



WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
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WORLD TRADE
ORGANIZATION

Trade Remedies & Trade Rules

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Background and Rationale

Trade liberalization



May have adverse effects for domestic industries

May give rise to «unfair» trading practices

May bring about «excessive» import competition

Trade remedy measures

Trade remedies allow for “exceptions” to principle WTO obligations in certain circumstances

WTO AGREEMENTS ON TRADE REMEDIES

Dumping

- Agreement on Application of Article VI of the GATT 1994 (Anti-Dumping Agreement)
- GATT 1994

Subsidy

- Agreement on Subsidies and Countervailing Measures
- GATT 1994

Safeguards

- Agreement on Safeguards
- GATT 1994

CONDITIONS AND OTHER FACTORS

- Anti-Dumping measures
 - Dumping
 - Material Injury to Domestic Industry
 - Causal Link
- CVD Measures
 - Countervailable Subsidies
 - Material Injury to Domestic Industry
 - Causal Link
- Safeguard Measures
 - Imports in such increased quantities , absolute or relative to domestic production
 - as to cause or threaten to cause serious injury
 - (plus additional factors)

What is dumping?

- Usually, when an exporter sells a product to the importing country at a lower price than its “normal value”...that is, the price at which the same (“like”) product is sold in its own domestic market
- More specifically, NV is normally as defined by Art. 2.1:
 - the **comparable** price
 - in the **ordinary course of trade**
 - for the **like product**
 - when destined for consumption in the exporting country
 - **Export price** (price at which a product is introduced into the importing market - before customs duties)
- Dumping if Domestic price of exporter > Export price

Dumping Margin = (Adjusted NV-Adjusted EP) / Adjusted EP

Under Art 4. **Domestic industry** is defined as:

- The domestic producers (in the importing country) as a whole of the like product
- OR
- The producers whose collective output of the product constitutes a major proportion of the domestic production of the like products
 - Can exclude producers related to foreign producers
-
- Under Art 3.1
 - The **determination of injury** must be based on **positive evidence** and involve an objective examination of:
 - Volume of the dumped imports
 - Effect of the dumped imports on prices in the domestic market for like products
 - Consequent impact of these imports on domestic industry
-
- Under Art 3.5 a Causal relation ship needs to be established, there are **No specific tests or criteria**
 - **It must be demonstrated that the dumped imports cause injury through the effects of dumping**
 - **Injury caused by other factors not to be attributed to dumped imports**

Anti-Dumping Measures

Investigation

Initiated as a rule at the request of the domestic industry

Existence of dumping

Existence of material injury

Causal link between dumped imports and material injury (or threat thereof)

- **Provisional measures (if necessary)**
- **Measures (final)**
 - Increased customs duties (Maximum = dumping margin) “Lesser duty” rule
- **Price undertakings**
 - Voluntary on the part of the exporter (so ending the investigation)
- **“Sunset” normally after 5 years**
- **Review**

Notification Requirements

- Article 18.5 of the AD Agreement requires Members to notify their domestic laws and/or regulations relating to anti-dumping to the Anti-Dumping Practices Committee (ADP Committee). These notifications are in the form of the full texts of the relevant laws and/or regulations. Any modification to the laws, regulations or administrative procedures must be notified promptly. Members that have no anti-dumping laws or regulations should notify that fact by providing a nil notification.
- Article 16.4 requires Members to report without delay all preliminary or final anti-dumping actions taken
- Article 16.4 also requires Members to submit a report of all anti-dumping actions they have taken, as well as a list of all anti-dumping measures in force, twice a year.
- A format for these reports, with detailed instructions adopted by the ADP Committee, can be found in document **G/ADP/1/Rev.1**.
- Members that have not taken any actions during a covered period and have no ongoing investigations or proceedings or measures in force do not need to use the format but shall instead submit a nil notification (simple two sentences indicating that no actions have been taken during that period; i.e. a nil notification).

