# DUMPING PROTECTION OF THE SINGLE MARKET THROUGH THE DUMPING TAX

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***Abstract***

*Liberalization of international trade is currently the goal of many countries in the world, as well as in the European Union. However, the EU does not give up the possibility to intervene and influence that specific area of imports of goods that liquidate or threaten to liquidate a certain industry in the EU. An instrument that does not conflict with liberal policy is the institution of anti-dumping duties, which is a legitimate means of restricting imports that harm certain EU production sectors. If the history of the EU is brought into question, it can be said that the anti-dumping process is not a new one in the European markets, and the first legislation that regulated the introduction of anti-dumping duties in the EU was adopted in 1968. Anti-dumping duties are an integral part of trade policy, they are often perceived only as a means of "improving" income, but also as unilateral decisions of the EU authorities, which cannot be influenced in any way. In this article, the specific features of the anti-dumping measures aimed at applying a tax to those who violate the legislation have been analyzed, and the conditions of application require the authorities to determine whether the situation in question makes the subject of adopting anti-dumping measures. Thus, when drafting this article, the objectives were considered: the clear delimitation of the conditions for the application of anti-dumping measures, their specific legislative process, but also the exemplification of terms such as: provisional measures, the definitive anti-dumping tax, exporters' obligations and the application of the measures.*

***Keywords:*** *trade, dumping, measures, liberalization, strategy*

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## 1. Introduction

There is currently no legal definition for customs duties. Taxes have the nature of an indirect tax, specific to consumption, on which certain types of goods are applied. An anti-dumping duty can be considered a defense tool. Dumping is understood as an unfair trade practice when the exporter sells its products on foreign markets at lower prices than on the domestic market or at a value lower than the value of these goods in normal trade.

The anti-dumping duty is a duty which, as a separate element of protection against abuse, determines the elimination of competition by artificially reducing the price of imported goods. However, for dumped imports, upon release of goods for free circulation in the Union it causes damage, thus an anti-dumping duty may be imposed.

The anti-dumping duty can be considered as:

• an extraordinary tool for the protection of the single market of the European Union;

• a measure that imposes an obligation to eliminate international discrimination, when a certain product is sold by a producer at different prices in different countries;

• a tax imposed on a product that does not exceed the dumping margin of this product, and which serve to offset or prevent dumping;

• receiving public budgets.

The fact that anti-dumping duties can be imposed by the EU can be considered specific unilaterally and does not require the consent of any of the parties affected by the anti-dumping duty. It is possible to consider relatively significant operability during the implementation of the anti-dumping duty or the possibility of the parties concerned to participate in the anti-dumping duty process.

## 2. Anti-dumping measures and conditions of application

In justified cases, anti-dumping duties are introduced. However, anti-dumping duties cannot be accepted without each other. Acceptance of the anti-dumping duty is also possible based on the outcome of the anti-dumping procedure. If anti-dumping measures are discussed, it is necessary to explain that not all withdrawals from partial anti-dumping proceedings can be considered as anti-dumping measures.

In general, an anti-dumping measure can be said to be a measure that requires persons to pay anti-dumping duty in connection with the importation of certain goods from a certain country. In the EU, there is a special anti-dumping measure that can be labeled as a "potential anti-dumping duty" measure because its introduction does not create a direct obligation for anyone to pay or provide an anti-dumping duty[1].

If one analyzes the practical labeling of products under anti-dumping measures, one arrives (quite logically) in the area of "general" customs regulations, since the application of anti-dumping measures is directly related to the application of current customs regulations (anti-dumping measures are a kind of "superstructure" "), goods must be defined identically for both areas. For this reason, under anti-dumping measures, goods are marked with a numerical code according to the EU integrated tariff, which is marked as TATRIC. It follows that all anti-dumping measures are integrated into TARIC after their introduction.

The anti-dumping duty as a protection against dumped imports is therefore a permissible violation of the most-advantaged clause and, in certain situations, of the national clause, but only under certain conditions (set by agreement). It is necessary to mention other possible legal violations, which are also measures to eliminate unauthorized state subsidies and protective measures imposed in order to protect the national industry.

The name of the regulation "on the protection against dumping of imports from countries not members of the European Community" is not very appropriate, because it does not itself establish any anti-dumping duty, but only regulates the rules for its introduction. In fact, within the EU, the anti-dumping duty is also established by the relevant Council regulation, which contains substantive legal provisions such as the description of the goods, the country of export and the rate of the anti-dumping duty.

