

List of Frequently Asked Questions and Answers

Q.1. what is the significance of Trade Remedy Measures, such as anti-dumping, countervailing and safeguard measures in Sri Lanka?

Answer:

Sri Lanka is currently in the process of phasing out its most of the customs duties and para tariffs in relation to imports.

With removal of these customs duties on imports, there has been a tendency on the part of several trading partners of Sri Lanka to resort to dumping or subsidisation of their goods of different kinds into Sri Lanka, thereby creating a situation of unfair competition in the domestic market whereby the domestic industry may suffer injury.

To address such a scenario of unfair trade, and to provide the requisite remedy to the domestic industry against injury caused by such dumping and subsidisation, the anti-dumping and countervailing measures have assumed a great deal of significance.

On other hand, import surges in substantial quantities can also cause injury to the domestic producers in Sri Lanka. To address such a scenario and to provide the requisite remedy to the domestic industry against injury caused by such surge of imports the safeguard measures have assumed a great deal of significance.

The anti-dumping or countervailing measures or safeguard measures do not aim at providing protection to the domestic industry per se. These are only remedial measures for removal of injury to the domestic industry caused by the dumping or subsidisation or surges of imports of goods. The object behind such measures is to re-establish fair competition and to provide the domestic industry a level playing field.

The paramount objective of the multi-lateral trade regime of WTO is to establish free and fair international trade. With reduction of duties and removal of QRs, Sri Lanka has moved towards the regime of free trade. At the same time, anti-dumping and countervailing measures can be applied, where warranted, in the interest of fair trade.

In Sri Lanka, the Designated Authority for anti-dumping, countervailing and safeguard measures is Department of Commerce.

Anti-Dumping Duties against Dumping:

Q. 2. What is anti dumping? What is its purpose in International Trade?

Answer:

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.

Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value.

This is an unfair trade practice which can have a distortive effect on international trade.

Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti-dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti-dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping.

The WTO Agreement does not regulate the actions of companies engaged in "dumping". Its focus is on how governments can or cannot react to dumping — it disciplines anti-dumping actions, and it is often called the "Anti-dumping Agreement".

Q.3. Does dumping mean cheap or low priced imports?

Answer:

Often, dumping is mistaken and simplified to mean cheap or low priced imports. However, it is a misunderstanding of the term. On the other hand, dumping, in its legal sense, means export of goods by a country to another country at a price lower than its normal value. Thus, dumping implies low priced imports only in the relative sense (relative to the normal value), and not in absolute sense.

Import of cheap products or counterfeits through illegal trade channels like smuggling do not fall within the purview of anti-dumping measures.

Q.4. Is anti-dumping a measure of protection for domestic industry?

Answer:

Anti-dumping, in common parlance, is understood as a measure of protection for domestic industry. However, anti-dumping measures do not provide protection per se to the domestic industry. It only serves the purpose of providing remedy to the domestic industry against the injury caused by the unfair trade practice of dumping. In fact, anti-dumping is a trade remedial measure to counteract the trade distortion caused by dumping and the consequential injury to the domestic industry. Only in this sense, it can be seen as a protective measure. It can never be regarded as a protectionist measure.

Q.4(a) Are not the Anti-Dumping measures injurious to the interests of the consumers?

Answer:

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 competition in the Sri Lankan 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 Sri Lankan 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, would prevent the decline of the domestic industry and would create 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.5. What is the relief/remedy to the Domestic Industry under the Anti-Dumping mechanism? Is it always in the form of Anti-dumping duty?

Answer:

The relief to the domestic industry against dumping of goods from a particular country is in the form of anti-dumping duty imposed against that country/ies, which could go up to the dumping margin. Such duties are exporter specific and country specific.

However, the remedy against dumping is not always in the form of anti-dumping duty. The Authority may terminate or suspend investigation after the preliminary findings **if the exporter concerned furnished an undertaking to revise his price to remove the dumping or the injurious effect of dumping as the case may be.**

No anti-dumping duty is recommended on such exporters from whom price undertaking has been accepted.

Anti-dumping duties, which takes a form of *ad valorem*/specific duties, and be imposed in addition to other import duties levied on the imported products concerned, shall be collected by the Director-General of Customs and provisions of the Customs Ordinance relating to collection of duties, shall *mutatis mutandis* apply to and in relation to the same.
[Section 48(2) of the AD & CVD Bill]

Q.6. What is the difference between anti-dumping duty and Normal Customs duty? Is the anti-dumping duty over and above the Normal Customs duty chargeable on the import of an item?