Notification Template

SEMI-ANNUAL REPORT OF ANTI-DUMPING ACTIONS²

For the period 1 January-30 June 2007

Original Investigations

Country or customs territory	Product	Initiation	Provisional measures and preliminary determinations	Final measures		No final measures / termination	Other	Trade data (from published report(s))		Basis for normal value determination
				Definitive duty	Price undertaking			Import volume or value (units / currency); product coverage, period, if different from cols. 2 / 3	Import volume as % of apparent domestic consumption or as % of total imports	
	Description; HS 6-digit category covering investigated product ³ ; ID number; (*) if investigation of >1 country	Date; period of investigation (D-dumping; I-injury)	Date of duties; range of individual dumping margins; "other" rates; [range of applied rates if different, reason]	Date of duties; range of individual dumping margins; "other" rates; [range of applied rates if different, reason]	Date of application; range of individual dumping margins or minimum prices	Date, Reason	Date, explanation	Import volume or value (units / currency); product coverage, period, if different from cols. 2 / 3	Import volume as % of apparent domestic consumption or as % of total imports	Codes for all bases used in proceeding;
1	2	3	4	5	6	7	8	9	10	11
Alpha	Coated ground-wood paper (*); xxxx.xx; 06-0001	04.05.2006 D: 1-12/2005; I: 1/2003-12/2005	12.10.2006 8-21%	03.02.2007 5-18%; [9.5% LDR] new shpr: 15%	03.02.2007 \$3-4/kg min. pr.			32,000 MT (2005)		HMP CV
Alpha	Machine tufted carpeting; yyyy.yy; 05-0062	12.30.2005 D: 10/2004-9/2005; I: 1/2003-12/2005		03.01.2007 (P) 30.01.2007 (C) 12-32%; all other: 25%				CF		TMP (USA)
Beta	Coated ground-wood paper(*); xxxx.xx; 06-0002	04.05.2006 D: 1-12/2005; I: 1/2003-12/2005	12.10.2006 1-3%			03.02.2007 no dumping		23,000 MT (2005)		HMP

Subsidies and Countervailing Measures(SCM)

- A Subsidy is defined as:

- ◆ **Financial contribution ...**

- Direct transfers of funds
- Potential direct transfers of funds
- Potential direct transfers of funds or liabilities
- Public revenue foregone or not collected
- Provision of goods or services

- ◆ **By a government ...**

- Or any public body, operating on behalf of or under instructions from the government

- ◆ **Whereby a benefit is conferred**

- To be determined in relation to the market (example: preferential loans)

If any of these three elements is missing, then the measure (programme, scheme, etc.) is **NOT** a subsidy under the SCM Agreement

Specificity

- Assuming that a measure is a subsidy within the meaning of the SCM Agreement, it nevertheless is not subject to the SCM Agreement unless it has been **specifically provided to an enterprise or industry or group of enterprises or industries**. Thus, only “specific” subsidies are subject to the SCM Agreement disciplines. There are four types of “**specificity**” within the meaning of the SCM Agreement:
 - Enterprise-specificity. A government targets a particular company or companies for subsidization;
 - Industry-specificity. A government targets a particular sector or sectors for subsidization.
 - Regional specificity. A government targets producers in specified parts of its territory for subsidization.
 - Prohibited subsidies. A government targets export goods or goods using domestic inputs for subsidization.

The basic principle is that a subsidy that distorts the allocation of resources within an economy should be subject to discipline. Where a subsidy is widely available within an economy, such a distortion in the allocation of resources is presumed not to occur.

Actionable subsidies (Art.5)

- “No Member should cause, through the use of any subsidy ..., adverse effects to the interests of other Members, i.e.:
 - **Injury** to the domestic industry of another Member
 - **Nullification or impairment** of benefits accruing directly or indirectly to other Members
 - **Serious prejudice** to the interests of another Member
- **What is serious prejudice?**
 - ✓ **Displace** or **impede** imports of like product into subsidizing country market
 - ✓ **Displace** or **impede** exports of like product from third-country market
 - ✓ Significant **price undercutting, price suppression, price depression, or lost sales** of like product in same market
 - ✓ **Increased world market share** for primary commodity

SCM: Remedies

- Can apply countervailing duties
 - Only following an investigation
 - Initiation by or on behalf of the domestic industry
 - Existence of a specific subsidy
 - Existence of injury, nullification of benefits, or prejudice
 - Causal link

