**THE ANTIDUMPING LAW OF INDIA**

Indian producers filed 369 antidumping petitions between 1994 and 2004. Of the 360 antidumping determinations by the Indian government during this period, about 90 percent resulted in the imposition of antidumping duties. The number of antidumping petitions filed in India increased until 2002, but has been significantly lower since, as illustrated in Figure 1.

![Figure 1](image)

### Legal Procedures

Any interested party may file an antidumping petition with the Ministry of Commerce on behalf of the domestic industry. After examining the accuracy and adequacy of the evidence in the petition, the Ministry undertakes an investigation into whether foreign products are imported at a price lower than the normal value, and whether those imports are causing or threatening to cause material injury to the domestic industry. In special circumstance, the Ministry may self-initiate an investigation without having received an antidumping petition if it has sufficient evidence of dumping, injury and a causal link between the two. The Central Government imposes antidumping duties on the basis of the findings by the Ministry.

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1 Although the Central Government is officially charged with administering India’s antidumping law, current regulations give the Central Government the authority to designate this responsibility to a specific government official. Currently, the Ministry of Commerce is charged with administering India’s antidumping law. The task is specifically handled by the Directorate General of Antidumping and Allied Duties within the Ministry of Commerce.

2 An antidumping investigation may be initiated if domestic producers who support the petition account for at least 25 percent of total domestic production of the like product and have collective output of more than 50 percent of the total production of such products produced by those producers who either support or oppose the petition.
To determine whether the foreign products are imported at a price lower than normal value, the Ministry calculates the dumping margin as the difference between a weighted average normal value and a weighted average export price to India, or the difference between individual normal values and individual export prices on a transaction-to-transaction basis over the period of investigation. In special circumstances, the Ministry may compare a weighted average normal value to prices of individual export transactions to India.

The Ministry determines the normal value using one of four methods. Whenever possible, the normal value is calculated using the sales price in the exporting country’s home market. However, if there is an insufficient quantity of sales in the exporting country’s domestic market, the weighted average sales price is below the weighted average unit cost, or the volume of sales below unit cost during the investigation period is more than 20 percent of the total sales being used to determine normal value, the Ministry calculates the normal value using one of the two alternative methods. The Ministry may calculate a “constructed” normal value using the exporting country’s cost of production plus a reasonable amount for selling, general and administrative costs and profits, or use the prices of sales from the exporting country to a selected third country. For non-market economy countries, the Ministry determines the normal value using either the sales price or constructed value in a selected market economy country, or the price from a selected market economy country to a selected third country which may include India. If none of these methods are possible, the Ministry may calculate the normal value for a non-market economy using the adjusted sales price of the like product in India, or using any other reasonable basis.

The Ministry generally calculates a separate antidumping margin for each supplier. However, if any interested party fails to provide authentic, necessary information within the time limit, or it is difficult to verify the provided information, the Ministry may make its determination on the basis of “facts available,” which includes the information submitted in the petition or submitted by interested parties. When the number of suppliers or products involved in the investigation is too large, the Ministry may select a sample of suppliers or products for the investigation using statistical sampling methods based on information available at the time of selection or by choosing those suppliers or products with the largest import volumes. The Ministry calculates the dumping margin for those firms not in the sample using a weighted average of the dumping margins calculated for those suppliers selected for the investigation.

When determining whether the foreign imports are causing or threatening to cause material injury to the domestic industry, or materially retarding the establishment of an industry, the Ministry considers the volume of dumped imports, the effect of the dumped imports on prices of the like product in India’s market, and the consequent effect of the dumped imports on domestic producers. To examine the impact of the dumped imports on domestic industry, the Ministry

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3 The unit cost is defined as production costs plus selling, general and administrative costs.
4 Non-market economy countries include Albania, Armenia, Azerbaijan, Belarus, People’s Republic of China, Georgia, Kazakhstan, North Korea, Kyrgyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Due to the changing economic conditions in Russia and in the People’s Republic of China, if there is sufficient evidence that market conditions prevail for any firm under investigation, normal values for these firms are calculated on the basis of the principles set out for market economies.
5 “Like products” are defined as goods that are identical or alike in all respects to the goods under investigation or which have characteristics closely resembling those goods.
evaluates the magnitude of the margin of dumping and all relevant economic factors and indices including natural and potential decline in sales, profits, output, market share, productivity, return on investments, inventories, employments, wages, and growth in the domestic industry. The Ministry also examines the other factors to ensure that the injury caused by these other factors is not attributed to the dumped imports. These factors include the volume of goods imported at a “normal value,” contraction in demand or changes in the pattern of consumption, competition between foreign and domestic producers, developments in technology, and the export performance and productivity of domestic producers.

Following its preliminary investigation, the Ministry makes a preliminary determination on dumping and injury and issues a public notice. The Central Government then imposes a provisional duty not exceeding the margin of dumping on the basis of preliminary determination by the Ministry. Provisional antidumping duties usually remain in force for a period of no more than six months; in some cases, they may be extended by the Central Government for up to nine months.

If an exporter promises to revise its price immediately and stop exporting at the “dumped” prices, the Ministry may suspend or terminate the antidumping investigation without applying provisional antidumping measures. The Ministry must also inform the Central Government of the acceptance of an undertaking and issue a public notice. If the exporter fails to uphold the undertaking agreement, the Ministry must inform the Central Government of such violation and recommend imposition of provisional duties.