Answer:

Although anti-dumping duty is levied and collected by the Customs Authorities, it is entirely different from the Customs duties not only in concept and substance, but also in purpose and operation.

The following are the main differences between the two: -

- Conceptually, anti-dumping and the like measures in their essence are linked to the notion of fair trade. The object of these duties is to guard against the situation arising out of unfair trade practices while customs duties are there as a means of raising revenue and for overall development of the economy.
- 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.**

The object of anti-dumping and allied duties is to offset the injurious effect of international price discrimination while customs duties have implications for the government revenue and for overall development of the economy.

- 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 of an exporter offering a price undertaking. Thus such measures are not always in the form of duties/tax.
- Anti-dumping and anti-subsidy duties are levied against exporter / country in as much as they are country specific and exporter specific as against the customs duties which are general and universally applicable to all imports irrespective of the country of origin and the exporter.

Thus, there are basic conceptual and operational differences between the customs duty and the anti-dumping duty. The anti-dumping duty is levied over and above the normal customs duty chargeable on the import of goods in question.

Q.7. What are the parameters used to assess dumping of goods from a country?

Answer:

Dumping means export of goods by one country / territory to the market of another country / territory at a price lower than the normal value. If the export price is lower than the normal value, it constitutes dumping.

Thus, there are two fundamental parameters used for determination of dumping, namely, the **normal value** and the **export price**. Both these elements have to be compared at the same level of trade, generally at ex-factory level, for assessment of dumping.

Q. 8. How do you define?

Normal Value: Normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country.

If the normal value cannot be determined by means of the domestic sales, the following two alternative methods may be employed to determine the normal value: -

- i. **Comparable representative export price** to an appropriate third country.
- ii. **Constructed normal value**, i.e. the cost of production in the country of origin with reasonable addition for administrative, selling and general costs and reasonable profits.

Export price: The Export price of the goods allegedly dumped into Sri Lanka means the price at which it is exported to Sri Lanka. It is generally the CIF value minus the adjustments on account of ocean freight, insurance, commission, etc. so as to arrive at the value at ex-factory level.

Dumping Margin: The margin of dumping is the difference between the Normal value and the export price of the goods under complaint. It is generally expressed as a percentage of the export price.

Illustration:

Normal value US\$ 110 per kg.

Export price US\$ 100 per kg.

There is dumping in this case as export price is lower than normal value and dumping margin in this case is US\$ 10 per kg., i.e. 10% of the export price.

Dumping is a function of two variables, namely Normal Value and Export Price, which must be compared at the same level of trade i.e. at the ex-factory level.

Q.7. What are the essential requisites for initiating an anti-dumping investigation?**Answer:**

The following are essential for initiating an anti-dumping investigation: -

1. Sufficient evidence to the effect that;

- there is dumping
- there is injury to the domestic industry; and
- there is a causal link between the dumping and the injury, that is to say, that the dumped imports have caused the alleged injury.

2. The domestic producers expressly supporting the anti-dumping application must account for not less than 25% of the total production of the like article by the domestic industry.

3. 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 constitute 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.

Note: This is to further clarify that a domestic industry, which seeks relief, should give sufficient evidence with respect to the above parameters. Unless the above parameters are satisfied, it will not be possible for the Department of Commerce to initiate an anti-dumping investigation.

Q. 8. What are the parameters of injury to the domestic industry?**Answer:**

Broadly, injury may be analysed in terms of the volume effect and price effect of the dumped imports. The parameters by which injury to the domestic industry is to be assessed in the anti-dumping proceedings are such economic indicators having a bearing upon the state of industry as the magnitude of dumping, and the decline in sales, selling price, profits, market share, production, utilisation of capacity etc.

Q.9. What is the Non-injurious Price and injury margin? How these are worked out?

Answer:

Non-Injurious Price (NIP) is that level of price, which the industry is, expected to have charged under normal circumstances in the Sri Lankan 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 effected the company and for which dumped imports can't be held responsible.