- ***DE MINIMIS***

No action if the subsidy is less than **1% of the value** of the product (2% for developing countries; 3% for LDCs and the poorest developing countries) or if the **volume of imports is less than 4%** of total imports (9% of total imports collectively)

SCM: Measures

□ **Increase in customs duties**

- Maximum = effect of the subsidy
- “Lesser duty” principle

- **Subsidy undertakings**: The Agreement places limitations on the use of undertakings to settle CVD investigations, in order to avoid Voluntary Restraint Agreements or similar measures masquerading as undertakings

□ **Price undertakings**

- voluntary, by the exporter (putting an end to an investigation)
- “**Termination**”, in principle, after 5 years (can be extended)
- **Review**: The Agreement requires that Members create an independent tribunal to review the consistency of determinations of the investigating authority with domestic law.

Notifications

- **Article 25.2** requires notification **every two years** of any subsidy as defined in the Agreement, which is specific, as also defined in the Agreement.
- **Article 32.6** of the SCM Agreement requires Members to notify their domestic laws and/or regulations relevant to countervailing duties to the Committee on Subsidies and Countervailing Measures (SCM Committee).
- Article 25.11 of the SCM Agreement requires Members to notify, without delay, all preliminary or final countervailing duty actions taken and also to submit a report of all countervailing duty actions they have taken, as well as a list of all countervailing measures in force **every six months**. A format for these reports, with detailed instructions adopted by the SCM Committee, can be found in document **G/SCM/2/Rev.1**.
- The Committee adopted a notification format under Articles 25.11 and 25.12 of the SCM Agreement (G/SCM/129) which provides for a so-called "**onetime notification**" for Members that have not yet established an investigating authority and, accordingly, have not taken any countervailing duty action, as a one-time notification that would remain valid until such time as the Member establishes a competent authority, and/or takes any countervailing action



Template

SEMI-ANNUAL REPORT OF COUNTERVAILING DUTY ACTIONS²

For the period 1 January-30 June 2007

Original Investigations

Country or customs territory	Product	Initiation	Provisional measures and preliminary determinations	Final measures		No final measures / termination	Other	Trade data (from published report(s))		Countervailed programme(s)
				Definitive duty	Undertaking			Import volume or value (units / currency); product coverage, period, if different from cols. 2 / 3	Import volume as % of apparent domestic consumption or as % of total imports	
1	2	3	4	5	6	7	8	9	10	11
Alpha	Coated ground-wood paper (*); xxxx.xx; 06-0001	04.05.2006 S: 1-12/2005; I: 1/2003-12/2005	12.10.2006 8-21%	03.02.2007 5-18%; [9.5% LDR] new shpr: 15%	03.02.2007 \$3-4/kg min. pr.			32,000 MT (2005)		
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Beta	Coated ground-wood paper(*); xxxx.xx; 06-0002	04.05.2006 S: 1-12/2005; I: 1/2003-12/2005	12.10.2006 1-3%			03.02.2007 no subsidization		23,000 MT (2005)		

Safeguards

- A safeguard measure is a **temporary** “emergency” measure applied to remedy the effects of **increased (not unfair)** imports that **cause or threaten** to cause serious injury to a domestic industry.
- The SG Agreement, which explicitly applies equally to all Members, aims to:
 - (i) clarify and reinforce GATT disciplines, particularly those of Article XIX;
 - (ii) re-establish multilateral control over safeguards and eliminate measures that escape such control; and
 - (iii) encourage structural adjustment on the part of the industries adversely affected by increased imports, thereby enhancing competition in international markets.
- Article 1 establishes that the SG Agreement is the vehicle through which measures may be applied pursuant to Article XIX of GATT 1994. That is, any measure for which the coverage of Article XIX (which allows suspension of GATT concessions and obligations under the defined "emergency" circumstances) is invoked, must be taken in accordance with the provisions of the SG Agreement.
- Article 2 sets forth the conditions under which safeguard measures may be applied. These conditions are: (i) **increased imports** and (ii) **serious injury or threat thereof** caused by such increased imports. It also contains the requirement that such measures be applied on an **MFN** basis.
- The determination of increased quantity of imports that a Member must make before it may apply a safeguard measure can be of either an **absolute increase** or an **increase relative** to domestic production.