Following a provisional affirmative determination, the Ministry continues its investigation on the margin of dumping and injury. Before giving its final findings, the Ministry informs all interested parties of the essential facts under consideration which will likely form the basis of its decision. Within one year from the date of initiation of the investigation, or in exceptional circumstances eighteen months, the Ministry must make a final determination regarding injury and the value of antidumping duties, submit its final findings to the Central Government, and issue a public notice on its finding. Within three months of the date of publication of final determination by the Ministry, the Central Government may publish a notification in the Official Gazette imposing antidumping duties not exceeding the margin of dumping determined by the Ministry.

The antidumping duty or undertaking agreement is usually lifted after five years unless revoked earlier. Upon request received from interested parties or on its own initiative, the Ministry periodically reviews the need for continuance of antidumping duty or undertaking and determines individual dumping margins for new suppliers in the exporting country who did not export the product to India during the original period of investigation. If it is concluded in a review that the removal of the antidumping duties would be likely to result in the continuation or recurrence of dumping and injury, the Central Government may extend the period of imposition of antidumping duty for a further period of five years.

An appeal against the order of antidumping determination or review can be filed with the Appellate Tribunal within ninety days. Every appeal must be heard by a Special Bench consisting of the President of the Appellate Tribunal and no less than two other members, which
must include one judicial member and one technical member. A Bench can exercise and discharge the powers and functions of the Appellate Tribunal. If the members of the Bench differ in opinion of any issue, the decision is made according to the opinion of the majority; if the members are equally divided, the President can either give an opinion himself or refer the case to one or more of the other members of the Appellate Tribunal and the decision is based on the opinion of the majority of those members.

**Compliance with the WTO Antidumping Agreement**

Antidumping procedures in India have been challenged at the World Trade Organization on three separate occasions. The disputes are summarized below.

**Imports of 27 Products from the European Communities**

On December 8, 2003, the European Communities (EC) filed a complaint with the World Trade Organization’s (WTO) dispute settlement body (DSB), claiming that the India’s antidumping investigation and the imposition of antidumping duties on imports of 27 products from the EC or EC member states failed to comply with the WTO’s Antidumping Agreement. Specifically, the EC argued that:

- the determination of the effect of the dumped imports on prices was not based on positive evidence or on an objective examination;
- the Indian authority did not demonstrate that the dumped imports were causing the alleged injury, and failed to examine other known factors and ensure that injury caused by those other factors was not attributed to the dumped imports;
- the Indian authority did not provide interested parties sufficient time to defend their interests when it informed them of the essential facts under consideration which formed the basis for its final decision;
- the Indian authority did not properly explain the reasons why it rejected the evidence or information that interested parties submitted within the investigation procedure; and
- the public notice of final determination did not contain all relevant information, including facts, law and reasons, which led to the imposition of the antidumping duties.

No panel was ever established in this case. However, by July 2005 sixteen of the 27 antidumping measures had been revoked by the Indian government.

**Lead Acid Batteries from Bangladesh**

On January 28, 2004, Bangladesh filed a complaint with the WTO’s dispute settlement body, claiming that the imposition of definitive antidumping duties concerning imports of lead acid batteries from Bangladesh failed to comply with the WTO’s Antidumping Agreement. Specifically, Bangladesh argued that:

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6 This was the first dispute involving a least-developed country member as a principal party to a dispute.
• the Indian authority initiated an investigation with unsubstantiated claims made “by or on behalf of the domestic industry” and failed to immediately terminate the investigation, notwithstanding the negligible volume of imports from Bangladesh;
• the normal value, export price, and margin of dumping were not properly determined;
• the injury and causation were not properly determined; and
• the Indian authority failed to consider all information submitted by the interested parties from Bangladesh and failed to disclose to the interested parties the essential facts under consideration which formed the basis of the final determination and other relevant information.

On October 26, 2004, the Indian Ministry of Commerce published the findings of its review and concluded that (1) there were no exports from Bangladesh during the period of investigation and hence the dumping margin could not be established and (2) the domestic industry had not suffered material injury due to dumped imports. Thus, India withdrew the antidumping duties before Bangladesh proceeded to the panel stage of the dispute settlement process. On February 20, 2006, Bangladesh and India informed the DSB that they had reached a mutually satisfactory solution to the issues raised by Bangladesh.

Imports of Seven Products from Chinese Taipei

On October 28, 2004, Chinese Taipei filed a complaint with the WTO’s dispute settlement body concerning the provisional and definitive antidumping measures imposed by India on imports of seven products, including acrylic fibers, analgin, potassium permanganate, paracetamol, sodium nitrite, caustic soda, and green veneer tape. Specifically, Chinese Taipei argued that:
• the Indian authority rejected the information submitted by Chinese Taipei exporters without providing reasons;
• the Indian authority initiated an investigation without sufficient evidence of dumping and injury in the petition;
• the normal value and export price were not properly determined;
• the Indian authority did not determine injury or threat of material injury based on positive evidence or on an objective examination, and failed to examine all injury factors in the antidumping agreement;
• the Indian authority did not sufficiently demonstrate that the dumped imports were causing the alleged injury, and failed to examine other factors and ensure that injury caused by those other factors was not attributed to the dumped imports;
• the Indian authority did not provide interested parties with full opportunity to defend their interests before making final determination;
• provisional measures were imposed for more than the period of time allowed under the antidumping agreement; and
• the public notice of final determination did not contain all relevant information which led to the imposition of the antidumping duties.

A panel was never established in this case. Antidumping duties have since been revoked for three of the seven products.