DUMPING MARGIN CALCULATION AND THE ZEROING PROCEDURE

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Abstract: In the context of an antidumping investigation, the dumping margin is one of the key elements that need to be considered by the authorities. Without a sufficiently significant dumping margin, the investigation cannot conclude with the imposition of sanctions. Given the special interests that often influence the antidumping investigation, the need to identify dumping even if there is no such practice involved often makes the authorities use innovative methods of calculating key elements like the dumping margin. One of the most used such methods is the zeroing procedure.

Key words: antidumping, dumping margin, zeroing

The Antidumping Agreement allows two ways if calculating the dumping margin (which represents the difference between the export price of a good and the price considered normal for it, considering factors like production costs, transportation and normal profit margin). The first refers to a comparison between the weighted average normal value of all transactions with the dumped product and the weighted average export price for all transactions. The second involves comparing the normal value and the export price for every individual transaction (as requested by article 2.4.2 of the Antidumping Agreement). A third possibility is offered only in special circumstances,[25] and consists in a comparison between the weighted average normal value of all transactions and the individual export prices of a single transaction. In Horlick's opinion[26] this third possibility was introduced in order to solve the so called hidden dumping.[27] It has transformed however in an opportunity to be speculated by the authorities in order to more easily identify dumping. [28]

One important concept regarding this issue has had a significant influence in practice. The procedure it refers to is called zeroing and it is used when the calculated

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[25] „… if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods and if an explanation is provided why such differences cannot be taken into account appropriately by the use of a weighted average-to- weighted average or transaction-to-transaction comparison."

[26] Horlick Gary, Shea Eleonor, *The world trade organization antidumping agreement*, Journal of World Trade, vol. 29, 1995, p. 25.

[27] This is defined as "the sell by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated and also below the price in the exporting country".

[28] Leebron David, *Implementation of the Uruguay Round results in the United States*, in *Implementing the Uruguay Round* (Jackson John, Sykes Alan – editors), Clarendon Press 1997, p. 239.

dumping margins are negative (that is if the export price is higher than the normal value). In such a case the authorities can choose to consider the negative margin as being equal to zero.[29] This greatly influences the calculation of the dumping margin for a product (which is a weighted average of individual margins for transactions). The „general" margin that results by using zeroing is higher because equaling to zero the negative terms of the average cancels their compensation effect over the positive terms. The zeroing procedure was made possible in this form by the provisions of articles 2.3 and 2.4 of the old Antidumping Agreement (the Tokyo Round Code) which allows for comparisons between individual export prices and normal values.

The same principle of zeroing can be used when comparing a weighted average normal value with individual export prices.[30] The following example shows how zeroing works in this case (the normal value is considered to be the price of the product when sold in the exporters' country).

Table no. 1 The influence of zeroing on the dumping margin (absolute figures)

Date	Home market price		Export price	Dumping margin	
		Average		Without zeroing	With zeroing
1 Aug	75	150	70	+80	+80
10 Aug	125		100	+50	+50
15 Aug	150		200	-50	-50 = 0
20 Aug	250		230	-80	-80 = 0
Total				0	100

Challenging this procedure to WTO was generally unsuccessful before the Uruguay Round. Three well known cases in which zeroing was not contested successfully were: the imposition by United States of antidumping duties on imports of certain fresh and chilled fish from Norway;[31] antidumping sanctions imposed by the EC on audio tapes in cassettes from Japan;[32] and the sanctions imposed by the EC on imports of cotton yarn from Brazil.[33]

In order to avoid such practices the WTO Members negotiated the introduction of article 2.4.2 in the text of the Uruguay Antidumping Agreement. The new provision asks for a comparison between a weighted average normal value and an average export price. This has not stopped zeroing but forced the national authorities to transform it in order to become legal under the new Agreement. One way of keeping zeroing alive was to use a so called inter-model version of it. The logic is as simple as for the previous „versions". If for a model of the product a positive dumping margin is identified, and

