

*Shaping the International Trade*

# TRADE REMEDIAL MEASURES

FREQUENTLY ASKED  
QUESTIONS



सत्यमेव जयते

DIRECTORATE GENERAL OF TRADE REMEDIES  
DEPARTMENT OF COMMERCE  
MINISTRY OF COMMERCE & INDUSTRY  
GOVERNMENT OF INDIA



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**ANUP WADHAWAN**



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## **FOREWORD**

This booklet aims to document in one place the issues and the clarifications relating to the fundamental concepts and procedural provisions of trade remedial measures. India is firmly committed to the principle of free and fair trade among nations, which is at the core of the multilateral trade order established by the WTO.

2. Anti-Dumping/countervailing/safeguard measures are in the nature of trade remedies, which the domestic industry could invoke for protection against unfair practices subject to the fulfilment of essential conditions and criteria as mandated under law. While the Government has put in place the requisite legal and institutional mechanism for administering these measures, the various concepts and the legal and operational aspects involved need to be widely understood in their true perspective.

3. The present booklet has been prepared in the form of a ready reckoner with the objective of disseminating information and generating public awareness on the subject of trade remedial measures. It provides a comprehensive explanation of the anti-dumping, countervailing and safeguard law and procedures in India. It is in the form of answers to commonly asked questions on various aspects of anti-dumping, countervailing and safeguard measures.

4 I am sure this publication will serve as an easily comprehensible guide on trade remedial measures in India and will be useful to all stakeholders.

New Delhi

  
**(Anup Wadhawan)**



**Sunil Kumar, IAS**  
**ADDITIONAL SECRETARY**  
&  
**DIRECTOR GENERAL TRADE REMEDIES**



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व्यापार उपचार महानिदेशालय  
वाणिज्य एवं उद्योग मंत्रालय  
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## **INTRODUCTION**

Under the existing WTO arrangement, and in terms of various provisions under the Customs Tariff Act of 1975 (as amended in 1995) and Rules framed thereunder, anti-dumping/Countervailing/Safeguard measures constitute the legal framework, within which the domestic industry can seek necessary relief and protection against dumping /subsidization/sudden surge in imports respectively, of goods and articles by exporting companies and firms of any country from any part of the world.

These Trade remedial measures are complex legal disciplines which are often not within the easy comprehension of the trade and industry who are the users of these measures. To obviate this difficulty faced by large sections of the domestic industry, there is a need to explain the basic concepts, legal provisions and procedural aspects in clear and easy language for their benefit. This will facilitate the domestic industry to avail these remedial measures.

However, it is always necessary to bear in mind that the anti-dumping/Countervailing/Safeguard action can never be an action based on presumption and vague complaints and only on very rare occasions suo-moto proceedings can be initiated. The requisite parameters of law have to be duly complied with and need to be fully supported and substantiated with facts and figures before any action could be initiated.

It is our earnest hope that all the Industry Associations and individual companies interested in Trade remedial measures will find this booklet useful. They are always welcome to come forward with their suggestions and seek further clarifications based on which this booklet would be revised as and when necessary.

**(Sunil Kumar)**  
**Additional Secretary and Director General of**  
**Trade Remedies**



## DISCLAIMER

The FAQs are some of the questions that are generally asked during the various outreach programmes conducted by this office for the benefit of Indian Industry especially those located in far off or remote locations.

The questions and answers have been compiled for informational purposes only. These are not intended to be exhaustive and should not be construed the exact legal advice for a particular topic/ question/ issue / concern. The information in simple language, however, is intended to serve merely as guidance to the beginners. This can also be subject to amendments.



## Abbreviations and Defined terms

S.No.	Abbreviation	Full Form
1.	DGTR	Directorate General of Trade Remedies
2.	ADD	Anti-Dumping Duty
3.	WTO	World Trade Organisation
4.	MTR	Mid-Term Review
5.	NSR	New Shipper Review
6.	SSR	Sunset Review
7.	CVD	Countervailing Duty



## GENERAL INFORMATION

### Q.1. What are various trade remedial measures administered by DGTR?

**Ans.** DGTR is bestowed with the responsibility of investigating and recommending various WTO compliant trade remedial measures viz. anti-dumping, countervailing, safeguard and quantitative restrictions.

- Anti-dumping duty is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect.
- Countervailing measures seek to counteract artificially low prices that are a result of subsidies or assistance granted by the Government in the exporting country to its local industry. Subsidies can be in form of subsidized loans, tax exemptions, indirect payments, etc., because of which exporters are able to export at lower prices.
- Safeguard measure is used when imports of a particular product increase unexpectedly to a point that they cause or threaten to cause serious injury to domestic producers of "like or directly competitive products". Safeguards measures give domestic producers a period of grace to become more competitive vis-a-vis imports.

