action
Receipt of Complete Application / Petition (Change in Interested Parties too for MTR)	Allot Case ID & Refer to IO / CO	Deficiency Letter / Hearing
Intimation to Embassies of Exporting Countries u/r 5(5), not must for MTR / SSR	Internal	Analysis
DG Rejection of Application/ Approval for Initiation	Internal	Rejection Order / Notice of Initiation
Communication to Interested Parties { Rule 6-(2),(3),(4)}	Internal	NCV Folder for Inspection by Registered Interested Parties {Rule 6(7)}
Receipt of Questionnaire Response { Rule 6(4)}	Participation	Verification to Domestic Industries & Report
Injury Analysis & Calculation of NIP, NV/CNV	Internal	Internal
Preliminary Findings u/r 12 (Not for SSR)	Participation	Oral Hearings u/r 6(6)
Exporters Verification	Foreign Visit	Report and calculation of NV, NEP & LV
Post Hearing Written Submissions & Rejoinders	Participation	Compilation
Disclosure Statement u/r 16 (DS)	Participation	Receipt of Comments of DS
Final Finding Notification u/r 17	Internal	Remedial Measures notified by Department of Revenue

THANK YOU

