Annexure-1

Comparative Table of Substantive Rules: Dumping

Sl No	Issues	WTO Provision	Practices			Remarks
			US	EU	India	
1	Like Product	"like product" (*product similaire*) is a product, which is identical i.e. alike in all respect to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects; has characteristics closely resembling those of the product under consideration	General similarity in physical characteristics, production processes and production facilities, the single product perceptions of US consumers and the similar channels of distribution, use based on purchaser requirements	Does not follow any specific guideline, and makes a case-by-case determination of like product. EC authorities examine factors like raw materials used to manufacture the products, their chemical compositions, their physical characteristics, applications and end-use etc.	Guiding principle is the technical and commercial substitutability of the products to the product under consideration	Both, the EC and the US authorities take into account the consumer perception and usage for determining the like product in the investigations. These issues give a lot of discretion and latitude to the authorities to decide the like article
2	Ordinary Course Trade	Sales must provide for recovery of cost within a reasonable period of time (usually 6months)	Profitable Sale> 80%, all sales accepted for Normal Value Calculation, otherwise non-profitable sales are disregarded	Sale made with Profit> 80%: Normal Value based on all sales (including those made at loss) Sales made with Profit at ≤ 80% but ≥ 10%: Normal Value based	Sale made with Profit> 80%: Normal Value based on all sales (including those made at loss) Otherwise non-profitable sales are disregarded	Provides a lot of latitude to the authorities to discard the domestic sale prices at some pretext or other

				on profitable sales and sales made at loss ignored Sales made with Profit < 10%: Constructed Normal Value		Construction of normal value becomes most favoured method
		Sales are Representative, i.e., significant volume of sale	The viability test in the US is also the 5% test as in the case of the EU. However, US law contains a possible exception to disregard the domestic prices even if the 5% test is passed, if the Commerce Department determines that a “particular market situation” exists in the home market that would not permit a proper comparison	EC uses the 5% representative test for accepting domestic sales prices for determination of normal value on the basis of domestic sales price	Indian law does not provide any specific criteria for the threshold volume of trade within the country or volume of exports to the third country to treat the price as the normal value as in the case of the US and the EU	When there is no domestic sale or insignificant domestic sale the whole concept of dumping with reference to normal value in domestic sales becomes doubtful
		Sales are reliable or at arms-length	Traditionally, DOC uses “99.5% test”: prices of transactions to an affiliated	Systematically disregards sales between associated parties and normal	Antidumping Rules in India does not contain any specific provision regarding the treatment to be given to related party sales in	Related Sales not

			customer are at least 99.5% or more than the prices on transaction to unaffiliated customers As per the US statute and Department regulations the term "affiliated persons" is defined by the concept of 'affiliation by control'. Companies may be considered affiliated if the company is "in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer become reliant upon each other	value is established on the basis of sales to unrelated parties. In case of sales made through a related sales company, EC applies "single economic unit" doctrine and normal value is determined at the level of the resale by sales company to the first independent buyer and not at the level of sale by the manufacturing company to the sales company A Company would be considered as an associated party, if it holds more than 1% of the exporter's capital, or the exporter holds more than 5% of this company's capital	the domestic market of the exporter for the purpose of determination of normal value. The Rules also do not define how to determine whether the buyer and seller are related.	accepted as Normal Value, but used as base for Constructed Normal Value calculation Consideration of the affiliated company's resale price inflates the dumping margin considerably. Hierarchy of alternate methods of determination of normal value not defined. In practice members use constructed normal value more often than third country export price.

