

Trade Remedies Procedures in Pakistan

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A – Procedure for Anti-Dumping Investigation

No. of Trade Remedy Investigations in Pakistan

	Initiated	Definitive antidumping duties imposed	Terminated	Pending
Antidumping investigations	118	50	35	33
Countervailing investigations	2	-	1	1
Safeguard investigations	-	-	-	-

Filing of Application

- An antidumping application can be filed by;
 - a single company,
 - jointly from two or more companies or;
 - from association of companies.
- In most of the cases, the companies providing the data for application accounts for more than 50% of total domestic production.
- In few cases, this percentage is less than 50% but with the inclusion of supporting producers, this percentage reaches to 50%.

Filing of Application

- A proper Antidumping Application;
 - Is filed by or on behalf of the domestic industry;
 - Is in a format specified by the National Tariff Commission of Pakistan which is available on its website; and
 - Contains evidence of dumping, injury and causal link between the two.
- After receipt of an application the Commission;
 - Sends a formal acknowledgement for receipt of application to the applicant.
 - Gives a prompt notice to the government of each exporting country of the receipt of such application.
- The Act prohibits the Commission to publicize an application unless a decision has been made to initiate an investigation.

Initiation of an Investigation

- For initiation of an investigation, the Commission is required to:
 - Examine adequacy and accuracy of the application.
 - Decide whether or not to initiate the investigation normally within 45 days of the receipt of Application.

If the Commission has required additional information or application involves complex issues, the time period may be extended to sixty (60) days.

- If the Commission decides not to initiate an application, it informs the applicants of the reason for not initiating the investigation and informs the exporting country of its decision.

Initiation of an Investigation

- On initiation of an investigation, the Commission:
 - Gives notice to
 - exporters
 - importers and any representative
 - associations of importers or exporters known to the commission to be concerned
 - representatives of the exporting country
 - the applicant and other interested parties known to the Commission to have an interest therein
 - Publishes a copy of such notice in the official Gazette and in Urdu and English newspapers widely circulated in Pakistan.
 - Makes such notice available on the website of the Commission.

Language of Correspondence

- Antidumping Law of Pakistan (Antidumping Duties Act 2015) is issued both in Urdu and English languages.

Hereinafter in this presentation Antidumping Duties Act 2015 is referred to as The Act.

- All correspondence from the Commission is made in English language.

Disclosures made in the Notice of Initiation

Following disclosures are made in the notice of initiation:

- Name of the country(ies) alleged to be involved in dumping.
- Complete description of the investigated product.
- Description of alleged dumping to be investigated.
- Summary of alleged injury factors.
- Addresses where information and comments may be submitted along with specified time line for parties to make their comments.
- Date of initiation of an investigation.
- Proposed timeline for an investigation.

Registration of Interested Parties

- Interested party includes:
 - i. any exporter or foreign producer of an investigated product;
 - ii. any importer of an investigated product;
 - iii. trade or business association a majority of the members of which are producers, exporters or importers of an investigated product;
 - iv. the government of an exporting country;
 - v. any producer of a domestic like product in Pakistan;
 - vi. trade or business associations a majority of the members of which produce a domestic like product in Pakistan; and
 - vii. such other person or group of persons as the Commission may, by notification in the official Gazette, specify;

Registration of Interested Parties

- Interested parties are requested to make themselves known to the Commission (usually within 15 days of publication of notice of initiation).
- Interested parties are also given an opportunity to provide their comments/views within 45 days of publication of notice of initiation.
- The deadlines mentioned above are not strictly followed by the Commission and interested parties and their comments are entertained even after the above-mentioned deadlines.
- After initiation of an investigation, the Commission provides full text of written application to the interested parties (exporting country, exporters, importers and relevant trade association of exporting country).

Issues Scrutinized by the Commission Before Initiation

- Issues scrutinized by the Commission before initiation includes;
 - Product Scope
 - Domestic Industry
 - Adequacy and accuracy of the evidences for dumping and injury
- For product scope, the Commission first determines that the product imported (investigated product) and product produced by the domestic industry (domestic like product) are like products.

