

## Overview of Anti-Dumping Actions in Turkey and Recommendations for Foreign Exporters

*20 Aug 2015*

Anti-dumping actions are an important trade remedy for developed and developing countries alike, used to regulate international trade policy and protect local industries. Liberalization of international trade has forced developing countries to adopt and apply anti-dumping provisions to defend their local industries from aggressive price policies imposed by other countries. However, the latest trends in international trade show that developed countries are increasingly also adopting these measures to protect their local industries.

This article outlines the Turkish legal framework for anti-dumping actions. It considers rights, remedies and processes, as well as practical recommendations for foreign investors and exporters operating in Turkey.

### World Trade Organization definition of dumping

The World Trade Organization ("**WTO**") defines dumping as the sale or import of a particular product at less than fair value. "Fair value" is assessed by comparing prices in the importing country with prices in the exporting country. Anti-dumping actions allow countries to impose extra import duties on products from particular exporting countries. The intention is to bring the sale price closer to the "normal value", or to compensate damage caused to the importing country's local industry

### Turkish legal framework

The legal framework in Turkey for defining and combatting dumping is based on two legal instruments, which together form the basis of all local anti-dumping actions and investigations:

- The Law on Prevention of Unfair Competition in Importation numbered 3577 ("**Law**").
- Regulation on the Prevention of Unfair Competition in Importation published in Official Gazette numbered 23861 on 30 September 1999 ("**Regulation**").

Turkey is involved with various international organizations and treaties, including being a party to the WTO. International provisions and standards have accordingly been integrated into national legislation as a result of Turkey ratifying the WTO's:

- General Agreement on Tariffs and Trade 1994.
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("**WTO Anti-Dumping Agreement**").

### Legal remedies against dumping

Dumping is a tortious act which is why countries intending to launch anti-dumping actions must consider tort principles and establish that:

- A dumped import exists.
- Damage has occurred to the local industry or production.

- There is a causal link between the dumped import and damage.

Simply determining that dumping has occurred is not enough for countries to initiate anti-dumping actions and impose anti-dumping duties. Rather, they must also show the domestic industry and manufacturers have suffered due to the dumped imports. Without damage existing and a causal link, countries cannot take protective international trade actions against other countries.

## Determining Dumping

Determining whether dumping exists is a subjective test. A high or low price does not always indicate that a product has been dumped. Countries considering whether to initiate an anti-dumping action should fairly compare the product's normal value in the exporting or origin country with the product's price in the import country ("**Export Price**").

The product is deemed to have been dumped if the Export Price is less than the product's normal value. The difference between the normal value and Export Price is referred to as the "dumping margin".

Under Turkish law, the dumping margin will be disregarded in any of the following circumstances (Article 28 of the Regulation):

- The margin is less than 2% of the Export Price.
- The product in question represents less than 3% of the total imported volume of similar products.
- The cumulative ratio of the product imported from multiple countries does not exceed 7% of the total volume of similar products.

Price comparisons must be made against the factory price (Article 10 of the Regulation) and should take into account:

- Sale conditions.
- Tax.
- Commercial stages.
- Quantities.
- Physical specifications.

In some circumstances, comparing the Export Price and normal value will be inappropriate, such as if:

- A product's sale volume in the exporting country is negligible. The sale volume is deemed negligible if the exporting country's sale volume is less than 5% of the sales made to Turkey.
- A special situation exists in the exporting country.

In such cases, the normal value will be calculated by adding a fair profit margin to the product's costs and taking into account the export price in other countries. Costs are normally calculated in line with the exporting country's accepted accounting principles and the profit margin is determined in proportion to profit margins obtained from similar products.

## Determining whether damage exists

To be actionable, a dumping incident must cause material damage to the domestic industry. The threat of damage and hindrance to establishment of the domestic industry both also qualify as damage in this context.

Material damage is deemed to exist if:

- A significant increase in import volume occurs.

- Significant price pressure or price reduction occurs, or a price increase is prevented.
- Local manufacturers experience actual or potential negative effects to sales, profit, production, market share, productivity, capacity, cash flow, store, employment, wages, growth, capital or investments.

A threat of damage is deemed to exist if:

- A significant increase in import volume occurs.
- Sufficient disposable product exists, or the exporter significantly increases capacity.
- A significant increase in product reserves occurs.
- Price pressure or reduction could potentially affect the product.

## Determining whether a causal link exists

To be actionable, a causal link must be shown between the dumped imports and material damage (or the threat of damage). Claimants or authorities must show the link between the dumping and damage, as well as determine the damage's source.

However, other factors besides dumping could damage a domestic industry, such as:

- The price or volume of non-dumped import products.
- A decrease in demand or change in consumer behavior.
- Restrictive commercial applications by other foreign and/or domestic manufacturers.
- Competition.
- Technology.
- Developments in domestic manufacturers' productivity.

## Initiating an anti-dumping investigation

The General Directorate of Imports ("**Directorate**") within the Ministry of the Economy is responsible for regulating and prosecuting unfair competition in international trade.

Anti-dumping investigations can be initiated via written applications made to the Directorate by domestic manufacturers. The Directorate can also initiate ex-officio investigations. Either way, the Directorate must believe it has sufficient data and evidence about dumping, damage and a possible causal link to initiate the process.

The parties supporting an application must exceed certain production thresholds in order for it to be deemed to have been made by domestic manufacturers. Accordingly, the total production of the parties supporting the application must (Article 20 of the Regulation):

- Exceed the total production of domestic producers which oppose the application, and
- Exceed 25% of Turkey's total production.

If the parties supporting an application fail to meet both of these production thresholds, the Directorate can still choose to initiate an ex officio investigation, if it deems this appropriate.

