AGREEMENT ON DUMPING AND ANTI-DUMPING DUTIES

If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "*dumping*" the product. Is this unfair competition? Opinions differ, but many governments take action against dumping in order to defend their domestic industries. The legal definitions are more precise, but broadly speaking the WTO agreement allows governments to act against dumping where there is genuine ("material") injury to the competing domestic industry. In order to do that the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is causing injury or threatening to do so.

Dumping is, in general, a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. Thus, in the simplest of cases, one identifies dumping simply by comparing prices in two markets. In this case, dumping would exist where:

Price of imported good < Home market price in exporting market

However, the situation is rarely, if ever, that simple, and in most cases it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country (known as the "**normal value**") and the appropriate price in the market of the importing country (known as the "**export price**") so as to be able to undertake an appropriate comparison.

GATT and WTO rules do not prohibit "dumping" as such. Rather, they set forth the rules that Members must respect when taking action against dumped imports. For such action to be permissible, Members must determine the existence and amount of dumping, and must establish that dumped imports are causing material injury or threat to, or material retardation of the establishment of, the importing Member's domestic industry producing the product that is "**like**" the dumped imported product.

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The Agreement on Implementation of Article VI of the GATT 1994 (from now on "the AD Agreement") does not pass judgment on dumping. Rather, its focus is on the actions that governments can (and cannot) take in response to dumping in their markets.

"***Dumping***" is *defined* in both **Article VI** of the **GATT 1994**, and in the **AD Agreement**, as *the sale of an imported product in the importing market at less than its "normal value "*.

6.1 Historical development

Under **Article VI** of **GATT 1947**, certain disciplines were established for situations where dumping was causing injury to a domestic industry in the importing market. Article VI allowed an "*anti-dumping duty*" to be imposed at the border upon importation to offset or prevent the dumping. The level of the duty could be equal to, but not higher than, the margin of dumping.

As tariff rates were lowered over time following the original GATT Agreement, anti-dumping duties were increasingly imposed, and the inadequacy of Article VI to govern their imposition became ever more apparent.

Article VI requires a determination of injury caused by dumping, but does not contain any guidance as to how that determination is to be made. It addresses the methodology for establishing the existence of dumping, but only in general terms.

Consequently, Contracting Parties to GATT 1947 negotiated successively more detailed Codes relating to antidumping. The first such Code, the **Agreement on Anti-dumping Practices**, entered into force 1967 as a (1964) result of the **Kennedy Round**. However, the United States never signed this "**Kennedy Round Code**", which as a result had little practical significance.

1973-1979

The anti-dumping Agreement that resulted from the Tokyo Round negotiations (the "**Tokyo Round Code**"), which entered into force in 1980, represented a quantum leap forward. Substantively, it provided far more guidance about the determination of dumping and of injury than did Article VI, including explicitly requiring that such determinations be made on the basis of an investigation conducted by the authorities of the importing country. Equally important, it set out in substantial detail certain procedural and due process requirements that had to be fulfilled in the conduct of such investigations. Nevertheless, the Code still represented only a general framework for countries to follow in conducting investigations and imposing

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duties. It was also marked by ambiguities on numerous controversial points, and was limited by the fact that only the 27 Parties to the Code were bound by its requirements.

6.2 Dumping and Anti-Dumping in the WTO

Unlike the Kennedy Round and Tokyo Round Codes, the WTO Anti-dumping Agreement is a multilateral (as opposed to a plurilateral) agreement. . The AD Agreement therefore must be accepted as part of the "single undertaking" by all current Members and by any country joining the WTO. That is, the AD Agreement applies to all Members.

The AD Agreement is rather long and complex. Essentially, it represents an effort to balance potentially conflicting interests: on the one hand, the interest of importing countries in imposing anti-dumping measures to prevent or remedy injury to their domestic industries caused by dumped imports; and on the other hand, the interest of exporters (and importers and consumers) for whom anti-dumping measures and procedures should not themselves become obstacles to fair trade.

Article VI of GATT allows countries to take action against dumping.

The AD Agreement clarifies and expands on Article VI, and the two operate together.

Under these provisions, countries are allowed to act in a way that would normally break the GATT principles of binding a tariff and not discriminating among trading partners. Typically, anti-dumping action means charging an extra import duty on a particular product imported from a particular exporter in order to bring the price of the imported product up to its "normal value" by offsetting the margin of dumping.

Article VI of GATT and the AD Agreement explicitly authorize a Member to impose specific anti-dumping measures on imports from a particular source, in addition to ordinary customs tariffs, when the importing Member demonstrates through a properly-conducted investigation that dumping is causing or is threatening to cause material injury to a domestic industry or would materially retard the establishment of a domestic industry.

A product is to be considered as being dumped when it is introduced into the commerce of another country at less than its "normal value", normally the comparable price at which the product is sold in the domestic market of the exporting country, or if there is no such price, a comparable price for sale of the like product to a third country market, or the cost of production of the product plus a reasonable amount for selling costs and profit.

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Under Article VI of GATT 1994, and the AD Agreement, WTO Members can impose anti-dumping measures if they determine:

(a) that dumping is occurring;

(b) that the domestic industry producing the like product in the importing country is suffering material injury or threat thereof, or that the establishment of a domestic industry is being materially retarded; and

(c) that there is a causal link between the two.

In addition to substantive rules governing the determinations of dumping, injury, and causal link, the AD Agreement sets forth detailed procedural rules for the initiation and conduct of investigations, the imposition of measures, and the duration and review of measures.

There are many different ways of calculating whether a particular product is being dumped heavily or only lightly. The agreement narrows down the range of possible options. It provides three methods to calculate a product's "normal value". The main one is based on the price in the exporter's domestic market. When this cannot be used, two alternatives are available—the price charged by the exporter in another country, or a calculation based on the combination of the exporter's production costs, other expenses and normal profit margins. And the agreement also specifies how a fair comparison can be made between the export price and what would be a normal price.

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