Issues Scrutinized by the Commission Before Initiation

- If a certain type of an investigated product is not being produced by the domestic industry, Commission excludes such types from the scope of the investigated product
- Criteria to determine the like product used by the Commission includes;
 - Raw materials.
 - Manufacturing process.
 - Appearances.
 - Substitutability of use.
 - HS Codes.

Issues Scrutinized by the Commission Before Initiation

- In determination of the domestic industry the Commission checks the production of the applicant producers as a proportion of the total domestic production.
- If any domestic producer or its related company has imported the investigated product, it is excluded from the definition of domestic industry on certain conditions including;
 - Its behavior from non-related producers. Commission normally sees behavior towards the application.
 - Its commercial interest-whether it is in its own production or imports.
 - In case of imports by its related company, whether related company controls that producer or not and vice versa.
 - Ratio of imports by that producer or its related company with total imports in Pakistan.

Appeal Against Initiation

- The Act provides an opportunity of Appeal against the Commission's decision to initiation an investigation before the Antidumping Appellate Tribunal (an authority to hear the Appeals against the decisions of the National Tariff Commission of Pakistan).
- Such appeal can be filed within 30 days of the publication of notice of initiation.
- The Tribunal is required to issue judgment within thirty (30) days of the filing of an appeal. Timelines not strictly observed.

Public File

- Public file is established and maintained relating to each investigation or review and subject to protection of confidential information.
- Public file is available to any interested party for review and copying at the office of the Commission throughout the course of investigation or review and any appeal.

Information Gathering

- The Commission gathers the information from the exporters, foreign producers, importers and other interested parties by way of;
 - Specified questionnaires which are available on the Commission's website.
 - Supplementary questionnaires (deficiency letter)
 - Written requests
- To meet the time line of the investigation the Commission;
 - Allows 37 days to the exporters, foreign producers to send back the filled questionnaires to the Commission;
 - Allows one or two weeks extension such time line upon a good cause shown.
 - Specifies the period within which reply has to be submitted for supplementary questionnaires or written requests.

Information Gathering

- In addition to requests for information by the Commission, any interested party may on its own initiative submit to the Commission in writing any information it considers relevant to an investigation, not later than fifteen days before the scheduled date of preliminary determination.
- Commission may seek information additional to the application submitted by the domestic industry which it deems necessary for the purpose of determination of injury.

On-the Spot Verification of Information

- The Commission normally conducts on-the spot verification of information submitted by the domestic industry, exporters, foreign producers during the course of investigation before preliminary determination of investigation.
- In a few instances, the Commission has also conducted the on-the spot verification after preliminary determination of investigation.
- The Act does not specify the timings of on-spot verification.
- The schedule for on-the-spot investigation is mostly fixed in consultation with the exporters/ foreign producers.

Preliminary Determination

- Preliminary determination whether, affirmative or negative, is made by the Commission;
 - To issue its preliminary findings and conclusions on all issues of facts and law considered material which are based on the information available at that time,
 - Not earlier than sixty (60) days and not later than one hundred and eighty days (180), after initiation of an investigation.
- Notice of the preliminary determination;
 - Is published in the official Gazzette.
 - Is published at least one issue each of a daily newspaper in English and Urdu language having wide circulation in Pakistan.
 - Is forwarded to exporting countries and other interested parties.
 - Is made available on the Commission's website.

Preliminary Determination

- Notice of preliminary determination contains information regarding;
 - Description of investigated product and its tariff classifications,
 - Name of known exporters and producers of the investigated product,
 - Period of investigation,
 - Determination of dumping margin,
 - Factors that that have led to the determination of injury,
 - imposition or non-imposition of provisional measures and the amount of provisional measures
 - an opportunity to request for hearing
 - schedule for final determination.

