



**ECONOMIC POLICY PAPER
ON
ANTI-DUMPING AND COUNTERVAILING DUTY
MEASURES**

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RINCIPLE

The Uruguay Round Agreements have laid down detailed procedure to develop an integrated, more viable and durable multilateral trading system. Anti-dumping and countervailing measures are important provisions for ensuring fair trade practice and avoiding discriminatory treatment. Depending on circumstances a combination of these measures may be applied.

A product is to be considered as being dumped i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price of the similar product in the exporting country.

Anti-dumping measures, however, shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement.

1. ANTI-DUMPING

1.1 DETERMINATION OF DUMPING

As mentioned above a product will be considered as dumped if the export price of the product is less than the comparable price of the like product in the exporting country. When there are no sales of the like product in the domestic market of the exporting country, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to a third country or with the cost of production in the country of origin plus other costs and profit. Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities that consider all available evidence on the proper allocation of costs provided that such allocations have been historically utilized by exporter or producer.

A fair comparison shall be made between the export price and the normal value. Due allowance shall be made for differences, which affect price comparability such as terms and conditions of sale, taxation, duties, profit etc. Authorities shall not impose an unreasonable burden of proof on the other party.

In the case where products are not imported from the country of origin but are exported to the importing member from another country, the price at which the products are sold from country of export to the importing member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if the products are merely transhipped through the country of export or such products are not produced in the country of export. The term like product shall be interpreted to mean a product which is identical i.e. alike in all

respects to the product under consideration or in the absence of such a product, another product which has characteristics closely to those of the products under consideration.

1.2 DETERMINATION OF INJURY

A determination of injury shall be based on positive evidence and involve an objective examination of both, (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume of the dumped imports, the investigating authorities shall consider where there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in the importing member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of a like product of the importing member.

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports. The examination of the impact of the dumped imports on the domestic country shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investment, utilization of capacity, inventories, employment, wages, growth, etc. But this list is not exhaustive. The demonstration of a casual relationship between dumped imports and injury to the domestic industry shall be based on examination of all relevant evidence before the authorities. A determination of a threat of a material injury shall be based on facts and not merely on allegation, conjecture or remote possibilities.

An investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon written application by or on behalf of the domestic industries. The application shall contain information as contained in part I And Article 5 of the Agreement. The application shall be considered to have been made by the domestic industry if it is supported by those whose collective output constitutes more than 50% of the total production. However, no investigation shall be initiated when domestic products account for less than 25% of total production. After receipt of a properly documented application, the authorities should notify the government. If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application, they should proceed only if they have sufficient evidence of dumping, injury and a casual link. The evidence of both dumping and injury shall be considered simultaneously. There shall be immediate termination of investigation where the volume of dumped imports is negligible which is less than 2% of export price. The volume of dumped imports shall be regarded as negligible if it is less than 3% of imports. Anti-dumping proceedings shall not hinder the procedures of customs clearance. Investigation shall be concluded within one year and in no case more than 18 months. All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to

present in writing all evidence which they consider relevant in respect of the investigation. Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. Oral information will also be taken into account. Any information which is by nature confidential be treated as such by the authorities. In order to verify information, the authorities may carry out investigation in the territory of other Member provided they obtain the agreement of the firms concerned and notify the representatives of the Government of the Member in question and unless that Member objects to the investigation. In case where the interested party refuses access to necessary information, the authorities may work on the basis of secondary information.

1.3 PROVISIONAL MEASURES

Provisional anti-dumping duty may be applied if a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry. Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation. Proceedings may be suspended or terminated upon receipt of satisfactory undertaking from any exporter to revise its prices or cease export. Price increase shall not be higher than the margin of dumping.

Price Undertaking

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1.4 COLLECTION OF ANTI-DUMPING DUTY

Anti-dumping duty is to be imposed on non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury. The amount of anti-dumping duty shall not exceed the margin of dumping. When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place normally within 12 months. Any refund is also possible within 12 months. Anti dumping duty may be levied not more than 90 days prior to the date of application of provisional measures. No duty shall be levied prior to the date of initiation of the investigation. An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. Anti-dumping duty shall be terminated on a date not later than five years from the date of imposition. Members should report without delay to the Committee on Anti-dumping practices, all preliminary or final anti-dumping actions taken. Dispute Settlement Understanding is applicable to consultation and the settlement of disputes under this Agreement.