When anti-dumping duties are introduced in the EU, basically two situations can be distinguished, which will be described in more detail. The first situation imposes an anti-dumping duty on certain products (goods) and a certain country of export, while the given good does not exist at the time in question. (ie at the time of filing the petition). The second situation can be described as a situation where an anti-dumping duty has already been imposed on a certain product (of course in relation to the defined country of origin) and it is found that imports from a country other than those defined in the placing regulations application of the Council, harms or threatens to harm certain economic aspects in the EU [1].

In order for the EU authorities to apply some of the possible anti-dumping measures, it is first necessary to determine whether the existing situation makes it possible to adopt anti-dumping measures. So it is possible to apply extraordinary protective measures in the form of anti-dumping duties in the EU (and also in other WTO members) only if certain conditions are met. This presupposes the fulfillment of the condition of the existence of dumping prices and the condition of actual injury to the EU manufacturing industry. In each anti-dumping proceeding and investigation carried out by the Commission, the existence of dumping prices for a specific product is investigated, as well as the injurious or liquidating effect of imports of goods at dumped prices on a specific EU production sector. The existence of both facts must be sufficiently proven in the given procedure. This means that damage to the manufacturing sector alone is not a reason to impose an anti-dumping duty, even if in some cases it is understood and publicized to that effect by the general public.

The most important step in determining the existence of dumped prices of goods is undoubtedly the determination of the current value of the goods. Under the concept of market value, it is necessary to imagine the already mentioned price of goods intended for sale on the domestic market of the exporting country. If the Commission has sufficient information on the fair value of the goods on the domestic market, it is necessary to compare this data with the prices at which the goods are exported to the EU. This phase of the analysis is designated as export price determination and it can be said that for the Commission this phase is much simpler.

If, during the investigation, the Commission has data on the fair value of the goods and the export price of the goods, it is necessary to carry out a comparison to assess the existence of a dumped export price for both determined values.

When comparing the two established prices, the Commission must follow certain established rules. This rule means that mainly transactions at the same trading level will be compared. It is difficult to accurately compare large volume imports by companies that own commercial chains with the price at which the goods are sold in the country of export in the retail chain to the final consumer. In the same way, transactions made during approximately the same period should be compared. This can be important when evaluating trade in so-called seasonal goods, etc[2].

However, when comparing prices and values, it is necessary to check whether certain adjustments are made related to the transactions being evaluated. This is primarily a comparison of the physical properties of the evaluated goods, such as different deviations in properties or various changes in appearance. In the long term, the determined values are adjusted by various import taxes or indirect taxes. Among other factors affecting the value, different trade levels have to be taken into account, and with it related discounts or bulk rebates, or packaging of the goods and others.

Therefore, if the existence of dumping prices is established, the amount so determined is usually expressed as a percentage or difference in value between the fair value and the export price under the individual Council regulations imposing the anti-dumping duty. This means that the anti-dumping duty is in most cases constructed as an ad valorem duty. However, for the sake of completeness, it should be noted that the anti-dumping duty can be constructed as a specific duty imposed on a certain product, in the form of a fixed amount for a certain quantity of goods, for example per piece or per ton.

Another condition entitling the EU to adopt anti-dumping measures is the existence of substantial injury to a specific EU production sector.

During the investigation, the Commission must objectively assess mainly two factors. It is primarily about the extent to which the imports in question affect the price of similar products from European producers on the EU domestic market, and then the effects of the imports in question on the EU manufacturing industry. However, in the assessment, it is necessary to take into account other factors affecting the performance of the economic sector, in particular workload, investment and similar disadvantageous factors, which would undoubtedly affect the performance of the given economic sector even without the existence of dumped imports[12].

