

ANTI-DUMPING PRACTICES IN TURKEY

Introduction

Turkey pursued import substitution policy within the context of industrialisation strategy until 1980's. During this period, domestic industries were protected from foreign competition by means of high tariffs and restrictions on imports. Starting from 1984, import substitution policy was replaced by a liberal import policy and domestic markets were opened to foreign competition by gradual reduction of customs duties and abolition of restrictions.

History and Legal Background

Following the adoption of the import liberalisation policies after 1980, the need to protect the domestic industries from unfair trade practices occurred. Consequently, Turkey enacted her first anti-dumping code in 1989, namely, the Legislation on Prevention of Unfair Competition in Importation, comprising of the Law No: 3577 which is amended by the Law No:4412, the Ministerial Decree No: 99/13482 and the Regulation, which covers the provisions on the protection from dumped imports. It has been formulated in accordance with the provisions of Tokyo Round Anti-Dumping Code of GATT which has regulated the technical and official procedures.

Accordingly, Turkey signed the Final Act of the Uruguay Round and the Marrakesh Agreement Establishing the World Trade Organisation. The mentioned Agreement has been ratified by the Grand National Assembly with the Law dated 26/1/1995 and numbered 4067. In that respect, the WTO Anti-Dumping (A-D) Agreement has the force of law in Turkey by virtue of the Turkish Constitution and Turkey adheres to the provisions of this Agreement.

To this end, WTO Anti-Dumping Agreement is the main reference for the Turkish anti-dumping authority. In practice, the said Agreement is fully observed by Turkey. Moreover, in cases of conflict the Agreement has precedence over the domestic legislation.

Authority

In Turkish anti-dumping system there are two separate bodies, which are the "Board of Evaluation of Unfair Competition in Importation" (the Board) and the "Department of Dumping and Subsidy Investigation" (the Department).

The Board is an independent body consisting of 8 members, representing 7 different public institutions and non-profit organisations. The Board is empowered to take decisions for the initiation of an investigation, acceptance of undertakings, termination of an investigation or imposition of anti-dumping duties.

The Department is subordinated to the Prime Ministry Undersecretariat for Foreign Trade, Directorate General for Imports. The Department is entitled to make preliminary examination upon complaint, to present proposals to the Board on whether to initiate an investigation or to take measures and to carry out such investigations.

Anti-Dumping Measures Applied by Turkey

Turkey has initiated **184 anti-dumping investigations** and **111 anti-dumping duties** have been put into force, **as of 18 May 2005**. At the moment, **66 anti-dumping duties** are in force.

Investigation Procedures

Application

In order to apply for a dumping investigation, the party alleging to have been injured by the dumped imports must fill out the questionnaire annexed to the Regulation. In cases where the application is found to be properly documented so as to include the evidence of dumping, injury and a causal link between the allegedly dumped imports and injury, the authority examines that application. In such a case, the government of the exporting country concerned is notified before proceeding to initiate an investigation.

Preliminary Analysis

A complaint has to be made by or on behalf of the domestic industry whose production represents at least 25% of the total production of the like product in Turkey and more than 50% of the production realised by those producers that either support or oppose to the complaint.

In the course of the preliminary analysis, it should be determined that the application contains sufficient evidence regarding the existence of dumped imports, injury caused by dumped imports and the causal link between them.

Initiation of Investigation

Following the completion of the preliminary analysis in 45 days maximum, the case is brought before the Board for the decision whether to initiate an investigation or not.

If the Board decides to initiate an investigation, a communiqué is published in the Official Gazette and the representative of the exporting country subject to investigation and other known interested parties are notified.

A non-confidential copy of the complaint and questionnaires are sent to known exporters, importers and producers. Questionnaires are to be responded within 30 days following the receipt of the questionnaires in 7 days.

Duration of an Investigation

An investigation shall normally be concluded within one year, but this period can be extended up to eighteen months in special circumstances.

Dumping Margin

During the course of the investigation, export price, actual or payable, and normal value are determined by using the methods described in the domestic regulation and the A-D Agreement.

The normal value is determined as the price actually paid or payable in the domestic market of the country of origin, or, in special circumstances, the comparable export price of the country subject to investigation to a third country, or the constructed value established by adding an appropriate profit margin to the cost of production of the product in the country of origin.

The third step is the calculation of the dumping margin by comparing the export price and normal value at the same level of trade. In case where levels of trade differ, they are to be brought to the same level.

Injury Determination

The term injury covers three modalities, which are material injury, threat of material injury and material retardation of the establishment of a domestic industry.

For determination of injury, the factors evidencing injury on the domestic industry, such as the volume, market share and price trend of dumped imports and other factors are evaluated by the authority. Besides, the consequences of these factors on the domestic industry, especially on the figures for employment, production, capacity, capacity utilisation ratio, sales prices, profitability etc., are assessed.

On-the-spot Investigation

In order to verify the information provided or to obtain further details, on-the-spot investigations can be carried out at the premises of the producer(s)/exporter(s) in the exporting country and domestic producer(s).

In cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

Hearing

Before a final determination regarding an anti-dumping investigation is made, the essential facts under consideration (final disclosure) which establish a basis for the decision whether to apply definitive measures, are disclosed to the interested parties.

Following this disclosure, or at any stage of the investigation, interested parties, individually or collectively, may be given the opportunity to present their views or oppositions about the procedure of the investigation upon request by the Undersecretariat for Foreign Trade Directorate General for Imports or any other interested party.

Provisional Measure

Provisional measures may be applied after the first 60 days of the investigation only if a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and if such measures are necessary to prevent the injury being caused during the investigation. Interested parties are informed of the decision of a provisional measure via a communiqué published in the Official Gazette.

The duration of provisional measures is 4 months, but this period may be extended up to 6 months upon request by exporters representing a significant percentage of the trade involved. Moreover, when the authorities decide that a duty lower than the dumping margin would be sufficient to remove injury, then these periods may be 6 and 9 months, respectively.

Price Undertaking

The exporters, or the authority, during the course of the investigation can offer price undertakings. If such undertakings are accepted, the investigation may be suspended or terminated without measure.

Definitive Measure

The amount of anti-dumping duty to be imposed can be the full dumping margin or less. If a duty less than the dumping margin is adequate to remove the injury on the domestic industry, such lesser amount can be imposed. Turkey systematically applies this lesser duty rule since 1989.

A definitive anti-dumping duty, which is assessed on a prospective basis in Turkish practice, may remain in force as long as and to the extent necessary to counteract dumping which is causing injury. However, pursuant to the provisions of the A-D Agreement, any definitive anti-dumping duty shall be terminated not later than 5 years from its imposition date, or from the date of the most recent review covering both dumping and injury unless the authorities, in a review initiated before the expiry date on their own initiative or upon request by the domestic industry, determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

Review of the Anti-Dumping Duties

Definitive duties may be reviewed upon written application by any interested party, which submits positive information substantiating the need for a review, provided that at least one year has elapsed from the date of imposition of the definitive duty.

As a result of a review investigation carried out, the definitive duty in force may either be revoked or remain at the same amount or be increased or decreased.

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