Preliminary Determination

- In addition to the notice of preliminary determination, a detailed report of preliminary determination is also issued by the Commission.
- The report of preliminary determination contains information on:
 - all the exporters/foreign producers who participated in the investigation,
 - determination of normal value and export price of each individual exporting producer
 - adjustments claimed and accepted by the Commission
 - determination of dumping margin subject to the confidentiality clause.
 - Determination of domestic industry
 - Determination of injury to the domestic industry
 - Determination of causal link between dumping and injury sustained by the domestic industry.

Disclosure Meeting

- Separate disclosure meeting is held by the Commission upon request by the exporters or producers within 15 days of publication of the notice of preliminary determination to;
 - Explain the dumping margin calculation methodology applied for that exporter or producer.
 - Allow the exporters or producers or their legal representatives to examine and receive copies of dumping calculation done by the Commission.

Hearing

- The Commission holds a hearing upon request by an interested party made not later than thirty (30) days after publication of a notice of preliminary determination, in which all interested parties are invited to present information and arguments.
- A hearing is held not later than sixty (60) days prior to the date proposed for final determination.
- A record note of the hearing is maintained in the public file complying with confidentiality clause.
- Interested parties need to submit the comments made at the hearing in writing within ten (10) days of the hearing.
- In an investigation in which no hearing is requested, any interested party may submit written comments to the Commission concerning any matter it considers relevant to an investigation.

Appeal Against Preliminary Determination

- Any interested party may prefer an appeal to the Appellate Tribunal against the preliminary determination within 30 days of the publication of notice of preliminary determination.
- The filing of an appeal does not effect the Commission's conduct of investigation. NO Stay granted by the Tribunal.
- In examining an appeal, the Appellate Tribunal may;
 - make such further inquiry as it may consider necessary, and
 - after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against
 - remand the case to the Commission, if requires action by the Commission.

Statement of Essential Facts

- Statement of Essential Facts (SEF) is issued;
 - After a hearing has been held:
 - the Commission has completed verification of information collected in the course of an investigation
 - At least thirty (30) days before the proposed date for final determination
 - To inform all the interested parties about the facts under consideration by the Commission which shall form the basis for final determination.
- Information in the SEF shall not indicate whether a final determination is affirmative or negative.
- Interested parties are allowed to submit comments, if any, on SEF within 15 days of the issuance.

Final Determination

- Final Determination is the final decision of the Commission which:
 - Is based on the information obtained by the Commission during the course of an investigation that have been disclosed to the interested parties,
 - Can be affirmative or negative,
 - Includes determination of dumping and injury
 - Is normally made within four to six months of the date of publication of notice of preliminary determination.
- As the provisional antidumping duties are levied for four months only, therefore the Commission prefers to make final determination within four months of the date of preliminary determination.

Final Determination

- Notice of final determination;
 - Is published in the official Gazette
 - Is published in at least one issue of each of a daily newspaper in English and Urdu language having wide circulation in Pakistan.
 - May contain a summary of salient features of the final determination and includes;
 - Description of the investigated product,
 - Period of investigation,
 - Methodology for calculation for dumping margins,
 - Decision on imposition of antidumping duties,
 - Applicable antidumping duty rates for each exporter or producer,
 - Procedure for refund of provisional antidumping duties, and
 - Timeline for request of disclosure meeting by the exporters or producers.

Final Determination

- Along with the issuance of notice of final determination, the Commission also issues report of its final determination which is available on the Commission's website and contains:
 - Names of known exporters and producers of an investigated product.
 - Detailed description of an investigated product.
 - Description of dumping margin calculation methodology used in determining normal value and export price and any adjustments made in comparing the two,
 - Method of comparison for normal value and export price,
 - Basis for declining the request for individual dumping margin for the exporters who voluntary responses.
 - Factors that led to determination of injury.
 - Any other reason leading to final determination.
 - Reasons for acceptance and rejection of relevant arguments or claims made by exporters and importers.

Disclosure Meeting of Final Determination

- Separate disclosure meeting is held by the Commission upon request by the exporters or producers within 15 days of publication of the notice of final determination to;
 - Explain the dumping margin calculation methodology applied for that exporter or producer.
 - Allow the exporters or producers or their legal representatives to examine and receive copies of dumping calculation done by the Commission.