### Q.2 What is the legal framework for Anti-Dumping, Anti Subsidy and Safeguard measures?

**Ans.** Legal Framework for various trade remedial measures is as under:

#### **Anti-dumping**

- Article VI of GATT 1994
- Agreement on Anti-Dumping
- Sections 9A and 9B of the Customs Tariff Act, 1975 as amended in 1995
- Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995

## Countervailing Duty

- Article VI of GATT 1994
- Agreement on Subsidies and Countervailing Measures
- Section 9 of Customs Tariff Act 1975 as amended in 1995
- Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995

## Safeguard measures

- Article XIX of GATT
- Agreement on Safeguards
- Section 8B of Customs Tariff Act, 1975
- Chapter IIIA of "The Foreign Trade (Development and Regulation) Act, 1992
- Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997
- Safeguard Measures (Quantitative Restrictions) Rules, 2012

Note: These Acts and Rules are in consonance with the WTO Agreements on Anti-Dumping, Anti-Subsidy/Countervailing measures and Safeguard measures.

### Q.3 What are the various subjects of international trade, which are outside the scope of DGTR?

**Ans.** Following are some of the matters, which are outside the scope of DGTR:

Sr. No.	Work outside the scope of DGTR	Concerned Department
1.	Matters pertaining to under-invoicing of goods	Department of Revenue
2.	Matters related to import duty/ inverted duty structure	Department of Revenue
3.	GST related matters	Department of Revenue
4.	Matters related to restricting import / export of goods	Directorate General of Foreign Trade
5.	Matters related to 'misclassification' of goods	CBIC & DGFT
6.	Matters related to 'wrong' certificate of origin	CBIC & DGFT

#### Q.4 Can the Authority initiate the trade remedial measures on suo moto basis?

**Ans.** Generally the Authority initiates the investigations for trade remedies action on the basis of a application received from the domestic industry.

However, the Rules also provide for *suo moto* initiation of trade remedies investigation by the Authority on the basis of information received from the Commissioner of Customs appointed under the Customs Act, 1962 or from any other source. In such circumstances, the Authority initiates the trade remedy investigation on its own without any complaint/application filed in this regard, provided the Authority is satisfied that there is sufficient evidence as to the existence of dumping/subsidy, injury and causal link between the alleged imports and the alleged injury. It is further clarified that after initiation, the *suo moto* investigation follows the same procedure as is followed in case of investigations initiated on the basis of applications received.

#### Q 5. Who can file an application for a Trade Remedies investigation?

- Ans.** a. 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.
- b. The application is deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.
- c. In case of anti-dumping/countervailing investigation, such producers may be excluded, who are related to the exporters or importers of the alleged subsidized article or are themselves importers thereof.

#### Q.6. What does the term "domestic industry" mean?

**Ans.** The "**domestic industry**" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term "domestic industry" may be construed as referring the rest of the producers.

#### Q.7. What does the term 'like article' mean?

**Ans.** The "**like article**" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

#### Q.8. Who are the interested parties to any trade remedy investigation?

**Ans.** The interested parties to various trade remedy investigation may include:

- The domestic industry on whose complaint the proceedings are initiated;
- The exporters or the foreign producers of the like articles subject to investigation;
- The importers of the same article subject to investigation;
- The Government of the exporting country/ countries.
- The trade or business associations of the domestic producers/user industries of the product under investigation.

#### Q.9. Whether is it necessary to get registered if the Questionnaire response has been filed?

**Ans.** Where an interested party files its questionnaire response, it shall be deemed to be registered as an interested party with the Authority, even if no written request for registration has been submitted.

#### Q.10. How the registration is to be done?

**Ans.** In order to get registered, the interested party shall, in writing, request the Authority to include it as an interested party within 40 days of initiation of investigation or such extended period as may be allowed by the Authority.

All the requests for the registration shall be sent to [dgdg.india@gov.in](mailto:dgad.india@gov.in) in accordance with Trade Notice 11/2018 dated 10th September 2018.

#### Q.11. Who all can appear in an investigation to represent the parties?

**Ans.** Any representative duly authorized by the petitioner/ interested parties/ Association etc. appear in an investigation to represent the concerned parties.

#### Q.12. What are the requirements for companies expressing support for any Anti-Dumping Duty / Countervailing Duty Petition / Application?

**Ans.** The requirements for the companies expressing support for an trade remedy application are:

- The supporter must be the producer of the product under consideration.
- They must provide the information as per Trade Notice No. 13/2018 dated 27/09/2018.
- The supporters should not be importers or related to exporter/importers of subject articles

#### Q.13. Can the Anti-Dumping and Anti-Subsidy measures be applied simultaneously?

**Ans.** GATT agreement as well as the Indian laws provides that the injured domestic industry is permitted to file for relief under the anti-dumping as well as countervailing duties.

#### Q.14. Who imposes the provisional or final Trade Remedial Measures ?

**Ans.** While the DGTR (in the Department of Commerce) recommends the provisional or final measures, it is the Ministry of Finance which acts upon such recommendation and imposes/levies such duty. For anti-dumping and countervailing measure, the duty has to be levied within three months from the date of provision or final recommendation by DGTR. In case of Safeguard Measures the recommendations are made Board of Safeguard.