Safeguards

- The Agreement defines “**serious injury**” as a significant **overall impairment** in the position of a domestic industry. In determining whether serious injury is present, investigating authorities are to evaluate all **relevant factors** having a bearing on the condition of the industry.
- Relevant factors:
 - ✓ Increased imports (value and volume)
 - ✓ Market penetration of imports
 - ✓ Changes in sales
 - ✓ Production
 - ✓ Productivity
 - ✓ Capacity utilization
 - ✓ Profits / losses
 - ✓ Employment

A “**domestic industry**” is defined as the producers as a whole of the **like or directly competitive** products operating within the territory of a Member, or producers who collectively account for a major proportion of the total domestic production of those products.

Safeguards

- A determination of **serious injury** cannot be made unless there is **objective evidence** of the existence of a **causal link** between increased imports of the product concerned and serious injury. Further, when factors other than increased imports are causing injury to the domestic industry at the same time, such injury must not be attributed to increased imports.
- Imposition of New Safeguards only after an **investigation** conducted by **competent** authorities establishing a **causal link** between **increased imports** and **serious injury** (or threat of) to domestic industry
- **Provisional safeguard measures**
 - Under critical circumstances, defined as circumstances where delay would cause damage that would be difficult to repair, provisional measures may be imposed, on the basis of a preliminary determination that there is clear evidence that increased imports have caused or threaten to cause serious injury. Such measures should be in the form of refundable tariff increases, and may be kept in place for a maximum of 200 days. The period of application of any provisional measure must be included in the total period of application of a safeguard measure.

Safeguards

- **Definitive safeguard measures**
 - Increased tariffs
 - Quotas (if necessary and not below average level of last 3 years unless otherwise justified)
 - Fixed amount added to import price
 - Combination of quota and tariff
- MFN principle, as a rule (Must be applied to all imports irrespective of their source);
- Safeguards shall be applied **only for the period of time necessary** to prevent or remedy serious injury and to facilitate structural adjustment.
- Maximum duration of 4 years possibility of extension (max. + 4 years); **Midterm review** if the measures were applied for more than **three** years.
- **Compensation Mechanism**
 - In principle (agreement on compensation)
 - If no agreement :
 - “retaliation”
 - not within the first 3 years (if absolute increase in imports)

Compensation Mechanism

Article 8

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a **substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members** which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the **affected exporting Members shall be free**, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that **the safeguard measure has been taken as a result of an absolute increase in imports** and that **such a measure conforms to the provisions of this Agreement**.

S&D Provisions

- When developing countries are affected by a safeguard measure: The Measures **are not** applicable where imports:
 - Do not exceed 3 per cent of total imports individually or
 - unless developing countries under 3 per cent together account for more than 9 per cent of total imports
- When developing countries apply measures they:
 - **Longer extension of application:** 2 additional years (Total application (i.e. $8+2=10$))
 - **Can re-apply safeguard measures sooner:** Special rules limit re-application of safeguard measures to a given product. Ordinarily, a safeguard may not be applied again to a product until a period equal to the duration of the original safeguard measure has elapsed provided that such period of non-application must generally be at least two years. Developing countries can re-apply the measure after a period equal to half of the duration of the original measure (so long as this period is at least two years)

Notifications

- Under Art. 12.6 - “one-time” Notification of laws, regulations and administrative procedures need to be submitted to the CRN, If a Member does not have any, it is enough to submit a one sentence notification to that effect.
- Under Art. 12.1(a), (b), (c) initiation of investigation, findings, and decision need to be notified. These are done on an *ad-hoc* basis meaning that they become due only when a specific action is taken by a Member.
- **WTO Trade Remedies Data Portal**
 - <https://trade-remedies.wto.org/en>

State Trading Enterprises

- State trading enterprises can be broadly described as enterprises, **whether governmental or not**, to which a member has **granted exclusive or special rights or privileges**, and that in the exercise of those rights or privileges **are able to influence the level or direction of imports or exports of goods** through their purchases or sales of goods. The most obvious examples are import or export monopolies, but there are many more types of state trading enterprises.
- The WTO agreements on trade in goods contain two sets of requirements on state trading enterprises:
 - (a) **transparency**, i.e. a requirement for members to notify relevant information; and
 - (b) **substantive obligations**, essentially requiring members not to use state trading enterprises to circumvent other **WTO obligations**.

