



## **MARS & Partners**

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### **ANTI-DUMPING DUTY**

In trade parlance, Dumping is said to have taken place, when an exporter sells a product in a foreign country at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping is per se not condemnable as it is recognized that producers sell their goods at different prices to different market depending upon the supply and demand conditions. It is also recognized that price discrimination in the form of dumping is a common international commercial practice. Therefore, from the point of view of anti-dumping practices, there is nothing inherently illegal or immoral about the practice of dumping.

However, where dumping causes or threatens to cause material injury to the domestic industry of the importer country, it can initiate necessary action for investigations and subsequent imposition of anti-dumping duties.

#### **Legal Framework on Anti-Dumping in India:**

- The principle of imposition of anti-dumping duties was propounded by the Article VI of General Agreement on Tariffs & Trade (GATT) 1994 - Uruguay round
- Indian legislation in this regard is contained in Section 9A and 9B (as amended in 1995) of the Customs Tariff Act, 1975
- Further regulations are contained in the Anti-Dumping Rules [Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995]
- The Designated Authority for conducting investigations pertaining to Anti-Dumping issues and on basis thereof, for forwarding its recommendations is the Ministry of Commerce, Government of India.
- The responsibility for Imposition and Collection of duties as imposed / recommended by the Adjudicating authority is imposed upon the Ministry of Finance, Government of India.

#### **When Dumping takes place?**

Dumping occurs when the export price of goods imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter. Imports at cheap or low prices do not per se indicate dumping.

It is very important to understand what is "Normal Value"?

The normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country or territory.



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If the normal value cannot be determined by means of domestic sales, the Act provides for the following two alternative methods:

- Comparable representative export price to an appropriate third country.
- Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and for profits.

### **Export Price:**

The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

If there is no export price or the export price is not reliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer.

### **Who can file an Application?**

Anti-dumping action can be taken only when there is an Indian industry which produces "like articles" when compared to the allegedly dumped imported good. The article produced in India must either be identical in all respects or one having characteristics closely resembling to the dumped goods.

A dumping investigation can normally be initiated only upon receipt of a written application by or on behalf of the "Domestic Industry" to the Designated Authority in the Ministry of Commerce for an investigation of any alleged dumping. The designated Authority may initiate an investigation when there is sufficient evidence that dumped imports are causing or are threatening to cause material injury to the Indian industry producing like articles or are materially retarding the establishment of an industry.

In order to constitute a valid application, the following two conditions have to be satisfied:

- The domestic producers expressly supporting the application must account for not less than 25% of the total production of the like article by the domestic industry in India; and
- The domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and those opposing the application.

### **Relief to Domestic Industry:**

Relief can be provided to the domestic industry in the form of anti-dumping duties or price undertakings.



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Duties are imposed on a source specific basis and can be expressed either on ad valorem or specific basis. The Designated Authority may suspend or terminate investigation, if the exporter concerned furnishes an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be. No undertaking can however be accepted before preliminary determination is made.