
A brief guide to making anti-dumping complaints / petitions

The requirements of an anti-dumping complaint

The particular requirements of a complaint will be set out in the legislation of the country concerned. However, as a minimum, complaints will have to contain the information required by the WTO anti-dumping agreement .

- Identity of the complainant (either an individual company or an association of producers) and the products produced by it which are affected by the allegedly dumped imports.
- Volume and value of domestic production of product concerned accounted for by complainants.
- Description of the allegedly dumped products.
- The exporting countries concerned and the identity of all producers/exporters who are known together with details of known importers.
- Information on prices at which product is sold, both domestically and when exported to market of complainants.
- How these imports have affected the development of the domestic market and led to injury to the domestic industry particularly in terms of trends in key economic indicators such as market share, production and profitability.

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100% of the domestic industry is not required in order to make an anti-dumping complaint. In fact, from the complainants' point of view it may be better that 100% of the industry is not involved.

The basic WTO rule is that at least 25% of production volume must be accounted for by the complainants. Thus, 25% of the industry can make a complaint, as long as less than 25% actively oppose the complaint. Note that the way in which this rule applies may vary between jurisdictions.

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In jurisdictions where the ‘domestic industry’ is considered to be that making the complaint, these rules provide an opportunity for some careful consideration of which companies go ahead and make the anti-dumping complaint. Different companies making the complaint may produce different results.

Some companies might not be entitled to make a complaint

WTO rules allow certain companies to be excluded from domestic industry. This has significance in assessing whether the complainants represent a minimum 25% of total production (because the “total production” would exclude the excluded producers) and whether injury has occurred to the domestic industry.

The first such exclusion from ‘domestic industry’ can be made when domestic producers are related to the exporters accused of dumping. Thus, if country X initiates an anti-dumping investigation against country Y, inward investors from country Y producing in country X can be excluded from the domestic industry. On the other hand, an inward investor from country Z cannot be excluded.

The definition of domestic industry is, therefore, not a question of nationality of ownership. If a company is producing in the country conducting an anti-dumping investigation, its nationality is irrelevant in regard of this question unless it happens to be related to the exporting countries being investigated.

The key test in deciding whether a company is related is whether the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

A second possible exclusion from the definition of domestic industry are those producing companies that are also importing the allegedly dumped product. The argument would be that a company that is importing the dumped product is potentially benefiting from the dumping and therefore is shielded from the injury suffered by the rest of the domestic industry.

It should be noted that the WTO agreement does not require either of these types of companies to be automatically excluded from the definition of domestic industry. Therefore, the precise approach of the anti-dumping authority to whom an anti-dumping complaint is being made should be considered.

Potential complainants are advised to work through possible complications of these sorts in advance of making the complaint. If it is found, for example, that one of the major companies making the complaint is also importing some dumped product, this could cause complications later in the case.

Product definition is crucial

Product definition at the stage of the complaint/petition is crucial for a number of reasons.

First, the percentage of the industry represented in the complaint can vary according to different formulas of product definition. Finding a definition of a product that excludes a particular grade or model may be a way of ensuring that the 25% test is met, or indeed that a company that is performing very well is not even relevant to the investigation.

Second, the product definition must be well defined in order that all aspects of the investigation, both on the dumping and injury side, pass smoothly.

The product definition will have to be confirmed by the anti-dumping authority in question. Therefore it is clear that complainants do not have carte blanche in dictating the product definition. Nevertheless, usually the anti-dumping authority officials will not be as familiar with the industry as those actually in the companies involved. Thus, the way in which the product is defined from the outset can critically affect the result of the investigation.

How do you establish dumping?

One of the hardest parts of the complaint is putting together the information to prove that dumping that is occurring. The actual requirements in the country concerned will be important to determine (note that requirements may include information not set out in the legislation but in practice that is required).

In order to provide evidence of dumping, it is necessary to provide sufficient evidence that export prices are below normal value (usually domestic prices but can be cost of production if domestic prices are lower than COP or unreliable). The best evidence of export and domestic prices is to get hold of actual invoices. However, often, this can be difficult and the WTO agreement allows other forms of evidence to be used.

On **domestic price**, if domestic invoices cannot be obtained, a second possibility are invoices to other export markets. Other sources of information might be offers and quotes, surveys, official statistics, advertising etc.

Sometimes, however, it is impossible to get hold of any information on actual prices charged. In this case, the WTO agreement allows complainants to provide information on the "constructed value" of the product concerned. This term is not defined but there is clearly a link to the cost of production of the product. It is unlikely that complainants will have detailed information on the cost of production of the exporters concerned. They may, however, have information on the production processes used by the exporters. Using this, combined with their own cost of production data, it should be possible to construct a reasonable estimate of normal value for the purpose of the complaint. In this way, a best estimate of the exporter's cost of production can be

calculated. A reasonable rate of profit can be added to this cost to give a representation of what a fair domestic price would be.

The level of trade of any invoices obtained or the cost of production estimate will have to be clearly identified. If the level of trade is not already ex factory, it is advisable to estimate the adjustments that need to be made in order that the prices can be equivalent to an ex factory level.

For cost of production, no adjustments may be necessary. For an invoice priced on an FOB export basis, for example, adjustments will have to be made for transport, insurance etc.