#### Q.15. Where can the application for refund of duty be filed?

**Ans.** The application for the refund of duty can be filed in the Office of Competent Authority of CBIC so designated.

#### Q.16. What is the source of import data in the country?

**Ans.** The DGCI&S is the reliable source of information pertaining to import of any product in the country.

#### Q.17. What is the procedure for obtaining the DGCI&S transaction-wise import data?

**Ans.** A letter should be filed in DGTR for authorization to obtain the transaction-wise import data from DGCI&S after which it can be collected from DGCI&S, Kolkata. Generally, the data is provided within a week of payment of the fees. (Refer Trade Notice No. 1/2018 dated 2/1/2018 and Trade Notice No. 7/2018 dated 5/3/2018).

#### Q.18. Whether the trade remedial measures are appealable?

**Ans.** Appeals in case of anti-dumping and countervailing measure lie before CESTAT within 90 days from the date of imposition of duty by Central Government.

The orders of the CESTAT may be challenged before the High Court/Supreme Court of India. In certain limited circumstances such as violation of principle of natural justice, etc., the levy of duty may be challenged before the Hon'ble High Courts through an appropriate Writ petition.

In case of Safeguard duty, a Writ petition can be filed before the Hon'ble High Court and Hon'ble Supreme Court.

#### **Q.19. Can there be an appeal in case of negative final finding?**

**Ans.** Yes, as per the judgement of Hon'ble High Court of Delhi in the matter of Jindal Polyfilms Ltd vs. Designated Authority & ANR. dated 20.09.2018, the applicant has the remedy to first challenge the impugned order under Section 9C of the Customs Tariff Act before the Appellate Tribunal (CESTAT). Thereafter, the appeal can lie before the Hon'ble High Court and Hon'ble Supreme Court.

#### **Q.20. Are the interested parties to the investigation given sufficient opportunity to represent their case before the Authority?**

**Ans.** The anti-dumping proceedings being quasi-judicial in nature, the Authority meticulously follows the norms of natural justice before making the final determination of duty.

The interested parties to the investigation are given adequate opportunity to represent their case at during the course of investigation.

The first opportunity is provided after the initiation of the proceedings. The Authority duly considers the submissions of all interested parties in response to the initiation while giving its Preliminary findings, (if applicable).

After the imposition of provisional duty (if any), the interested parties file their responses within the stipulated time to the Preliminary findings and opportunity is also provided to them for submitting the facts and figures to the Authority at the stage of verification of their information.

A formal Oral hearing is held providing opportunities to all interested parties to make their submissions before the Authority. All oral submissions made during the hearing need to be reproduced in writing for the Authority to take the same on board.

All these submissions and rejoinders by all interested parties, are given due consideration and on that basis, the Authority issues a disclosure of essential facts which form the basis of final findings.

A Final opportunity is given to all the interested parties in the investigation to respond to the disclosure statement and represent their case before the final findings are notified.

**Q.21. Is there a requirement to select a period for the alleged and injury claimed in an application?**

**Ans.** The application must mention a period of investigation (POI) and the injury period. Normally, POI is for 12 months and injury period is comprised of 3 financial years immediately preceding the POI. The POI so selected should be recent and not older than 5 months as on the date of submission of an application.

**Q.22. How much time does it generally takes to initiate a trade remedial investigation?**

**Ans.** Anti-dumping investigations are generally initiated after examination of merits of the case, within 30 days of acceptance of an application. In countervailing investigation, as pre-consultation meetings are held with the Embassies of the subject countries, it usually takes 60-75 days to initiate a countervailing investigation from the date of acceptance of an application.

In Safeguard investigations, the accuracy and reliability of the data submitted by the applicant has to be ascertained. It may also include an onsite verification. Therefore, it may take about 90 days to initiate safeguard investigation.

**Q.23. Can there be an interim relief to the domestic industry pending the levy of final duty? In how many days such interim relief can be expected?**

**Ans.** Yes, the Authority can recommend an interim relief in form of provisional duty. It is provided to the affected domestic industry, pending the finalisation of investigation proceedings, under circumstances where delay would result in injury to the extent that would be difficult to repair.

The interim duty in case of Antidumping and CVD investigations can only be imposed after the expiry of 60 days from the date of initiation of the concerned investigation. The provisional duty in case of an antidumping investigation can remain in force for a period

not exceeding six months which is extendable to a period of nine months under certain circumstances. The provisional duty in a CVD investigation can remain in force for a period not exceeding four months. Provisional safeguard 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 and such duty shall remain in force only for a period not exceeding 200 days from the date on which it was imposed. The period of application of any provisional measure must be included in the total application of that measure.

The provisional anti-dumping duty/ countervailing duty/ safeguard duty is recommended by the Authority in its preliminary findings and the same is levied by the Ministry of Finance, Dept. of Revenue.