3	Third Country Sales price for Normal value determi nation	Sales Price to an "appropriate" Third Country provided this price is representative	DOC accepts the third country sales having the highest volume	In practice, the EC authorities never use the export price to third countries	Use of third country sales price is rare in India	The term "Appropriate Third Country" not defined in the Agreement.
4	Constru cted normal value of the like product	Cost of manufacturing of the merchandise in the country of export or origin, plus the selling, administrative and general expenses**, and a reasonable profit**	Extremely complex method of calculation and adjustments for various elements of costs, taxes and rebates and profit Adopts only profitable sales for determining the average profit margin	Cost of production is calculated by adding the manufacturing cost in the country of origin and a "reasonable amount for selling, general and administrative expenses (SGA)" The transactions done at profit only are taken in to account for calculating average profit and transactions made at loss are ignored	Fully allocated manufacturing cost plus selling, administrative and general charges and a reasonable profit. Resorts to 'facts available', in most cases which is generally based on the adjusted cost data of the domestic industry	Reasonable profit margin not defined The Appellate body has ruled in the *EC-Antidumping duty on Imports of Cotton Type Bed Linen from India* case that the authorities must include all sales in determining the profit rates, not just above cost
5	Actual Export Price	Price at which the Like goods are consigned to the importing country: Normally at	Sales made directly from the foreign exporter to the US Company are called	The "**actual export price**" in EC regulation is the "price actually paid or payable for the	Weighted average import price for the purpose of customs clearance as	Level of trade adjustment is a tricky issue

		ex-factory level net of taxes and discounts and rebates directly linked to the sales.	"export price" (EP) sales	product sold for export from the exporting country to the Community". But EC authorities almost always use "the price actually paid" for comparison	maintained by DGCIS are accepted as the export price if they are found to be reliable and adjusted for insurance and freight for working out FOB export price.	
6	Constructed Export Price	Ex-works Export price after adjustment for affiliation, and level of trade.	Sales, which are processed in any fashion through the foreign company's U.S. affiliate (even if the merchandise is shipped directly), are called "constructed export price" (CEP) sales Deducts further processing expenses to arrive at the 'export price'. Identifies the first unrelated sales price of the merchandise in the US and works backward with a number of adjustments for	Actual export price may be rejected when there is an 'association' or a 'compensatory arrangement' between the exporter and the importer and "**constructed export price"** will be determined after number of adjustments on export data available from any reliable source.	Export prices are to be constructed on the basis of the price at which the imported articles are sold to the first unrelated customer in India. If the goods are not resold to an independent buyer, or if it undergoes further processing before being sold, the export price is to be constructed in any reasonable manner	Adjustments for affiliation and level of trade leave a lot of discretions to the authorities.

			different situations			
7	Adjust ments	Agreement provides for various adjustments to the export prices so arrived to compare it with the normal value	Level of trade adjustment; US delivery cost prior to sale; Adjustment for packing cost includes material, labour, and factory overheads; Adjustment for difference in physical characteristics; Home-market import duties rebated or forgiven upon export; Limited adjustment for the difference in quantities; “Circumstances of sale adjustments’	Difference in physical characteristics; Difference in import charge and indirect taxes; and Difference in selling expenses; Adjustments for difference in the level of trade.	Price will be adjusted for duties and taxes, incurred between importation and resale, and for profit; Adjustment is also allowed for the level of trade, normally at the ex-factory level; Difference in conditions and terms of sale, taxation, quantities, physical characteristics and any other differences, which are demonstrated to affect price comparability.	Adjustments are neither uniform nor objective. They leave a lot of latitude for the authorities.
8	Dumpin g Margin Calcula tion	Dumping margins is normally established ‘on the basis of comparison of “weighted average	The DOC calculates weighted-average prices by model (i.e. by control numbers) and by level of trade	EC tended to avoid a full average to average comparison by comparing an average normal value during	Indian dumping margin calculation is normally established based on weighted-average normal value and	The Appellate Body of WTO has declared ‘zeroing’ inconsistent with ADA.

		normal value" with "weighted average of the prices of all export transactions" to the country of imports, or by comparison of normal value and export price on a transaction to transaction basis'. However, the Rule also provide an exception to the above provision and allows for comparison of normal value established on a weighted average basis to prices of individual export transactions, if a pattern of export prices is established which differs significantly among different purchasers, regions or time.	DOC follows the same practice like EC to change the negative dumping margins at "model" levels to 'zero' for the purpose of calculating the overall dumping margin Practices 'Zeroing' in its Reviews also. De minimis level of Dumping Margin at the time of Reviews is less than that of original investigation.	the investigation period with average export price on 'products-type-per-product type' basis In calculating the overall average for all types, the "undumped PCNs" were given zero values instead of negative values. This practice, termed "*Zeroing*",	weighted average export prices basis	However, the Appellate Body ruling in this respect pertains to original investigations only And does not appear to cover this practice in the administrative review process.