Besides the calculation of the margin of dumping, the Designated Authority also calculates the Injury Margin for the Domestic Industry. The Injury Margin is the difference between the Non-Injurious Price due to the Domestic Industry and the Landed Value of the dumped imports.

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.

For calculating Non-Injurious Price, the Authority calls for costing information from the domestic industry in the prescribed pro forma for the period of investigations and for three previous years. Accounting records maintained on the basis of Generally Acceptable Accounting Principle (GAAP) 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 is determined considering the reasonable return on the capital employed

Q.10. How is causal link established between dumping and injury to the domestic industry?

Answer:

In the anti-dumping proceedings, it is imperative to prove that the dumping has caused injury to the domestic industry. No anti-dumping duty shall be recommended without a finding of this causal relationship. That is to say,

Dumping should lead to Injury

The causal link is to be established generally in terms of the following effects of dumped imports on domestic industry: -

- volume effect
- price effect

The volume effect of dumping relates to the market share of the domestic industry vis-à-vis the dumped imports from the subject country/ies while with regard to the price effect, the Designated Authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of the like product in Sri Lanka, 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.11. In case anti-dumping duty is warranted after the investigation, what is the extent of such duty to be recommended/imposed?

Answer:

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**. The Sri Lankan law also provides that the anti-dumping duty to be recommended/levied shall not exceed the dumping margin.

Q.12. What is the minimum level of imports (de-Minimis margins) from a country and from an individual exporter below which such exporter or country is to be excluded from the scope of Anti-Dumping investigation/duties?

Answer:

Individual exporter: Any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of anti-dumping duties even if the existence of dumping, injury as well as the causal link is established.

Country: Further, investigation against any country is required to be terminated if the volume of the dumped imports, actual or potential, from a particular country accounts for less than 3% of the total imports of the like product.

However, in such a case, the cumulative imports of the like product from all these countries who individually account for less than 3%, should not exceed 7% of the import of the like product.

II. Anti-Dumping Procedures

Q.13. Who can make an application for initiation of Anti-Dumping investigation and imposition of AD duty?

Answer:

Applications can be made by or on behalf of the concerned domestic industry to the Department of Commerce for an investigation into alleged dumping of a product into Sri Lanka. Under the Rules, a valid application can be made only by those petitioners/domestic producers who expressly support the application, and account for more than 25% of total domestic production of the like article in question.

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.

However, such producers may exclude those who are related to the exporters or importers of the alleged dumped article or are themselves importers thereof. In other words, a domestic producer who is related to the exporter or importer of the dumped article or is himself an

importer thereof, may not be treated as part of the domestic industry even if he files or supports an anti-dumping petition.

Q.14 Who are the interested parties to an anti-dumping investigation?

Answer:

The interested parties to an anti-dumping investigation include:

1. the domestic industry on whose complaint the proceedings are initiated;
2. The exporters or the foreign producers of the like articles subject to investigation;
3. The importers of the same article allegedly dumped into Sri Lanka;
4. The Government of the exporting country/ countries.
5. The trade or business associations of the domestic producers/importers/user industries of the dumped product.

Q.15 Who all can appear in Anti-dumping cases to represent the parties?

Answer:

Any representative duly authorized by the petitioner/ interested parties/ Association etc. can appear in the Anti-dumping cases to represent the concerned parties.

Q.16 What are the essential conditions for initiation of Anti-Dumping investigation?

Answer:

The Designated Authority shall not initiate an anti-dumping investigation unless it receives a well-documented application/petition, which should help it determine:

1. that the domestic producers/petitioners filing the petition and/or expressly supporting the petition account for at least 25% of total domestic production of the like article in question.

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 fifty percent 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; and

2. that there is sufficient evidence furnished by the petitioner/s regarding;
 - Dumping of goods in question;
 - Injury to the domestic industry; and
 - A causal link between the dumped imports and alleged injury to the domestic industry.

Q.17 Can the Designated Authority initiate Anti-Dumping cases in respect of items suo-motu, i.e. on its own, without a petition filed by the aggrieved party?

Answer:

Normally speaking, the Designated Authority initiates the proceedings for anti dumping action on the basis of a petition received from the domestic industry alleging dumping of certain goods and the injury caused to it by such dumping.

However, Section 19 of AD & CVD Bill provides for suo-motu initiation of anti-dumping proceedings by the Department of Commerce (DoC) on the basis of direction received from the Minister in charge of the subject.