#### **Q.24. Can certain trade remedial measures be levied on a retrospective basis?**

**Ans.** Anti-dumping duty can be levied on a retrospective basis in case it is found that:-

- i. there is a history of dumping which caused injury or that the importer was, or should have been aware that the exporter practices dumping and that such dumping would cause injury; and
- ii. the injury caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

However, the anti-dumping duty cannot be levied retrospectively beyond 90 days from the date of issue of Notification imposing duty.

In a similar line, countervailing duty may be levied retrospectively from the date commencing 90 days prior to the imposition of provisional duty.

Safeguard Duty cannot be levied retrospectively.

**Q.25. If an application seeking imposition of anti-dumping duty or safeguard duty is rejected, can a fresh application be filed immediately? If not, then after how many days can a fresh application be filed?**

**Ans.** There is no prohibition under WTO Agreement or Indian Rules for a domestic industry to file application immediately after the previous application has been rejected without initiation of investigation. Similarly, if the investigation was initiated, but terminated without recommending any measures; a fresh application can be filed without any time gap, though WTO member countries believe that there should be some “cooling period” before a fresh application can be accepted. However, in practice, there is likely to be gap of about 12 months before a fresh application is filed due to the time taken in obtaining fresh import data and completion of various processes required in filing a duly documented application as per extant Rules and Trade Notices.

**Q.26. Where are the duty notifications issued by the Department of Revenue available?**

**Ans.** These are available on the website of CBIC at <http://www.cbic.gov.in/Customs-Notifications>.

**Q.27. What all informations are available on the website of DGTR?**

**Ans.** The following information is available on the website of DGTR:

- Ongoing and concluded investigations
- Application Proforma
- Questionnaires
- Trade Notices
- Compendium of laws and rules related to trade remedial measures etc.

**Q.28. How many times a duty can be extended under various trade remedial measures and for what duration?**

**Ans.** There is no restriction under the law with regard to the number of times the anti-dumping duty can be extended. However, the safeguard law provides that safeguard duty cannot exceed the period of ten years. Under dumping law, the anti-dumping duty can remain in force as long as necessary and so long as there is enough evidence that the withdrawal of anti-dumping duty shall lead to continuance or recurrence of dumping of goods.

## ANTI-DUMPING MEASURES

### Q.29. Does dumping mean cheap or low priced imports ?

**Ans.** In general parlance, dumping is considered to mean cheap or low priced imports. However, dumping in its legal sense under Trade Remedies Law means export of goods by a producer exporter in the exporting country to India at a price lower than its prevailing price in the domestic market of that country.

### Q.30. What are normal value, export price and dumping margin?

**Ans. Normal Value:** It is the comparable price of the like products at which the subject goods are sold in the ordinary course of trade, in the domestic market of the exporting country.

**Export Price:** It is generally the CIF value of the product exported, duly adjusted for ocean freight, insurance, commission, etc. so as to arrive at ex-factory export price of the product

**Dumping Margin:** It is the difference between the Normal Value and the Export Price of the alleged dumped articles at the same level of trade.

### Q.31 What are the essential requisites for initiating an Anti-dumping investigation?

**Ans.** For initiation of an Anti-dumping investigation, it is essential that sufficient evidence is available for dumping of alleged goods and said dumped imports are causing material injury or threatening to cause material injury or causing material retardation to the establishment of the domestic industry.

### Q.32. What are the parameters for determination of injury to the domestic industry?

**Ans.** Broadly, injury may be analysed in terms of the volume effect and price effect of the imports. The parameters by which injury to the domestic industry is to be assessed in the anti-dumping proceedings are well elaborated in Annexure-II of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on dumped articles and for Determination of Injury) Rules, 1995 comprising of such economic indicators as having a bearing upon the state of industry including the natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investment etc.

### Q.33. What is the Non-Injurious Price and Injury Margin? How are these computed?

**Ans.** Non-Injurious Price (NIP) is that level of price, which the industry is expected to have charged under normal circumstances in the Indian market during the period defined. This price would have enabled reasonable recovery of the cost of production and profit after nullifying the adverse impact of those factors of production which could have adversely affected the company and for which dumped imports can't be held responsible.

Non-Injurious Price is calculated based on the costing information furnished by the domestic industry in the prescribed proforma for the period of investigation. Accounting and Costing records maintained on the basis of Generally Acceptable Accounting Principle (GAAP) and Cost Accounting Standards form the basis for estimating Non-Injurious Price. In the estimation of Non-Injurious Price for the Domestic Industry, the Authority makes an appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption etc. and the actual expenses during the Period of Investigation including the investments, the capacity utilization etc. The Non-Injurious Price for Domestic Industry also includes the reasonable return on the capital employed.

The Injury Margin is the difference between the Non-Injurious Price and the Landed Value of the dumped imports of the like articles. Landed Value for this purpose is taken as the assessable value under the Customs Act and the applicable basic Customs duties except for CVD, SAD, and special duties.