1.5 FINAL PROVISION

No specific action against dumping from another Member can be taken except in accordance with the provisions of GATT 1994. Each Member should inform the Committee of any changes in its laws and regulations relevant to this Agreement.

2. COUNTERVAILING MEASURES (SUBSIDY)

Subsidy is a financial contribution involving direct transfer of funds, government revenue foregone, tax credit, payment to funding mechanism, income or price support. Subsidies contingent upon export performance and upon the use of domestic over imported goods are prohibited. Actionable subsidies are those which cause injury to the domestic industry of another country. Serious prejudice means that ad valorem subsidisation exceeds 5%, covering operating losses sustained by an industry and direct forgiveness of debt. If a country is affected by the use of prohibited subsidy or actionable subsidy the concerned country may raise the matter with the Dispute Settlement Body (DSB) for redress. In circumstances where material injury is caused to the concerned country, instead of raising the matter before DSB, it can levy countervailing duty on the imported products after investigation in the prescribed manner.

Countervailing duties cannot be levied on non-actionable subsidies. Examples of non-actionable subsidies are subsidies which are not specific, assistance for research, equipment, land and building for research, consultancy for research, assistance to disadvantaged regions, adaptation to new environmental requirements. Upon request for consultation, Member granting or maintaining the subsidy program shall enter into consultation. If no mutually acceptable solution can be reached within 60 days, the requesting Member may refer the matter to the Committee. The Committee shall present its conclusions within 120 days. Subsidy on agriculture is separately treated in the WTO. The long term objective is to provide substantial progressive reduction in agricultural support and protection. A list of agricultural products is also identified. The export subsidy discipline requires developed countries to decrease the value of subsidy by 36% over six years. Developing countries have to reduce this by 24%. Least developed countries were exempted from reduction commitment. LDCs lack the financial resources to use export subsidies as a market development tool. Bangladesh should seek greater discipline in the use of export subsidies by developed countries.

2.1 INITIATION OF INVESTIGATION

An investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry. An application shall include sufficient evidence of the existence of (a) a subsidy and if possible its amount, (b) injury and (c) a causal link between the subsidised imports and the alleged injury. The application shall contain the following:

The identity of the applicant and description of the volume of the domestic production of the like product by the applicant.

- 7 A complete description of the subsidized product, the names of the country or countries of origin or export in question. The identity of each known exporter or foreign producer and a list of known persons importing the product;

- ? Evidence with regard to the existence, amount and nature of the subsidy in question;
- ? Evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies.

The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation. The application shall be considered 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 product produced by that portion of the domestic industry expressing either support for or opposition to the application. No investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product by the domestic industry. The authorities concerned may decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation. They shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and casual link.

An application shall be rejected when the authorities concerned can satisfy that there is no sufficient evidence of subsidization or injury. There shall be immediate termination if the amount of subsidy is de minimis or the injury is negligible. The amount of subsidy shall be considered to be de minimis if the subsidy is less than one percent ad valorem. An investigation shall not hinder the procedure of customs clearance. Investigation shall be concluded within one year and in no case more than 18 months.

Interested members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant. The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant. The investigating authorities may carry out investigation in the territory of other members provided they have notified in good time the member in question unless that member object to the investigation. The authorities shall inform all interested members and parties before applying definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interest. Members whose products may be subject to investigation shall be invited for consultation and arriving at a mutually agreed solution.

2.2 DETERMINATION OF INJURY

The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profit, productivity, return on investment, etc. Provisional measures may be undertaken under certain circumstances. Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

2.3 COLLECTION OF COUNTERVAILING DUTY

When a countervailing duty is imposed, it should be levied on the imports of such products from all sources found to be subsidized and causing injury. No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist. The definitive countervailing duty may be assessed on imports which were entered for consumption not more than 90 days prior to the date of provisional measures. Countervailing duty shall be terminated not later than five years.

2.4 JUDICIAL REVIEW

Each member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purposes, inter alia, or the prompt review of administrative actions relating to final determination.