Appeal Against Final Determination

- Any interested party may prefer an appeal to the Appellate Tribunal against an affirmative or negative final determination by the Commission within 45 days of the publication of notice of final determination.
- In examining an appeal, the Appellate Tribunal may;
 - make such further inquiry as it may consider necessary, and
 - after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit including
 - Confirming
 - altering
 - Annulinga determination of the Commission or
 - remand the case to the Commission, if requires action by the Commission.
- The decision of the Appellate Tribunal shall be appealable in the High Court

Reviews of Antidumping Duty Imposed

- New Comer Review
- Sunset Review
- Review for Change of Circumstances

Sunset Review of Anti-Dumping Duty

- Final duties imposed for a maximum of five (5) years period. In a few investigations, the duties were imposed for a period of three (3) years as well.
- The Commission publishes a notice of impending expiry not later than ninety days preceding the date of expiry of a definitive antidumping duty.
- The Commission initiates review investigations upon a duly substantiated request made by or on behalf of domestic industry within forty five (45) days from public notice of impending expiry of a definitive antidumping duty concerned.

Sunset Review of Anti-Dumping Duty

- Procedure for a sunset review is similar to an original investigation with the few exceptions including;
 - No preliminary determination is required to be made by the Commission.
 - Commission has separate questionnaires for original investigation and sunset review investigations.
 - Likely continuation or recurrence of dumping and injury to be reviewed / investigated.
- In few recent investigations, Commission continued the same dumping margins/ duty rates which were determined in the original investigation.
- Previously the Commission used to revise the dumping margins in sunset review investigations.

Sunset Review of Anti-Dumping Duty

- Statistics of Sunset Review Investigations by Pakistan

Industry	Initiations	Duty Continued	Terminations	Pending Measure
Chemicals	20	7	-	13
Plastic Films	4	4	-	-
Steel	6	1	5	-
Textile	7	7	-	-
Tiles	-	-	-	-
Grand Total	37	19	5	13

Review for Change of Circumstances

- The law provides that after a period of twenty four (24) months, the Commission may review the need for continued imposition of anti-dumping duty on its own initiative or upon a written request submitted by any interested party.
- No review for change of circumstances filed / initiated yet.

Newcomer Review

- A newcomer review is carried out by the Commission for the purpose of determination of individual dumping margin for the exporters or producers who;
 - Have not exported the product to Pakistan during the period of investigation.
 - Are not related to exporters or producers who are subject to antidumping duties.
 - Have requested the Commission for newcomer review by way of application in the specified format.
- Such review is initiated by the Commission within thirty (30) days following the date of receipt of an application.

Newcomer Review

- If the Commission asks for additional information which it deems necessary, the review is initiated within thirty (30) days of the receipt of additional information.
- Investigation for a new comer review is to be concluded normal within six (6) months to twelve (12) months.
- For the period of a newcomer review investigation, no AD duty shall be imposed on imports from such exporter or producer.
- The Commission requires from importers to make cash deposit at the rate of residual antidumping duty which are refundable if no/lesser dumping margin is determined in a newcomer review.

Refund of Duty

- Different types of refund of antidumping duties include;
 - Refund of provisional antidumping duties if the duty rate in final determination is lesser than the provisional duty rate.
 - Refund of duties where an exporter gets lesser or no duty as a result of new comer review.
 - Refund on application by an importer that dumping margin on the basis of which antidumping duties were being collected has been eliminated or reduced.
 - For such refunds an importer may submit an application not late than sixty (60) days from the end of any twelve months period in which duties were collected.

Refund of Duty

- Different types of refund of antidumping duties include;
 - Refund of provisional antidumping duties if the duty rate in final determination is lesser than the provisional duty rate.
 - Refund of duties where an exporter gets lesser or no duty as a result of new comer review.
 - Refund on application by an importer that dumping margin on the basis of which antidumping duties were being collected has been eliminated or reduced.
 - For such refunds an importer may submit an application not late than sixty (60) days from the end of any twelve months period in which duties were collected.