**Q.34. What is the relevance of "causal link" in various trade remedial measures?**

**Ans.** The term "causal link" means that relevant injury to the domestic industry is being caused by the dumped /subsidized / increased imports.

Whereas in a safeguard investigation a causal link needs to exist between increased imports and serious injury. In a CVD investigation, a causal link is to be found between subsidized imports and injury.

In Anti-dumping/Countervailing Investigations, the causal link is to be established generally in terms of the following effects of dumped/subsidized imports on domestic industry: -

- Volume effect
- Price effect

The volume effect of dumped imports relates to the market share of the domestic industry vis-à-vis the dumped/subsidized imports from the subject. With regard to the price effect, it is analyzed as to whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

### Q.35. What are the major stages of the anti-dumping investigation process?

**Ans.** An Application received by the Director General is dealt with in the following manner:-

**A. Pre-initiation:**

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation.

**B. Initiation:**

The application is examined to ensure that it been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the evidence provided in the application and when satisfied that there is sufficient evidence regarding dumping, injury and causal link, a notification is issued initiating an investigation.

**C. Public Notice & Inspection Folder:**

A public notice is issued to the interested parties for filing responses. The non-confidential versions of all the applications/responses is kept open for inspection for the interested parties in the form of a inspection folder.

**D. Preliminary Findings:**

The Authority will proceed expeditiously with the conduct of the investigation and may, in *appropriate* cases, make a preliminary finding containing the detailed information behind the determination.

**E. Provisional Duty:**

A provisional duty not exceeding the margin of dumping or injury, whichever is less, may be imposed by the Central Government on the basis of the preliminary finding recorded by the Authority. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 6 months, extendable to 9 months under certain circumstances.

**F. Oral Evidence & Oral Hearing:**

Interested parties who participate in the investigation can present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Director General may grant oral hearing anytime during the course of the investigation.

**G. Disclosure of information:**

Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final findings. However, the Authority will inform all interested parties of the essential facts, which forms the basis for its decision before the final finding is made.

**H. Final Determination:**

The interested parties submit their response to the disclosure statement issued by the Authority. The Director General examines these final submissions of the parties and comes out with final findings.

**I. Duty Notification**

A copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue which, in turn, notifies the duty within a period of 90 days from the date of Final Finding after obtaining approval of the competent authority.

**J. Time-limit for Investigation Process**

Normal time allowed by the statute for conclusion of investigation and submission of final findings is one year from the date of initiation of the investigation. The above period may be extended up to period of 6 months, in exceptional circumstances, by the Central Government.

**Q.36. In case anti-dumping duty is warranted after the investigation, what is the extent of such duty to be recommended/imposed?**

**Ans.** Under the WTO arrangement, the National Authorities can impose duties up to the margin of dumping i.e. the difference between the Normal Value and the Export Price. However, the Indian Law provides for Lesser duty rule i.e. Lower of Injury Margin or Dumping Margin. This ensures that the amount of duty which, if levied, would remove the injury applicable to the domestic industry.

**Q.37. What is the period of validity of the Anti-Dumping duty imposed? Can such duty, once imposed, be reviewed before and after the expiry of its full term?**

**Ans.** The anti-dumping duty shall remain in force for a period of not more than five years (or less if so notified) from the date of imposition of duty. However, such duty can be reviewed by the Authority any time before the expiry of the said period.

**Q.38. What are the various review mechanisms under Anti-Dumping Investigation?**

**Ans.** The various review mechanisms are as under:-

**Sunset Review (SSR):**

Anti-Dumping duty imposed under the law shall be in force for a period of not more than five years (as notified) from the date of imposition, unless revoked earlier. Sunset review may either be initiated by DGTR on *suo-moto* basis or upon an application filed by the domestic industry of the article concerned at least 270 days before end of such period to examine as to whether there is a need to continue imposition of ADD for further period.

**Mid Term Review (MTR):**

After a reasonable period of time has elapsed since the imposition of anti-dumping duty (normally 12 months or more), the Authority can conduct an interim review, or full-fledged review to examine the need for the continued imposition of the ADD or change in the duty

imposed. Such a review can be done *suo-moto* or on the basis of the information received from an interested party in view of the changed circumstances.

**New Shipper Review (NSR):**

There may be situation wherein an exporter/producer did not export the product concerned to India during the Period of Investigation of the previously concluded investigation, based on which the existing duty was notified. As a result, such exporter/producer could not be accorded a separate rate of duty. If such exporter thereafter wishes to claim a individual anti-dumping duty rate, he may do so by filing a new shipper review application. DGTR will thereafter review the need for determining margins of dumping for such exporter, provided that such exporter/producer has not exported the product during the period of investigation and is not related to any exporter or producers who are already subject to ADD on the product.