## 3. The anti-dumping process

Before the actual introduction of anti-dumping measures, all the decisive circumstances for their introduction must be verified. In order for the competent authorities to start the verification of a situation in which there is a suspicion of a possible violation of international agreements and European legislation in the form of exports at dumped prices and, at the same time, to be able to take appropriate anti-dumping measures based on the results found, they must, no doubt to have some initial information. The fact that there are imports of goods into the EU is usually discovered by people who directly damage such imports. They can be natural persons, legal persons or certain associations within which certain producers of a certain product are concentrated. The procedure from the filing of a complaint (or other initial finding) to the adoption of an anti-dumping measure

may be referred to as the process of imposing anti-dumping measures, the so-called anti-dumping process. In the phase of ascertaining the existence of dumping, European legislators insufficiently divided anti-dumping taxation, more precisely into taxation and anti-dumping. Active cooperation between individual EU member states is envisaged. This cooperation (or collection of relevant information) is aimed at detecting the existence of dumping, a measure based on the extent of injury caused by dumping in the EU. In order to be able to evaluate the information provided, it is necessary for the Commission to determine the period for which the data will be evaluated and to identify the nature of the problem. As part of the dumping determination, the Commission will distribute questionnaires to the parties concerned and set deadlines for their return. At the same time, member countries will be asked to provide related information. Member countries may be invited to carry out partial checks, checks or inspections, the results of which they are obliged to sell to the Commission[13].

Submitting a questionnaire does not exhaust all rights of affected persons, and any person who feels affected by a possible anti-dumping measure may request a hearing from the Commission. At the hearing, these persons may inspect all materials available to the Commission, provided that confidential information is protected. At the request of data subjects, the Commission can also mediate a meeting between parties defending different interests. As a rule, they are representatives of the organization that associates EU producers with representatives of the organization that associates importers or representatives of the governments of the exporting countries concerned. During the event procedure, the Commission verifies the correctness of the information provided by the participants in the procedure and the acceptance of the corresponding anti-dumping measures[14].

The legal regulation of the deadlines for the termination of the procedure is specific. In any case, it can be stated that the procedure must be completed within 15 months from the start, but the legislator amended in an advisory manner that it is appropriate to complete the procedure within one year from the beginning phase. The question remains, therefore, after what period the procedure will end without the adoption of measures. Given that the one-year period is only indicative, it can be assumed that the management will expire after the expiry of the 15-month period[11].

The review, unlike the new review, pursues a different objective. Before the final anti-dumping duty expires, the affected party or Member State may request a review. Unlike a new assessment, a review of an anti-dumping measure is intended to determine whether the definitively imposed anti-dumping duty has eliminated or reduced the dumping found. The circumstances surrounding the possible resumption of dumping in the absence of anti-dumping duties are also examined. The initiative to initiate a review is filed in the last year of validity of the final anti-dumping duties and must be filed at least three months before the expiry of the Council's anti-dumping regulation.

According to Ion M. S., if it is desired to prevent damage resulting from the anti-dumping process, it is necessary for the importing country to impose some measures, such as anti-dumping taxes [8]. According to information from the specialist literature, in the last decade anti-dumping actions represented commercial barriers, which were identified extremely often [4].

## 4. Anti-dumping measures

In this part, we arrive at a detailed analysis of each anti-dumping measure, in terms of their function in the anti-dumping proceedings, their scope and their actual impact on the individual rights and obligations of the affected entities.

Provisional measures - Currently, it is necessary to indicate in the Commission regulation the country of origin of the goods to which the provisional anti-dumping duty will be applied. Given that certain conditions must be met for the adoption of a provisional measure, including that the

existence of dumping duties and their injurious effect on the manufacturing sector have been established in advance, it is clear that the level of the relevant provisional duty cannot be higher than the dumping margin found. The very introduction of a provisional measure must be preceded by consultation with the advisory committee and EU member states. In urgent cases, the consultation may not take place, but the Commission is obliged to inform the EU Member States and, of course, the Council, about the introduction of a temporary measure. That the provisional anti-dumping duty is only a temporary measure is evidenced by the fact that it can be imposed for a maximum period of six months and in certain cases for a period of nine months. The relatively short period for the application of the provisional measure can be understood as a certain "leverage" of the Commission to ensure that the procedure is not unnecessarily prolonged and that the EU internal market requires protection against dumped imports of goods in the form of a final anti-dumping duties as soon as possible. The peculiarity that applies within the framework of the provisional measure is that it is not the final anti-dumping duty that is imposed, but the so-called "provisional anti-dumping duty". In each case, the provisional anti-dumping duty may affect the price of the goods, which are offered for sale after they have been introduced into the EU free market[7].