In such circumstances, the Authority (DoC) initiates the anti-dumping investigation on its own without any complaint/petition filed in this regard, provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury.

It is further clarified that after initiation, the suo-motu investigation follows the same procedure as the one based on a petition as mentioned in the Anti-Dumping Rules.

Q.18 What is the information required to be submitted by the Domestic Industry for Anti-Dumping proceedings?

Answer:

An application for investigation into any alleged dumping filed by the aggrieved domestic industry must contain sufficient evidence (like Bill of Entry, Invoices, letter from the Sri Lankan Mission in the subject country/ies, data from secondary sources like specialized commodity journals etc.) as to the existence of dumping in relation to the goods imported from the subject country/ies and the fact that such dumped imports are causing or threatening to cause material injury to the Sri Lankan Industry producing the like goods or are materially retarding the establishment of an industry. Further, the information relating to the standing of the petitioner/s as domestic industry (Please see the answer to Q.2) must be contained in the anti-dumping application.

The application containing the requisite information for the proceedings must be made in the prescribed format devised by the Department of Commerce and available in the said Directorate. Guidelines for filling in the application proforma and for completing the prescribed questionnaire are formulated and incorporated in a user-friendly manner in the application proforma itself.

Q.19 What is the period to which the information will relate that is to say what is Period of Investigation in anti-dumping cases?

Answer:

All the information and evidence furnished in the application in relation to dumping, injury and causal link must pertain to a definite period which is called the period of investigation. Broadly, there are indications that such period should not be, in any case, less than six months and not more than eighteen months.

It is, however, important that the period taken into consideration for detailed investigation into dumping and injury should be as representative and as recent as possible. The most desirable period of investigation is a financial year provided there is reasonable proximity between the end of the financial year and the filing of the application.

However, for the purposes of injury analysis, the domestic industry has to furnish the relevant data **for the past three years.**

Q.20 What are the various stages of the investigation process?

Answer:

An Application received by the Designated Authority is dealt with in the following manner:

A. Preliminary Screening:

The application is scrutinized to ensure that it is fully documented and provides sufficient evidence for initiating an investigation. If the evidence is not adequate, then a deficiency letter is issued. Unless the deficiencies are rectified, the submission made before the Authority cannot be construed as an application pending before the Authority.

B. Initiation:

Designated 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 dumping, injury and causal link, a public notice is issued initiating an investigation.

The Initiation notice will be issued normally within 5 days from the date of receipt of a properly documented application.

C. Access to Information:

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

D. Preliminary Findings:

The Designated Authority will proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, make a preliminary finding containing the detailed information on the main reasons behind the determination. The preliminary finding will normally be made within 60-70 days from the date of initiation.

E. Provisional Duty:

A provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the Designated 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 & Public Hearing:

Interested parties who participate in the investigations can request the Designated Authority for an opportunity to 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.

Besides the above, the Authority holds a public hearing inviting all interested parties to make their submissions before it. All oral submissions made during the hearing need to be reproduced in writing for the Authority to take the same on board.

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 Designated Authority will inform all interested parties of the essential facts, which form the basis for its decision before the final finding is made.

H. Final Determination:

The interested parties submit their response to the disclosure and the final position of the Authority taken therein. The Authority examines these final submissions of the parties and comes out with final findings.

(Please refer the flow chart given below)

Conditions for Initiation of an Investigation

(Section 14 of the Antidumping & Countervailing Bill)

Requirement of a Written Application by /on behalf of a SL Industry having submitted to the Director General of Commerce [Sections 14(1) & 14 (2) of the AD & CVD Bill] or Self Initiation (Section 19 of AD & CVD Bill)

Application is required to be supported by SL Producers, whose collective output constitutes more than 50% of total production, Provided that Producers support the application at least to be 25% of total production produced by the Sri Lankan industry - [Section 14(3) of the AD & CVD Bill]

An application shall provide information as is reasonably available to the applicant (Section 15 of the AD & CVD Bill)

Director-General shall, upon receipt of an application, immediately notify the government of each exporting country concerned - [Section 16(2) of the AD & CVD Bill]

Director-General shall notify of investigation to the Interested Parties and issue a Public Notice when an investigation is initiated - [Section 21 of the AD & CVD Bill]