**Q.39. When can the MTR and SSR application be filed?**

**Ans.** As per the Trade Notice no. 1/2010 dated 17/5/2010 an MTR application can be filed after a reasonable period of time, i.e. at least one year, has elapsed since the imposition of the definitive anti-dumping duty by the Central Government.

As per the Trade Notice no. 02/2017 dated 12.12.2017, the SSR application shall be filed atleast 270 days prior to the date of the expiry of Anti-dumping measures. It can also be filed 240 days prior to the date of the expiry of Anti-dumping measures with the justification of delay and with the payment of late fee as prescribed by the Authority.

**Q.40. What are the various formats of questionnaires to be filed by various interested parties during the course of anti-dumping investigation?**

**Ans.** All formats for anti-dumping applications/questionnaire responses are available on the DGTR website namely [www.dgtr.gov.in](http://www.dgtr.gov.in). These formats are to be read in consonance with the relevant Trade Notices.

**Q.41. Can the anti-dumping investigations, once initiated, be terminated? If so, under what circumstances?**

**Ans.** The Authority shall terminate an anti-dumping investigation in the following cases:

- i. If there is a request in writing from the domestic industry at whose instance the investigation was initiated.
- ii. When there is insufficient evidence of dumping or injury.
- iii. If the margin of dumping is less than 2% of the export price.
- iv. The volume of dumped imports from a country is less than 3% of the total imports of the like article into India and the volume of dumped imports collectively from all such countries is less than 7% of the total imports.
- v. If injury is negligible.

**Q.42. What is the difference between Anti-dumping duty and Basic Customs duty? Is the Anti-dumping duty over and above the Basic Customs duty chargeable on the import of an item?**

**Ans.** The following are the main differences between the anti-dumping duty and the basic customs duty: -

- Conceptually, anti-dumping duty is an instrument for achieving fair trade. The object of anti-dumping duty is to provide level playing field to the domestic industry in a situation of unfair trade practices while that of customs duty is collection of revenue.
- Customs duties fall in the realm of trade and fiscal policies of the Government while anti-dumping and anti-subsidy measures are there as trade remedial measures.
- Anti-dumping duties are not necessarily in the nature of a tax measure in as much as the Authority is empowered to suspend these duties in case an exporter offers a price undertaking. Thus, such measures are not always in the form of duties/tax.
- Anti-dumping and Anti-subsidy duties are levied against producer/ country in as much as they are country specific and producer specific as against the customs

duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.

- Furthermore, the Anti-dumping duty is levied over and above the normal customs duty chargeable on the import of goods in question.

Thus, there are basic conceptual and operational differences between the customs duty and the anti-dumping duty.

#### **Q.43. Whether Anti-Dumping measures are injurious to the interests of the consumers?**

**Ans.** The purpose of anti-dumping duties, in general, is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair trade in the Indian market, which is in the general interest of the country.

The imposition of anti-dumping duty might affect the price levels of the products manufactured using the subject goods. However, fair competition in the Indian market will not be reduced by the anti-dumping measures.

On the contrary, imposition of anti-dumping duty would remove the unfair advantages gained by the overseas exporters through their dumping practices; it would prevent the decline of the domestic industry and would create congenial conditions for fair trade.

The imposition of anti-dumping measures would not restrict imports from the subject country in any way and therefore, would not hinder the consumers' access to the imported goods.

#### **Q.44. If an anti-dumping duty is in force, can another application be filed for the same product and same country(ies) before the expiry of original duty?**

**Ans.** If anti-dumping duty is in force, then another application cannot be filed again on the same product before the expiry of original duty. It can only be revised through a process of review. Further, all trade defence measures provide for premature review and revocation, if it is established that there is no need for continuation of duty.

**Q.45. What are the implications for the importers who are liable to pay anti-dumping duty, if the final duty is different from the provisional duty?**

**Ans.** Anti-dumping duty may be levied at two stages, provisional and final. If the final duty levied is less than the provisional duty which has already been levied and collected, or is withdrawn, the differential amount already collected as provisional duty is liable to be refunded.

If the final duty imposed is more than the provisional duty already imposed and collected, the difference shall not be collected.

**Q.46. What constitutes circumvention of duty? How can it be addressed?**

**Ans.** Circumvention of anti dumping duty occurs when producer exporters in the exporting country exports to India, the goods which attract the anti dumping duty, either by altering the description or name or composition or form of the article or changing the country of its origin/export or in any manner which renders the anti-dumping duty so imposed ineffective. This situation is remedied by initiating an anti-circumvention investigation to provide suitable relief to the domestic industry.

**Q.47. Whether the product under an anti-circumvention investigation is same as notified under relevant anti-dumping investigation? For what duration such anti-circumvention duties are in force?**

**Ans.** In case the product on which the anti-dumping duties are levied is being altered or its composition is being changed, the anti-circumvention investigation may be initiated against the imports of such altered product or the product with such changed composition. However, in case of circumvention through change in country of origin, then the PUC may remain the same. The life of any anti-circumvention duty being imposed under such investigation shall be co-terminus with the validity of the relevant anti-dumping duty(ies).

