

DETERMINATION OF INJURY IN ANTI-DUMPING INVESTIGATIONS: TURKEY'S SIDE OF THE STORY

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I – Introduction

In a world ruled by the global economy, protection of international trade from unfair competition holds great importance. Unfair competition can develop out of various trade forms such as dumping or subsidy. Between global players, such protection against these forms is maintained through customs taxes and other similar foreign trade policies like anti-dumping measures.

In Turkey, as a frequent exerciser of anti-dumping measures since 1989, anti-dumping practices are governed within scope of the Law No. 3577 on Prevention of Unfair Competition in Imports (“Law”) and the secondary legislation, which is a transposition of the Agreement on Implementation of Article VI of The General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”). In light of the Law, the authority to initiate a dumping or subsidy examinations, upon complaint or, where necessary, *ex officio*, is given to the Ministry of Economy’s Directorate General of Imports (“Directorate”)¹.

During an examination, the Directorate first begins the task of determining whether the imports are in fact being dumped or subsidized, and if so, to what extent. If the imports turn out to be dumped or subsidized, the Directorate should then determine whether an injury is incurred by the domestic industry. Therefore, not only the existence of dumping but also existence of injury must be revealed for applying certain anti-dumping measures.

II – Definition of Injury

Article 2 of the Law defines injury as “*Material damage to a production line, material damage threat to a production line or a tangible delay in establishing such production line*”. This definition is in parallel with the definition brought by Anti-Dumping Agreement, which sets forth that under the Anti-Dumping Agreement the term "injury", unless otherwise specified, means material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such industry.²

¹ Article 4 of the Law No. 3577 on Prevention of Unfair Competition in Imports.

² Article 3.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Within this perspective, *injury* occurs when dumped product leads to (i) material damage or (ii) material damage threat on a production line of “a similar product”³ or (iii) a tangible delay in establishing such production line. Determination of injury, at first, requires designation of a “similar product” and producers of similar product.

III – Criteria for Injury Determination

Under Turkish legislation, the Regulation on the Prevention of Unfair Competition in Imports (“Regulation”) sets forth the principles for injury determination.

The Regulation accepts that “*determination of material injury shall be based on positive evidence and shall involve an objective examination of both the volume of dumped or subsidized imports and the effect of such imports on prices in the domestic market for like products, and the consequent impact of those imports on the domestic industry*”.⁴

- Determination of material injury

Following criteria is considered in determination of material injury:

(i) There should be a significant increase in the volume of dumped or subsidized imports, either in absolute terms or relative to production or consumption in Turkey.

(ii) Dumped or subsidized imports should cause an undercutting in the prices of similar product in Turkey or such imports should depress prices to a significant degree or prevent price increases.

(iii) Dumped or subsidized imports should affect the domestic production line negatively (in terms of economic factors such as actual and potential decline in sales, profits, output, market share, productivity, return on investments, and utilization of capacity as well as factors affecting domestic prices and the magnitude of the margin of dumping; actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments).

- Determination of material injury threat

For determination of the material injury threat, following criteria should be taken into account:

(i) Dumped or subsidized imports should show a significant rate of increase into the domestic market in a way to indicate the likelihood of substantially increased importation,

³ Under Article 4 of the Regulation on the Prevention of Unfair Competition in Imports, similar product is defined as “*product which carries the same characteristics with a dumped or subsidized product, or another product with similar characteristics if there is no product with same characteristics*”.

⁴ Article 17 of the Regulation on the Prevention of Unfair Competition in Imports.

(ii) There should be a sufficient and freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped or subsidized exports to Turkey, taking into account the availability of other export markets to absorb any additional exports,

(iii) Import prices should have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports,

(iv) Inventories of the investigated product should also be taken into account, and

(v) As regards the subsidy investigations, the nature of the subsidy in question and the trade effects likely to arise therefrom will be reviewed.

In any case, none of these factors by themselves can necessarily provide a decisive guidance in injury evaluation.

- Casual link between the dumped import and the damage

Following determination of dumping and the injury, Article 3.5 of the Anti-Dumping Agreement which reads as “*It must be demonstrated that the dumped imports are (...), causing injury within the meaning of this Agreement.*”, requires a causal link between dumped imports and the injury incurred by domestic production for implementation of dumping measures. For instance, in case the negative effects exposed to the domestic production originate from decrease in customer demand or consumption changes and not caused by dumped imports, dumping measures should not be implemented.

IV – An Example of Injury and Injury Threat Determination⁵

Existence of injury in the competing domestic industry can be illustrated simply with an example. For this purpose, the tables below show the data on the imports of an X product from country A to country B over the years.

Years	Sales Price of the Dumped Product (Turkish Liras)	Total Amount of Dumped Imports (Figure)	Total Amount of Dumped Imports (Turkish Liras)	Dumped Imports' Share in Imports (%)	Dumped Product's Market Share (%)
2003	200	30.000	6.000.000	% 50	% 10
2004	180	105.000	18.900.000	% 70	% 35
2005	170	153.000	26.010.000	% 85	% 51
2006	150	216.000	32.400.000	% 90	% 72

Years	Sales Price of Domestic Product	Total Domestic Production (Figure)	Domestic Product's Market Share (%)
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⁵ Onur ELELE, Uluslararası Ticarete Damping ve Antidamping (Yaklaşım Yayıncılık 2008), 49

	(Turkish Liras)		
2003	250	240.000	% 80
2004	230	150.000	% 50
2005	220	120.000	% 40
2006	210	60.000	% 20

As seen in the tables above, while product X is being imported to country B over dumped prices, its import price is gradually decreasing. As a result of the dumped imports between the years of 2003-2006, dumped imports show a significant rate of increase in comparison to both domestic production and total imports from other countries. Tables also demonstrate that dumped imports have a significant depressing and suppressing effect on domestic prices and caused decline in domestic production as well as domestic product's market share. Also, the correspondence and causation amongst the percentage distribution of the foregoing parameters can be used to verify the casual link between the dumped import and the damage.

In light of the foregoing, for this present case it can be argued that foregoing parameters fulfill the conditions for injury as well as injury threat.

V – Conclusion

Existence of dumping alone is not sufficient for implementing anti-dumping measures. To do so, (i) injury and (ii) causal link between dumped imports and the damage that injure domestic production are also necessary. Therefore, process of injury determination play a substantial role in Turkish anti-dumping investigations.

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The content of this article is intended to provide a general guide to the subject matter.

Specialist advice should be sought about your specific circumstances.