[29] Farr Sebastian, *EU anti-dumping law. Pursuing and defending investigations*, Palladian Law Publishing Ltd., 1998, p. 16.
[30] Horlick Gary, *The United States antidumping system*, in *Antidumping law and practice. A comparative study* (Jackson John, Vermulst Edwin - editors), New York, Harvester Wheatsheaf, 1990, p. 146.
[31] GATT Panel Report, *United States - Imposition of Anti-Dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway*, ADP/87, April 27, 1994
[32] GATT Panel Report, *EC - Anti-Dumping Duties on Audio Tapes in Cassettes Originating in Japan*, ADP/136, April 28. 1995
[33] GATT Panel Report, *EC - Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil*, ADP/137, July 4, 1995

for another model a negative one, the latter is equaled to zero. The weighted average calculated for the models is higher than the one determined without zeroing.

Table no. 2: The effect of using inter-model zeroing

	Home market price (average)	Export price	Dumping margin
Model A	1500	700	800
Model B		1000	500
Model C		2000	-500 = 0
Model D		2300	-800 = 0

It is easily noticeable that zeroing helps the authorities to identify dumping even when only one model of the product is sold at a price lower than the normal value, all the others being sold at a higher price.

We consider that zeroing, in all the forms it took over the years, has a profound negative impact on the correct determination of dumping margin. Far from helping in identifying dumping when the practice truly manifests itself, zeroing favors false conclusions regarding not only the margin of dumping but the very existence of it. It is an instrument designed and used with the sole purpose of speculating the weaknesses of the Agreement in favor of the investigating authorities.

Under the provisions of article 2.4.2 of the Uruguay Code, the challenging of zeroing practices has been made successfully in a number of cases. In the case of the antidumping duties imposed by the EC on imports of certain types of bed linen from India,[34] the WTO panel noted that zeroing distorts the comparison between price and normal value, leading to misleading results.[35] Also in the case of antidumping sanctions imposed by the EC on iron tube and pipe fittings from Brazil the panel rejects the zeroing procedure even though it had little influence on the comparability between price and normal value.[36] A different kind of zeroing was that practiced by the US authorities when investigating an exporter from a country with a national currency going through a devaluation process.[37] The investigators divided the investigation period into two separate sub-periods (up to the devaluation and after it). A separate dumping margin was calculated for each of the periods, for one of them resulting a negative margin which was equaled to zero. The WTO panel in that case decided the procedure is conflict with the provisions of article 2.4.2[38] For some circumstances in which it is justified to use zeroing in this way (especially when there is a difference, from one sub-period to another, in the weighted averages of transactions in the exporting countries vs. the importing country) see Traullo.[39]

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[34] Discussed in detail in Kim Jong Bum, *Fair Price Comparison in the WTO Anti-Dumping Agreement - Recent WTO Panel Decisions against "Zeroing" Method*, Journal of World Trade, vol. 36, 2002.

[35] WTO Panel Report, *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* , WT/DS141/R, October 30, 2000, par. 6.115.

[36] WTO Panel Report, *European Communities - Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/R, March 7, 2003, par. 7. 216-7.219.

[37] WTO Panel Report, *United States - Anti-dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*, WT/DS179/R, December 22, 2000.

[38] *Idem*, par. 7.3.

[39] Traullo Daniel, *The hidden costs of international dispute settlement: WTO review of domestic anti-dumping decisions*, Law and Policy in International Business, vol. 34, 2002, pp. 142-143.

Conclusions

There are still few decisions in the Dispute Settlement Mechanism of the WTO regarding the zeroing procedure. However the number grows steadily and, most importantly, there is a consensus between the panels regarding the incorrect nature of the practice. It is our belief that in the negotiations for a new Antidumping Agreement, zeroing should be one of the key issues discussed, and that rather than trying to impede its usage (which will only make members try to find innovative new ways to circumvent the respective provisions) the practice should face an interdiction in all its forms.

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