## COUNTERVAILING MEASURES

### Q.48. When is countervailing measure applicable?

**Ans.** Countervailing Duties (CVDs) are applicable when a government in the exporting country provides subsidies or assistance to a local industry. This can be in the form of subsidized loans, tax exemptions, indirect payments, etc. The assistance provided enables these foreign suppliers and manufacturers to potentially export and sell the goods for a price less than that at which domestic companies of the target member country can reasonably sell. Countervailing Duties are meant to neutralize the adverse effects of the subsidies allowed for a particular product in exporting member country.

### Q.49. What are the essential requisites for initiating CVD investigation?

**Ans.** CVD Investigations can be initiated, if there is sufficient evidence to the effect that; there is subsidy, there is injury to the domestic industry; and there is a causal link between the subsidized imports and the injury, that is to say, that the subsidized imports have caused the alleged injury.

### Q.50. Whether the government of the subject country(ies) is consulted for defending their interest before initiating a CVD investigation?

**Ans.** Yes, in CVD cases, a pre-initiation consultation is granted to the government of the subject country(ies) for defending their respective interest.

### Q.51. What are the stages of countervailing investigation process?

**Ans.** An Application received by the Authority is dealt with in the following manner:

#### **A. Pre-initiation scrutiny and consultation:**

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. Pre-initiation consultation is then

held with the respective Governments as per the obligations under the ASCM provisions.

**B. Initiation:**

The Authority determines that the application has been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the evidence provided in the application and when satisfied that there is sufficient evidence regarding subsidies, injury and causal link, a notification is issued initiating an investigation.

**C. Public Notice & Inspection Folder:**

A public Notice is issued inviting all concerned parties to file response. The Authority provides access to all the interested parties for the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection on request after receipt of the responses.

**D. Preliminary Findings:**

The Authority will proceed expeditiously with the conduct of the investigation and may, *in appropriate cases*, make a preliminary finding containing the detailed information behind the determination.

**E. Provisional Duty:**

A provisional duty may be imposed by the Central Government on the basis of the preliminary finding recorded by the Authority. The provisional duty can be imposed only after the expiry of 60 days from the date of initiation of investigation. The provisional duty will remain in force only for a period not exceeding 4 months.

**F. Oral Evidence & Oral Hearing:**

Interested parties who participate in the hearing may present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Authority may grant oral hearing anytime during the course of the investigation.

**G. Disclosure of Facts:**

Based on these submissions and evidence gathered during the investigation and verification thereof, the Authority will determine the basis of its final findings. However, the Authority will inform all interested parties of the essential facts, before the final finding is made.

**H. Final Determination:**

The interested parties submit their response to the disclosure statement issued by the Authority. The Authority examines all submissions of the interested parties and comes out with final findings.

**I. Duty Notification**

A copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue which, in turn, notifies the duty within a period of 90 days from the date of Final Finding after obtaining approval of the competent authority.

**J. Time-limit for Investigation Process**

Normal time allowed by the statute for conclusion of investigation and submission of final findings is one year from the date of initiation of the investigation. The above period may be extended up to period of 6 months, in exceptional circumstances, by the Central Government.

**Q.52. What is the review mechanisms under Countervailing Investigation?**

**Ans.** The SCM Agreement recognizes the following three types of reviews of CVD measures:

- (i) The investigating Authority is required to carry out promptly and in accelerated manner reviews requested by exporters which are subject to a definitive countervailing duty, but which were not actually investigated for reasons other than for refusal to cooperate;

- (ii) Definitive countervailing duties shall normally expire after five years from their imposition (or the period of notification), unless the domestic industry asks for a review within a reasonable period of time preceding the expiry, requesting that the expiry of the duty would likely to lead to continuation or recurrence of subsidization and injury. During the period of duty as notified interested parties may request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization or whether the injury would be likely to continue or recur if the duty were removed or varied, or both. The duty may remain in force pending the outcome of such a review;
- (iii) The Members to who adopt countervailing duty legislation, are obligated to maintain independent procedures for the purpose of prompt review of final and determinations. The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in India is the independent judicial forum to consider the appeals against the final findings issued by DGTR.

**Q.53. Can the CVD investigations, once initiated, be terminated? If so, under what are the circumstances?**

**Ans.** The CVD investigation shall be terminated

- If the domestic industry at whose instance the investigation was initiated requests the Authority to do so;
- If in the course of investigation the Authority is satisfied that there is no sufficient evidence either of subsidisation or applicable injury to the domestic industry;
- If the amount of subsidy is less than one percent ad valorem or in the case of a product originating from a developing country, the amount of subsidy is less than two per cent;
- It determines that the volume of the subsidized imports, actual or potential or injury where applicable, is negligible or in the case of a product originating in a developing country, the volume of the subsidized imports represent less than 4 % of the total

imports of the like product into India, unless imports from developing countries whose individual shares of total imports represent less than 4% collectively account for more than 9% of the total imports of the like product into India.