Definitive anti-dumping duty – is imposed and is the result of the procedure. The final anti-dumping duty regulation can only be adopted provided that the advisory committee does not raise any objections to the Commission's proposal. Another no less important condition is that if the Commission has imposed safeguard measures on the goods and the country concerned, the proposal must be submitted to the Council at least one month before the expiry of this safeguard measure. In the context of what follows, it is clear why it is necessary to proceed in the given way. In order to be able to collect guaranteed anti-dumping duties under a provisional measure, the Council must adopt a regulation on the final anti-dumping duty before the expiry of the deadline. According to the regulation, the Council has one month to reject the proposal to introduce a definitive anti-dumping duty. We can assume that only the "tacit consent" of the Council is sufficient to introduce the final anti-dumping duty[6].

Exporters' Obligations to Eliminate Dumping Prices - are a specific anti-dumping measure that has a different function than provisional measures or final anti-dumping duties, and the undertakings themselves do not impose any anti-dumping duty. It can be argued that exporter obligations to eliminate dumped prices constitute the only anti-dumping measure that eliminates dumped export prices, i.e. when the obligation applies, goods from the exporting country are sold in the EU at non-dumping prices. - anti-dumping prices. Therefore, there is no need to adjust the export price with an anti-dumping duty. The application or rather the acceptance of the undertaking by the exporter is conditional on the voluntary offer of the undertaking or the acceptance of the undertaking by the exporter. Acceptance of the undertaking means that no further anti-dumping measures will be applied to certain exporters. This means that it is possible for an obligation to exist concurrently with other anti-dumping measures on certain goods. Exporter obligations to eliminate dumping duties can be considered anti-dumping measures, which alone eliminate dumping[3].

Customs registration of imports is another anti-dumping measure, it was introduced in the EU in 1996. Similar to duties, no anti-dumping duty is entered in the customs records of imports. The main difference for using import customs registration is that, at the time of entry, there must already be an anti-dumping duty on the goods in question in the EU. This might seem illogical at first sight, why introduce an anti-dumping duty when an anti-dumping duty is already in place. In order to understand the given method, it is necessary to explain that the anti-dumping duty introduced in this way does not exist independently in real time, but is a kind of "superstructure" on the already existing anti-dumping duty and may ultimately act on a different group of imports. The introduction of customs registration of imports does not end the anti-dumping process.

Applicability of anti-dumping measures - In general, anti-dumping measures can be said to apply after their announcement in the Official Journal of the EU. Due to the special nature of some anti-dumping measures, it is not possible to talk about their fiscal impact in relation to the time of introduction and operation. This means that not every anti-dumping measure imposes an ad hoc anti-dumping duty. It means that in the area of anti-dumping duties, the retroactive effect of anti-dumping measures will definitely be allowed[7].

An important moment is the establishment of the moment when the customs debt arises by law. If the goods are subject to import duty and the goods are released for free circulation or for temporary use with partial duty exemption, the customs debt arises when the customs declaration is accepted. In the case of the application of definitive anti-dumping duties, or in the case of provisional measures, the customs debt is guaranteed. In the case of definitive anti-dumping duties, the amount must be taken into account[15].

## 5. Conclusions

The final selling price of a product exported to the EU at dumped prices, on which the anti-dumping duty has been imposed, should therefore be approximated to the price at which such a product is sold in the country of export. The increased price of the product due to the anti-dumping duty acts on the EU internal market by compensating and possibly preventing in the future, an instrument that protects a certain EU production sector that produces a similar product for the EU internal market. Thus, the imposed anti-dumping duty always works for the future in such a way as to remove the effect of dumped prices on the given product. The fiscal function of the customs duty, as revenue for the national budget and the EU budget, is only secondary, although certainly not negligible.

We can state that in most cases where the anti-dumping duty is assessed retroactively, the consignee of the goods does not know this because he has already sold them in the past and it is likely that the goods were sold at a price that did not include part of the anti-dumping duty . Therefore, goods sold at such prices cause damage to a certain economic sector in the EU. The anti-dumping duty should always eliminate dumped prices.

Legal institutions can be found in the EU anti-dumping regulations, the basis of which cannot be found at the WTO level, and the EU has specifically modified them. This is an anti-dumping measure designated in the basic Council Regulation as a customs registration of imports. The main issue is its possible retroactive effect, which is different from the legal retroactive effect regulated in the WTO anti-dumping agreements.

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