2.5 REVIEW OF COUNTERVAILING DUTY

The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or provided that a reasonable period of time has elapsed since the imposition of countervailing duty, upon request by, any interested party which submits positive information justifying the need for a review. If, as a result of the review, the authorities determine that countervailing duty is no longer warranted, it shall be terminated immediately. Any definitive countervailing duty shall be terminated on a date not later than five years, unless the authorities determine that the elimination of duty would be likely to lead to continuation or recurrence of subsidy.

There is a Committee on subsidies and countervailing measures to carry out responsibilities under this Agreement. Any member may make a written request for information on the nature and extent of any subsidy granted or maintained by another Member or for an explanation of the reasons for which a specific measure has been considered. Members shall report without delay to the Committee all preliminary or final actions with respect to countervailing duties.

2.6 DEVELOPING COUNTRY MEMBERS

Any countervailing duty investigation of a product originating in a developing country member shall be terminated as soon as it is determined that (a) the overall level of subsidy does not exceed 2% of the value calculated on a per unit basis and (b) the volume of subsidized imports is less than 4% of total imports. As the main purpose of the on the spot investigation is to verify information, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary.

3. SCOPE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

3.1 SIMILARITY BETWEEN ANTI-DUMPING AND COUNTERVAILING MEASURES

Anti-dumping and countervailing measures are more or less similar. Of course, there are differences in the calculation of de minimis and the number of applicants calling for anti-dumping and countervailing measures. Dumping is done by firms whereas subsidy is imposed by some authorities of the government. Effects of both subsidy and anti-dumping are quite similar.

3.2 INDUSTRIAL POLICY, EXPORT AND IMPORT POLICY

These policies are not directly related to anti-dumping and countervailing measures. Anti-dumping and countervailing measures may be imposed only after proper investigation. Industrial policy, Export and Import policy may be discussed in WTO during Trade Policy Review and Balance of Payment consultation. But anti-dumping and countervailing duties have to be reported to the relevant Committee for review. Affected parties may take up these matters in the Committee which may go up to the General Council and Dispute Settlement Body.

3.3 SCOPE OF ANTI-DUMPING AND COUNTERVAILING DUTY INVESTIGATION.

Because of substantial liberalization, domestic products are facing serious competition from imported products. There is unconfirmed report that, among others, ceramic, glass, bicycle, medicine, toiletries, dry cell battery, detergent and electrical products are being subsidized/dumped by other countries. This may provide a clue to investigate a particular case. Preliminary investigation may be carried out in the case of products mentioned above. There are two aspects of countervailing duty. One is to see if subsidized goods are imported into the country. Secondly, Bangladesh also provides subsidy to some of our exports. Therefore, we should find out if other countries are imposing countervailing duty on our products and find out the justification for such duty. Market intelligence reports are very important for adopting anti-dumping and countervailing measures. It may be mentioned that smuggled goods are outside the scope of anti-dumping and countervailing measures.

For business persons, knowledge of the complete rules on the levy of anti-dumping and countervailing duties are essential in their capacities as exporters and producers whose interest may be affected by the unfair price practices of producers in other countries. The affected exporters have the right to petition their national investigating authorities for the levy of anti-dumping duties if the imports are being dumped and for the levy of countervailing duty if the imports are being subsidized.

Brazil has imposed anti dumping duty on jute products of Bangladesh. Govt. was trying to get the duty lifted but it was not possible to do so. The matter was referred to our Geneva Mission with the request to take it up with the WTO. Before taking it up, the

Geneva mission requested for certain information from the Ministry of Jute. But no satisfactory reply was received. Therefore, the Geneva mission could not take it up with the WTO. The Geneva mission informally consulted the Permanent Mission of Brazil. The Brazilian mission agreed to look into the matter but we could not make out a case. The matter ended there.

4. SAFEGUARD MEASURES

Although safe guard measure is not included in the Terms of Reference (TOR), a brief discussion on safeguard measures is made in order to inform all concerned that WTO members may take 'safeguard' action to protect a specific domestic industry from an increase of imports of any product which is causing and which is likely to cause serious injury to the industry.