Director-General shall, as soon as an investigation is initiated, provide the full text of the written application to all concerned Parties - [Section 22 of the AD & CVD Bill]

Parties interested may, not later than 15 days before making of Preliminary determination, submit written arguments concerning any matter relevant to the investigation – [Section 30 of the AD & CVD Bill]

Director-General shall issue a public notice of Preliminary Determination, which shall set forth in sufficient detail findings & conclusions reached on all issues of fact and law - [Section 31(2) of the AD & CVD Bill]

As per Second Schedule to the Bill, Director-General may carry out investigations in other countries where necessary, with prior consent of firms concerned, and after notifying representatives of government of country in question for verifying information provided/to obtain further information - [Section 33 (2) & 33 (3) of the AD & CVD Bill]

I. 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 by the Central Government by 6 months. (Please refer the flow chart given below)

Time Frames to be Honoured

The Director-General shall, having examined the accuracy and adequacy of the evidence provided in the application, determine whether there is sufficient evidence to justify initiation of an investigation – [40 days to make this decision](#) [Sections 18(1) & 18(2) of the AD & CVD Bill]

Director-General shall grant exporters & foreign producers to whom the questionnaire is sent, a period not less than [37 days](#) for reply - [Section 29(2) of the AD & CVD Bill]

Director-General shall make Preliminary Determination not earlier than [6 months](#) & not later than [5 months](#) after initiation - [Section 31(1) of the AD & CVD Bill]

Director-General shall, upon request made by a party interested [not later than 01 month](#) after publication of Preliminary Determination, fix a date not later than [03 weeks](#) & not more than [01 month](#) prior to date of proposed date of Final Determination, for the hearing. – [Section 35(1) of the AD & CVD Bill]

Director-General shall make a Final Determination of dumping, injury, and causal link, generally [within 6 months](#) of date of preliminary determination – [Section 38(1) of the AD & CVD Bill]

Director-General shall conclude an anti-dumping investigation within [12 months](#) and in no case more than [18 months](#) of its initiation - [Section 23 of the AD & CVD Bill]

Q.21 Are the interested parties to the investigation given sufficient opportunity to represent their case before the Authority?

Answer:

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

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

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

After the imposition of provisional duty, the interested parties file their responses to the Preliminary findings and opportunity is provided to them to submit the facts and figures to the Authority at the stage of verification of their information if the same has been already filed in response to the initiation.

A formal Public hearing is held providing opportunities to all interested parties to make their submissions before it. 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 of the different interested parties are given due consideration and on that basis the Authority issues a disclosure of essential facts which are proposed to form the basis of final findings.

The parties to the investigation are also given the final opportunity to respond to the disclosure and represent their case before the final findings are notified.

Q.22 Can there be interim relief to the domestic industry pending levy of final anti-dumping duty? In how many days such interim relief can be expected?

Answer:

Yes, the Designated Authority recommends an interim relief which is provided to the affected domestic industry in the form of provisional anti-dumping duty pending the finalisation of investigation proceedings. The provisional anti-dumping duty is recommended by the Authority in its preliminary findings and the same is levied by the Ministry of Finance.

This serves as immediate relief to the domestic industry against the injury caused to it by the dumping of goods. Statutorily, the provisional anti-dumping duty cannot be levied earlier than 60 days from the date of initiation of proceedings.

The endeavour of the Designated Authority has been to recommend provisional duty immediately after the expiry of the mandatory period of 60 days. That is to say, in normal circumstances, the provisional anti-dumping duty is recommended in a period of 60-70 days and levied in a period of about 3 months from the date of initiation of the proceedings.

Provisional Measures

[Section 41, Section 42, & Section 43 of the AD & CVD Bill]

Q. 23. Can the anti-dumping duty be levied on a retrospective basis?

Answer:

Anti-dumping duty can be levied on a retrospective basis in case it is found that –

1. 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
2. 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.

Q.24 who imposes the Anti-Dumping duty, provisional or final?