Industry-wise Distribution of AD Investigations

Industry	Initiations	Final Measures Applied	Terminated	Pending
Automobile	1	-	1	-
Chemicals	50	29	7	14
Paper and Paperboard	21	-	12	9
Pharmaceuticals	1	-	1	-
Plastic Films	4	4	-	-
Steel	22	6	10	6
Textile	13	10	-	3
Tiles	6	1	4	1
Grand Total	118	50	35	33

No Public Interest Clause

- There is no separate clause in the Act to see the public interest while apply the antidumping measures.

Sampling

- Commission selects exporters or producers on sampling basis where:
 - the number of cooperating producers and exporter are very large
 - it is impracticable for the Commission to calculate individual dumping margin for each cooperating exporter or producer.
- Sample of exporters or producers is:
 - Normally made in consultation with exporters, producers and importers concerned
 - Statistically valid on the basis of information available to the Commission at the time of selection
 - Represent the largest percentage of volume of exports to Pakistan.

Sampling

- If an exporter or producer voluntarily submits the necessary information for its individual dumping margin, the Commission generally does not calculate individual dumping margin for that exporter or producer, until and unless some very convincing argument is put before the Commission.

Lesser Duty Rule

- While making any preliminary or final determination, the Commission imposes antidumping duty at rate lesser of;
 - a) Dumping margin established for an exporter or producer;
 - b) margin adequate to remove injury to the domestic industry.

In all cases, the duty imposed is less than or equal to the dumping margins determined by the Commission.

No AD for Export Purposes

- Provisional and final antidumping measures are not applicable on imports that are to be used as inputs in products destined solely for exports and are covered under any scheme exempting customs duty for exports under the Customs Act 1969.

B – Procedure for Countervailing Investigation

Procedure for Countervailing Investigation

Almost the entire proceedings in countervailing investigations is conducted in a way similar to anti-dumping investigation as explained. Few exceptions have been discussed in later slides.

Invitation for Consultations

- After receipt of a properly documented application, the Commission before initiating an investigation, give notice to an exporting country which is invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.
- After consultation with an exporting country, if the Commission is satisfied that there is sufficient evidence to justify initiating an investigation, the Commission initiates a countervailing investigation.

Meetings with the Interested Parties

- An opportunity is provided on request of importers, exporters, applicant and the government of exporting country to meet those parties having adverse interests, so that opposing views may be presented and rebuttal arguments offered.
- Throughout an investigation, the Commission affords an exporting country a reasonable opportunity to continue consultations with a view to clarifying the factual situation and arriving at a mutually agreed solution. However, the Commission may continue an investigation during such consultations.

Provisional Countervailing Duties

- A provisional countervailing duty is imposed not earlier than sixty days from initiation of an investigation but no later than nine months from initiation of the investigation.

Negligibility Thresholds in CVD Investigations

- The amount of countervailable subsidies is considered to be negligible if;
 - Such amount is less than one percent ad valorem,
 - In case of investigations concerning imports from developing countries less than two percent ad valorem.
- An investigation is not initiated against countries whose imports represent a market share of below one percent unless such countries collectively account for three percent or more of domestic consumption.

Negligibility Thresholds in CVD Investigations

- In the case of an investigation concerning imports from developing countries, the volume of subsidized imports is considered negligible if it represents less than four percent of the total imports of a like product in Pakistan, , unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of a like product in Pakistan.
- In the case of an investigation concerning imports from countries other than developing countries, the volume of subsidised imports is considered negligible if it represents less than three per cent of the total imports of a like product in Pakistan, unless imports from such countries under investigation which individually account for less than three per cent of the total imports of a like product in Pakistan collectively account for more than seven per cent of imports of the like product in Pakistan.

Imposition of Definitive Countervailing Duties

- Where the Commission has established the existence of countervailable subsidies and injury caused thereby, a definitive countervailing duty shall be imposed by the Commission , unless the subsidy in question is withdrawn or it has been demonstrated to the satisfaction of the Commission that the subsidies no longer confer any benefit on any exporters involved.

THANK YOU.