The WTO agreement sets out requirements for safeguard investigation by national authorities which include public notices for hearing and other appropriate means for interested parties to present evidence. The agreement sets out criteria for the assessment of serious injury and the factors which must be considered in determining the impact on the domestic industry. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available. In principle , safeguard measures have to be applied irrespective of source of import.

The duration of safeguard measure should not exceed four years, though this can be extended upto eight years. The agreement envisages consultation on trade compensation of exporting countries where safeguard measures are imposed on them. Where consultations are not successful, the affected members may withdraw equivalent concessions -for instance raise tariff against the member taking the safeguard measure.

Safeguard measures are not applicable to products from developing countries as long as their share of import does not exceed 3% and that developing country members with less than 3% import share collectively account for no more than 9% of the total import of the product concerned. The Safeguards Committee of the WTO oversees the operation of the agreement and is responsible for the surveillance of Member's commitments.

5. RECOMMENDATIONS

In the light of the discussion above, the following recommendations are made for the purpose of application of anti-dumping and countervailing measures.

1. As weaker and smaller countries are most vulnerable, Bangladesh should be most careful and build appropriate capacity to deal with this issue.
2. Bangladesh should appeal with other LDCs together that LDCs should be kept out of the provision.
3. With other LDCs Government will have to convince the WTO members for adoption of simplified procedures.
4. The Tariff Commission¹ should be restructured and renamed as Tariff and Anti-Dumping Commission.
5. With other LDCs government should convince the WTO that LDC firms should be totally exempted from anti-dumping and countervailing action by the developed country.
6. As it is very expensive for the LDCs to defend their Dumping cases in WTO, the government should try with other LDCs to convince the Council of Trade in Goods that solution for this problem should be found. At the country level government should bear the cost of defending such cases within WTO.
7. The government should try with other LDCs to stop the practice of some developed countries to consider subsidy and dumping together to determine injury in an antidumping investigation; i.e. efforts may be made to grant that kind of subsidy that is not actionable.
8. Trade and industry organizations in Bangladesh should build up an information system and keep watch on the prices of the imported products in specific sectors particularly the sensitive sectors; and if there is sufficient proof of dumping and subsidy, they should be approached to the authorities for initiating action.
9. Efforts should be made with other LDCs to exempt export subsidies applied by LDCs from export competitiveness threshold.
10. Non-actionable categories of subsidies should be expanded to include those subsidies for development diversification and upgrading of industries.

¹ The Internal Resources Division has already adopted anti-dumping and countervailing procedures. Tariff Commission has been given the responsibility of implementation of these measures. The Tariff commission is now working on the preparation of a Questionnaire for investigation.

11. As the legal costs of investigation are substantial and are often beyond the means of small and medium sized enterprises, the government should defend their interests.
12. As resources are scarce all chambers should jointly build WTO Information- Cell with policy framework and strategies, build up expertise on the subject and make the businesses aware of the implication of anti-dumping and countervailing duty.
13. The chambers should co-operate with the Tariff Commission in the matter of investigation of antidumping and countervailing cases.
14. Tariff Commission should be facilitated and empowered to deal with international dumping claims.
15. Chambers should collect information about anti-dumping and countervailing and forward it to the government and seek support.
16. Appropriate institutions should be built up for research, publication and dissemination of the provisions of the international agreements.
17. Government should finance legal officers of some selected chambers to assist the disputed cases for proper legal advice.
18. Functions of foreign diplomats should be extended and utilized to find out dumping cases, which hurt the country.
19. Due homework has to be done before any problem is intended to be taken up with the WTO.
20. Government should delegate legal power in dispute settlement to the trade organizations and Trade Organisation Ordinance should be amended if necessary giving effect to the delegation
21. Ministry of Commerce should establish strong WTO Cell, handle the anti-dumping and countervailing measures and all other matters related to this.
22. To face dumping allegation government should assist related enterprises.
23. Bangladesh should have a coherent subsidy policy and strategy and an Inter-Ministerial Task Force should be established for this purpose.
24. Databank should be established and made the information available for business.
25. Including others steps should be taken to improve competitive advantage of the country, e.g. the investments cost (technology costs) should be reduced.

Reference

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4. Train for Trade -UNCTAD
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6. The World Trade Organization - WTO