Answer:

While the Designated Authority (the Department of Commerce) recommends the anti-dumping duty, provisional or final, it is the Ministry of Finance, which acts upon such recommendation within three months and imposes/levies such duty. (Please refer the flow chart given below)

Institutional Mechanism in Decision Making

The Director-General shall submit a proposal for a definitive Anti-Dumping Duty to the Inter-Ministerial Committee (IMC)
[Section 38(2) of the AD & CVD Bill]

Inter-Ministerial Committee considers appropriateness of imposing of a definitive anti-dumping duty [Section 38(3) of the AD & CVD Bill]

Inter-Ministerial Committee submits recommendations to Minister of Finance through the Minister (I & C), within 10 working days of receipt of such proposal [Section 38(3) of the AD & CVD Bill]

Minister of Finance in consultation with Minister (I & C) shall, within 14 working days of date of receipt of IMC recommendation & taking into account of SL's economic interest, determine on adoption of a definitive anti-dumping duty, and amount of duty to be imposed, if any.
[Section 39(1) of the AD & CVD Bill]

Q.25 What are the implications for the importers who are liable to pay anti-dumping duty?

1. if the final duty is less than the provisional duty;
2. The final duty is more than the provisional duty;

Answer:

Anti-dumping duty is recommended and 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, the differential amount already collected as provisional duty shall be refunded.

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

If the provisional duty is withdrawn based on the final findings of the Designated Authority, than the provisional duty already collected shall be refunded.

Q.26 what is the arrangement made to notify the recommendations of the Designated Authority?

Answer:

The Designated Authority notifies its recommendations with respect to Initiation / Preliminary Findings/Final Findings etc. through Government of Sri Lanka, Gazette.

Q.27 Is the order of determination of anti-dumping duty appealable? If so, which is the appellate Authority?

Answer:

The Bill under **Section 81** provides that an order of determination of existence degree and effect of dumping is appealable under judicial review of action in terms of Article 140 of the Constitution. However, as per the judicial view, only the final findings/order of the Designated Authority/Ministry of Finance can be appealed against.

No appeal will lie against the Preliminary findings of the Authority and the provisional duty imposed on the basis thereof. The Appeal should be filed within (90) days.

Q.28 Can the Anti-Dumping investigation, once initiated, be terminated? If so, what are the circumstances?

Answer:

The Designated Authority may suspend or terminate the investigation in the following cases:

1. if there is a request in writing from the domestic industry at whose instance the investigation was initiated.
2. when there is no sufficient evidence of dumping or injury.
3. if the margin of dumping is less than 2% of the export price.

4. the volume of dumped imports from a country is less than 3% of the total imports of the like article into Sri Lanka or the volume of dumped imports collectively from all such countries is less than 7% of the total imports.
5. If injury is negligible.

(Please refer the flow chart given below)

Director-General shall not initiate an investigation, when he determines that -

- ✓ imports of the allegedly dumped product from a country represent less than 3% of total imports of allegedly dumped + like product in SL, unless imports of allegedly dumped product from countries under investigation, collectively account for more than 7% of imports; or
- ✓ the dumping margin is less than 2%, expressed as a percentage of the export price.

[Section 20 of the AD & CVD Bill]

An application may be withdrawn

- ✓ at any time prior to initiation of an investigation; or
- ✓ at any time after an investigation has been initiated - Director-General shall terminate investigation without measures, unless he determines that it shall be continued in the economic interest of SL.

[Section 17 of the AD & CVD Bill]

Q.29 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?

Answer:

The anti-dumping duty shall remain in force **for a period of five years from the date of imposition of duty**. However, such duty can be reviewed by the Designated Authority any time before the expiry of the said period.

The Authority has the power to review the need for continuation of anti-dumping duty. Such a review can be done on the basis of a request received from an interested party in view of the changed circumstances.

The review may result in the withdrawal of the duty or in the variation of the duty level depending upon the new circumstances. Generally speaking, an interested party can file a request for review only after a year from the imposition of duty.

A review shall follow the same procedure as prescribed for investigation of a fresh case to the extent applicable.

Definitive anti-dumping duty shall stand terminated on a date not later than 5 years from its imposition or from date of most recent review under section 57, if that review has covered both dumping & injury - [Section 56(1) of the AD & CVD Bill]

Q.30 Does the levy of Anti-Dumping duty on a particular product extend to all imports of that product? Which imports are exempt from such duty?

Answer:

The levy of anti-dumping duty is both exporter specific and country specific.

It extends to the imports from only those countries in respect of which dumping has been alleged and the complaint has been filed and duty recommended.

Such duty will not apply to the imports from other countries in respect of which the domestic industry has not alleged dumping.