## SAFEGUARD MEASURES

### Q.54. What are safeguard measures?

**Ans.** Safeguard measures are defined as "emergency" actions to address serious injury to the importing Member's domestic industry for a particular product. Safeguard duties give domestic producers a period of grace to become more competitive vis-à-vis imports, when imports of a particular product suddenly increase to a point that they cause or threaten to cause serious injury to domestic producers of like or directly competitive products, a safeguard duty is used as temporary relief . .

The Safeguard duties are applicable against all the countries with uniform rate of duty unlike the anti-dumping duties.

### Q.55. Are safeguard measures non-discriminatory?

**Ans.** Safeguard Measures are applicable on all imports of the like article or directly competitive article from all the countries. However, the safeguard duty is applicable to only those developing countries where the imports are more than 3%, provided that developing country members with less than 3% share collectively account for not more than 9% of the total imports of the product under consideration.

### Q.56. What are the stages of Safeguard investigation process?

**Ans.** An Application received by the Authority is dealt with in the following manner:

#### **A. Pre-Initiation:**

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation.

#### **B. Initiation:**

The application is examined to ensure that it has been made by or on behalf of the Domestic Industry. It also examines the accuracy and adequacy of the evidence

provided in the application and when satisfied that there is sufficient evidence regarding increased/ surge in imports, serious injury and causal link, a notification is issued initiating an investigation.

**C. Public Notice and Inspection Folder:**

A public notice is issued to the interested parties for filing responses. The non-confidential versions of all the applications/responses is kept open for inspection for the interested parties in the form of a inspection folder.

**D. Preliminary Findings:**

The Authority shall proceed expeditiously with the conduct of the investigation and may, in *appropriate* cases, make a preliminary finding containing the detailed information behind the determination.

**E. Provisional Duty:**

A provisional duty may be imposed by the Central Government on the basis of the preliminary finding recorded by the Authority. The provisional duty will remain in force only for a period not exceeding 200 days from the date of imposition of duty.

**F. Oral Evidence & Oral Hearing:**

Interested parties who participate in hearing may present the relevant information orally. However, such oral information shall be taken into consideration only when it is subsequently reproduced in writing. The Director General may grant oral hearing anytime during the course of the investigation.

**G. Final Determination:**

The Authority examines all the submissions of the parties made during the course of the investigation and comes out with final findings.

**H. Recommendation of duties:**

After the final determination is made and the final findings are issued, the matter is then referred to the Board of Safeguards, which in turn, decides upon whether the duties are to be imposed or not. Such recommendation is made considering matters like public interest etc.

### **I. Duty Notification**

If the duties are approved by the Board of Safeguards, a copy of the Final Findings is sent to the Tax Research Unit in Department of Revenue, which in turn, notifies the duty.

### **J. Time-limit for Investigation Process**

Normal time allowed by the statute for conclusion of investigation and submission of final findings is 8 months from the date of initiation of the investigation or within such extended period as determined by the Central Government.

### **Q.57. What is the period of validity of safeguard measure?**

**Ans.** The safeguard duty shall be levied only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate positive adjustment. The duty levied shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition.

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition. Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

**Q.58. What are the various review mechanisms under Safeguard Measure?**

**Ans.** The Authority shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if it is satisfied on the basis of information received, that –

- (a) such safeguard duty is necessary to prevent or remedy serious injury and there is sufficient evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of that duty;
- (b) there is no justification for the continued imposition of such safeguard duty, recommend to the Central Government for its withdrawal.

Any measure of more than three year's duration must be reviewed not later than mid-term of such imposition and if appropriate, recommend for withdrawal of such safeguard duty or for the increase of liberalization of duty.

The Authority shall, from time to time, review the need for continued imposition of the safeguard quantitative restrictions and shall, if it is satisfied on the basis of information received that –

- (a) safeguard quantitative restrictions is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of quantitative restrictions;
- (b) there is no justification for the continued imposition of such restriction, recommend to the Central Government for its withdrawal.

Any measure of more than three year's duration must be reviewed not later than the mid-term of such imposition and if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the increase of the liberalisation of quantitative restrictions.

**Q.59. When can a safeguard measure be applied again to the import of the product under consideration which has been subjected to such a measure before?**

**Ans.** As per Article 7.5 of Agreement on Safeguards, no safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that

during which such measure had been previously applied, provided that the period of non-application is at least two years.

**Q.60. Can one apply simultaneously for both anti-dumping duty and safeguard duty for dumping?**

**Ans.** The Safeguard Rules require that in case the injury to the domestic industry is caused due to dumping, the domestic industry may seek imposition of anti-dumping duty and not safeguard duty. The safeguard duty is mainly meant to address the injury caused on account of surge in imports.





**For Any Further Enquiry Contact:**

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