The Directorate cannot initiate an investigation if the dumping margin or import volume is negligible and investigations must be finalized within 18 months at the most. These criteria are intended to minimize adverse and disruptive effects on international trade.

If the Directorate initiates an investigation, it must publish a communiqué in the Official Gazette which includes:

- Investigation commencement date.
- Product.

- Exporting or origin country.
- Explanation of dumping and damage.
- Response periods granted to relevant parties.

## The anti-dumping investigation process

Anti-dumping investigations have three stages:

- Data collection.
- Data evaluation.
- Final determination, including provisional measures, definitive measures, undertakings, interruptions or closure.

Certain procedural requirements apply to the Directorate during anti-dumping investigations. Accordingly, the Directorate must show maximum attention and endeavor to ensure transparency, while protecting the relevant parties' confidentiality and granting them the right to defend themselves.

During the investigation, the relevant parties are expected to:

- Submit any requested data to the Directorate.
- Submit a non-confidential summary of confidential information.
- Allow the Directorate to conduct on-site research.

The relevant parties are entitled to:

- At least 30 days to respond to the Directorate's questionnaires.
- Request an extension of up to 30 days to respond to the Directorate's questionnaires.
- Receive the application's full text.
- Notify the Directorate of their opinions.
- Protect their confidential information.
- Receive non-confidential information provided to the Directorate by other relevant parties.
- Provide verbal information to the Directorate.
- Settlement of a hearing with other parties with adverse interests.
- Be informed of the findings which support the Directorate's final decision.
- Request an extension of provisional measures.
- Accept or reject price undertakings offered by the Directorate.
- Offer price undertakings to the Directorate.
- Be informed of the Directorate's reason for refusing price undertakings.

It is crucial for the relevant parties to cooperate and respond to the Directorate's questionnaires. Failure to do so can result in less favorable investigation outcomes for exporters. Non-cooperation will essentially mean the Directorate will base its investigation determinations exclusively on the data provided by Turkish manufacturers or collected ex-officio. Accordingly, non-cooperating foreign exporters could be forced to pay anti-dumping duties at higher rates than if they had cooperated and shared information.

After the Directorate's preliminary determinations, the Directorate can invite exporters to submit a price undertaking to re-consider export prices or stop making exports at dumped prices (Article 32 of the Regulation). Exporters are free to accept or reject the Directorate's invitation and can also propose undertakings of their own accord. The investigation will be suspended if an offer is accepted.

During the investigation, the Directorate cannot prevent products continuing to be dumped, unless it imposes provisional measures. The Directorate can impose provisional measures if the preliminary determination finds causality between the dumping and damage (Article 12 of the Law).

Provisional measures include imposition of advance taxes, fixed values, or cash/bond guarantees on exporters. These cannot be applied within 60 days of the investigation beginning, but can apply for periods of up to six months. If the investigation results in a final decision that dumping has not occurred, the Directorate will refund the cash or bond guarantee to the relevant exporters.

## Final investigation outcomes - Definitive anti-dumping measures

Local principles dictate the anti-dumping duties which apply in each country. All countries which are party to the WTO (including Turkey) may choose to apply the "lesser duty" rule, which means the relevant authorities must impose duties which are less than the dumping margin.

Accordingly, Turkey's anti-dumping duty will not exceed the dumping margin and is intended to simply compensate the damage caused to the domestic industry (Article 13 of the Law). Any surplus will be reimbursed to the exporter if the anti-dumping duty is higher than the dumping margin or the ratio which are determined at the end of the investigation.

On completion, anti-dumping investigations are publicly announced. The announcement includes the decision, material findings and legal reasoning. The announcement must not violate the parties' confidentiality.

Anti-dumping duties remain in effect for five years, or until an adequate remedy is provided.

## Revision investigations

After a definitive measure has been in effect for one year, the relevant parties can ask the Directorate to initiate an intermediary revision investigation. The Directorate considers whether the duty is still necessary to achieve the original objective and whether the damage would repeat or continue if the duty were removed. The Directorate has discretion to increase, decrease, or remove the anti-dumping duty, as well as leave it to continue at the current level.

During the final year of an anti-dumping duty, the relevant parties can ask the Directorate to initiate an expiry revision investigation. The Directorate considers whether the anti-dumping duty should continue in effect for a further five year period.

All definitive measures and actions carried out in the course of revision investigations are subject to review by the Turkish civil and administrative courts, as well as arbitral tribunals.

## Recommendations for parties exporting to Turkey

Anti-dumping measures, by their nature, are subject to political influence at least as much as technical processes. In many other developing countries, local anti-dumping actions and definitive measures can occasionally be seen as abusive and extra-protective, running contrary to the generally accepted requirements of free international trade. This is also the case for Turkey, as reflected in the increasing number of measures taken by the Turkish authorities.

Therefore, before any investigations have started, foreign exporters and parties considering exporting to Turkey should:

- Closely monitor Turkey's political developments and economic decisions.
- Maintain accurate records reflecting the difference between their product's normal value and the Export Price; the Directorate may request these records.
- Carefully research and consider Turkish foreign trade policy in order to avoid variable and arbitrary trade remedies which may apply to their products.
- Cooperate with the Directorate as far as possible to ensure it takes all relevant information and opinions into account during a possible investigation.

- Be informed of incentives offered to foreign investors which may effectively counter any local financial burdens.

Once an investigation has started, it is wise to cooperate with the Directorate as much as possible to ensure it takes all relevant information and opinions into account. This way, political bias can be diminished to the maximum extent possible and the investigation results will be based more on figures than political motives. Such an approach may help reduce the ultimate financial burden, which could be higher without providing such information.

The Directorate's decision can be opposed more confidently before administrative courts if cooperation has been offered yet the Directorate still imposes taxes based on political motives, failing to take the facts and figures into account.

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