Countervailing Duties against Subsidisation:

Q.31 What are other remedial measures against unfair trade practices in addition to Anti-Dumping? How do they come into operation?

Answer:

Apart from dumping, some of the countries also resort to the subsidisation of their exports to Sri Lanka. Export subsidies, under the WTO agreement, are treated as unfair trade practice and such subsidies are actionable by way of levying of anti-subsidy countervailing duty.

Anti-subsidy countervailing measure is in the form of countervailing duty which is to be imposed only after the determination that:

1. the subsidy is a specific subsidy;
2. the subsidy relates to export performance;
3. the subsidy relates to the use of domestic goods over imported goods in the export article; or
4. the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article.

Q.32. What is subsidy for this purpose?

A subsidy is said to exist;

1. If there is a financial contribution by the Government or any public body within the territory of the exporting country, i.e. where-
2. There is a direct transfer of funds (including grants, loans, and equity) by the Government; government revenue i.e. otherwise due is foregone and not collected (including fiscal incentives, I.T. exemption a government provides goods or services other than general infrastructure;
3. A government grants or maintains any form of income or price support which operates directly or indirectly to increase export of any article from its territory.

Q.33. What is not a subsidy?

However, the subsidy which is for research activities conducted by the persons engaged in manufacture or export or the subsidy which is for assistance to disadvantaged regions with the territory of the exporting country is not actionable. Thus, no countervailing duty is to be levied on such subsidies.

In anti-subsidy countervailing investigation, the Government of the exporting country/ies is a party to the investigation in addition to the exporters from these countries. The countervailing duty imposed on the subsidized exports from a country shall not exceed the amount of such subsidy/ies.

Q.34 Can the Anti-Dumping and Anti-Subsidy measures be applied simultaneously?

Answer:

GATT agreement as well as the Sri Lankan laws provide that the injured domestic industry is permitted to file for relief under the anti-dumping as well as countervailing duties. However, no articles shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

Q.35 What are Safeguards?

There is one more trade remedial measure called "safeguards" which are applied as an emergency measure in response to the surge in imports of a particular item.

Safeguards, on the other hand, are applied when:

1. There is a surge in imports of a particular product irrespective of a particular country/ies and,
2. It causes serious injury to the domestic industry.

Safeguard measures are applied to all imports of the product in question irrespective of the countries in which it originates or from which it is exported. This aspect distinguishes Safeguards from antidumping and anti-subsidy measures which are always country specific and exporter specific.

Safeguards are applied in the form of either safeguard duty or in the form of safeguard Quantitative Restrictions. These measures are administered by Department of commerce.

Q.36 What is the institutional arrangement in Sri Lanka for anti-dumping, anti-subsidy and safeguard action against unfair trade practices?

Answer:

Anti-dumping and anti-subsidies, countervailing measures and Safeguard measures in Sri Lanka are administered by the Department of Commerce (DoC) functioning under the Ministry of Trade and Industry and the same is headed by the "Designated Authority". The Designated Authority's function, however, is only to conduct the anti-dumping/anti-subsidy &

countervailing duty investigation and make recommendation to the Government for imposition of anti-dumping or anti-subsidy measures.

Such duty is finally imposed/levied by a Notification of the Ministry of Finance. Thus, while the Department of Commerce recommends the Anti-dumping duty, it is the Ministry of Finance, which levies such duty.

WHEN SHOULD ONE APPLY FOR ANTI-DUMPING DUTY, COUNTERVAILING DUTY OR SAFEGUARD DUTY

Anti-Dumping Duty	Countervailing Duty	Safeguard Duty
If the goods are imported at dumped prices.	If the goods were subsidised in the country of export	If the goods have entered in increased quantities
If the dumped imports cause or threaten to cause material injury or material retardation of the establishment of a domestic industry.	If the subsidised imports cause or threaten to cause material injury or material retardation of the establishment of a domestic industry.	If the increased imports cause or threaten to cause serious injury to the domestic producers of like or directly competitive products.

Q.37 Can One Apply Simultaneously For Both Anti-Dumping Duty and Safeguard Duty?

The Safeguard duty Rules require that in case the injury to the domestic industry is caused due to dumping, the domestic industry should seek for the imposition of anti-dumping duty and not safeguard duty.

*Compiled by Gothami Silva
(DoC – 06.12.2017)*