STEs

- [Article XVII](#):1(a)-(b) of the GATT 1994 applies to "State enterprises", and to enterprises to which a member grants exclusive or special privileges and which are engaged in purchases or sales of goods.;
- Article XVII:1(a) commits members to ensure that such enterprises act, in their purchases or sales involving imports or exports, in accordance with the "general principles of non-discriminatory treatment" that the GATT 1994 lays down for governmental measures. Article XVII:1(b) adds that this is "understood to require that such enterprises shall ... make any such purchases or sales solely in accordance with commercial considerations ... and shall afford ... other contracting parties adequate opportunity ... to compete for participation in such purchases or sales."
- An [Interpretative Note](#) to Articles XI, XII, XIII, XIV, and XVIII specifies that the disciplines on import and export restrictions contained in these provisions apply equally to "restrictions made effective through state trading operations."
- This means that the general prohibition on quantitative restrictions on imports or exports as well as the rules that apply to quantitative restrictions when these are exceptionally allowed apply equally to restrictions made effective through state trading operations.
- Thus, for example, if a member granted an import monopoly to an enterprise, and that enterprise refused to import, this would be equivalent to the member itself prohibiting importation.

Notifications

- In line with Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, all members must submit a notification of state trading enterprises **every two years**.
- Members have agreed on a "working definition" of state trading enterprises for purposes of notifications in paragraph 1 of the [Understanding on the Interpretation of Article XVII](#) of the GATT 1994.
- "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."
- Members that maintain one or more enterprises falling within the definition must make their notification by completing the STE questionnaire available in document [G/STR/3/Rev.1](#), whereas members that do not maintain any such enterprise must simply notify that this is the case.
- <https://notifications.wto.org/en/notification-status/state-trading-enterprises>

Notifications

WORLD TRADE ORGANIZATION

G/STR/3/Rev.1
14 November 2003

(03-6117)

Working Party on State Trading Enterprises

QUESTIONNAIRE¹ ON STATE TRADING

Name of Member

Revision

I. ENUMERATION OF STATE TRADING ENTERPRISES

- A. *Identification of state trading enterprises.*
B. *Description of products affected (including tariff item number(s) encompassed in product description).*

II. REASON AND PURPOSE

- A. *Reason or purpose for establishing and/or maintaining state trading enterprise.*
B. *Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers.*

III. DESCRIPTION OF THE FUNCTIONING OF THE STATE TRADING ENTERPRISE

- A. *Summary statement providing overview of operations of the state trading enterprise.*
B. *Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise.*
C. *Type of entities other than the state trading enterprise that are allowed to engage in importation/exportation and conditions for participation.*
D. *How import/export levels are established by the state trading enterprise.*
E. *How export prices are determined.*
F. *How the resale prices of imported products are determined.*
G. *Whether long-term contracts are negotiated by the state trading enterprise. Whether the state trading enterprise is used to fulfil contractual obligations entered into by the government.*
H. *Brief description of market structure.*

IV. STATISTICAL INFORMATION (SEE ATTACHED TABLES I - III)

V. REASON WHY NO FOREIGN TRADE HAS TAKEN PLACE (AS APPROPRIATE)

VI. ADDITIONAL INFORMATION (AS APPROPRIATE)

TABLE I

STATE TRADING: NAME OF STATE TRADING ENTERPRISE

STATISTICAL INFORMATION, IMPORTS

Description of product(s) (including HS number(s))	Total quantity imported ¹	Quantity imported by state trading enterprise ¹	Average import price	Average representative domestic sales price	Mark-up ²	National production
1	2	3	4	5	6	7

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