It can be noted that the emphasis in the WTO anti-dumping agreement is on *sufficient* evidence of dumping. Therefore, the estimate of normal value only has to be such as to provide sufficient evidence of the domestic price of the product. It does not have to be 100% accurate as it is recognised that the actual information is not necessarily available to the complainant. It therefore has to be a reliable estimate based on best information available.

In the case of countries considered to be non-market economies or economies in transition, a different approach may have to be adopted. The definition of a non-market economy, as well as their treatment in anti-dumping investigations, varies considerably from country to country. If a country is considered to be a non-market economy, evidence such as domestic invoices might be not be acceptable. In such situations alternatives will have to be found, such as estimate cost of production based on surrogate values for factors of production or domestic prices of companies operating in an appropriate analogue country (depending on the methodology of the administration with whom you are dealing).

The approach on what is acceptable as evidence of dumping will vary from country to country. Smaller anti-dumping authorities may use strict criteria on evidence to limit the number of complaints as a way of allocating scarce staff resources. The WTO rules provide a minimum of what must be provided. Individual anti-dumping authorities are free to impose higher criteria for accepting complaints if they wish. Potential complainants should consult the anti-dumping authority in question to discuss what is an acceptable level of evidence.

For **export prices** it might be easier to get hold of actual information from importers of the product into the domestic market. If information on actual prices cannot be obtained, an estimate might be made by calculating unit values (i.e. total value by total volume of imports of the product from the country concerned) from official trade statistics. Although unit values are notoriously inaccurate as an estimate of price, they probably do meet the criteria to provide sufficient evidence of low prices.

However the estimate of price is obtained, adjustments may have to be made to ensure that the price represented is equivalent to the level of trade of the normal value (probably ex factory). This could include adjustments for transport, insurance, importer's profit etc.

In calculating an estimated **margin of dumping**, efforts should be made to produce a fair comparison of prices. As mentioned above, the prices used should be at the same level of trade. This will usually be ex factory but could be on a different basis if that is more appropriate.

It should also be ensured that other factors, such as product type, are such as to allow a fair comparison. If the products are not an identical model or grade, adjustments should be made to compensate for the difference.

How do you establish injury and causal link?

In addition to the information on dumping, it is necessary to give information relating to injury and causal link. This should ideally be given for a period of 3-5 years previous to the date at which the complaint is made and should include:

- Information on the evolution of the volume of the allegedly dumped imports - have the dumped imports increased in volume both in absolute terms and in market share?
- The effect of these imports on prices of the like product in the domestic market – have prices fallen significantly and do the dumped imports undercut the domestic industry price?

If domestic prices are depressed (or have been prevented from increasing in response to cost increases) - due to the dumping - this should be pointed out. If the domestic industry has reduced its price to match the dumped imports, price undercutting may be zero, but in fact much injury has been caused through lower depressed prices.

It is also necessary to provide information on the consequent impact of the imports on the domestic industry - this should be measured in two ways.

- it must be established that injury has actually been suffered by the domestic industry.
- it must be shown that there is a causal link between the dumped imports and the alleged injury.

The fact that injury has been suffered must be established through negative trends in financial and economic indicators reflecting the companies performance. The WTO anti-dumping agreement gives the following indicators for guidance.

- Actual and potential decline in sales
- Magnitude of dumping margin
- Profits
- Negative effects on cashflow

- Output
- Inventories
- Market share
- Employment
- Productivity
- Wages
- Return on investments
- Growth
- Capacity utilization
- Ability to raise capital
- Factors affecting domestic prices
- Investments

However, other indicators might be provided if they help to establish that injury has been caused.

It should be noted that some injury cases are more obvious than others. It is possible, for example, that dumped imports volumes have fallen but that injury has still been caused by dumped imports. This situation might arise when the domestic industry has reduced its prices lower than the import prices in response to the dumping. Thus, domestic sales volumes may in fact have increased, but at the expense of large price reductions and consequent profit losses.

The injury statistics therefore need to be brought together to assess how the case can be established in a way that is consistent with developments in all of the numbers.

Precise requirements on injury will vary between different AD authorities. However, the more work that it is done at the complaint stage, the smoother the investigation will go, as the AD authority in question will have to make a detailed injury and causality assessment after initiation of an investigation.

A three-stage strategy for making anti-dumping complaints

STAGE 1 - Identify products suffering injury - It is easier for complainants to collect information on injury than on dumping, due to the fact that much of the injury data is actually held by the complainants themselves. Thus, before wasting any time trying to get information on normal values and export prices, it is advisable to check exactly which areas of the complainants' business are suffering injury.

STAGE 2 - Identify sources of injury - From official trade statistics and other data sources it should be possible to identify exporting countries that have increased their sales to the complainants' domestic market. Again using the trade statistics to calculate unit values, it should be possible to identify which of the countries that have increased their exports have done so at relatively low prices.

STAGE 3 - Sources of dumping - By this stage, potential complainants will have identified the product(s) and country(s) that might be the subject of anti-dumping complaints. The next stage is to identify if any of the prices concerned appear to be unfair. It is at this stage that estimates of normal value will have to be made.

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