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, 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 this third possibility was introduced in order to solve the so called hidden dumping. It has transformed however in an opportunity to be speculated by the authorities in order to more easily identify dumping.

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.”


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”.

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. 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. 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>
<thead>
<tr>
<th>Date</th>
<th>Home market price</th>
<th>Export price</th>
<th>Dumping margin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average</td>
<td></td>
<td>Without zeroing</td>
</tr>
<tr>
<td>1 Aug</td>
<td>75</td>
<td>70</td>
<td>+80</td>
</tr>
<tr>
<td>10 Aug</td>
<td>125</td>
<td>100</td>
<td>+50</td>
</tr>
<tr>
<td>15 Aug</td>
<td>150</td>
<td>200</td>
<td>-50</td>
</tr>
<tr>
<td>20 Aug</td>
<td>250</td>
<td>230</td>
<td>-80</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>0</td>
<td>100</td>
</tr>
</tbody>
</table>

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; antidumping sanctions imposed by the EC on audio tapes in cassettes from Japan; and the sanctions imposed by the EC on imports of cotton yarn from Brazil.

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

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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**

<table>
<thead>
<tr>
<th>Model</th>
<th>Home market price (average)</th>
<th>Export price</th>
<th>Dumping margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>700</td>
<td>1500</td>
<td>800</td>
</tr>
<tr>
<td>B</td>
<td>1000</td>
<td></td>
<td>500</td>
</tr>
<tr>
<td>C</td>
<td>2000</td>
<td>-500 = 0</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>2300</td>
<td>-800 = 0</td>
<td></td>
</tr>
</tbody>
</table>

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, the WTO panel noted that zeroing distorts the comparison between price and normal value, leading to misleading results. 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. 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. 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. 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 Traulio.

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38 *Idem*, par. 7.3.
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 among 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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