

Comparative Table of Substantive Rules

Injury

Sl No	Issues	WTO Provision	Practices			Remarks
			US	EU	India	
1	Like Product	<p>The “like product” for the purpose of injury test is the product produced in the importing country, which is identical to the product under investigation.</p> <p>It defines the domain of the product and the producers of the same who will be identified as the domestic industry for the purpose of injury determination and standing of the domestic industry</p>	<p>In the US, the like product for dumping and injury determination has different standards</p> <p>ITC examines whether the products have interchangeable use; similar physical appearance; common manufacturing and distribution; similar prices; and similar customer perceptions</p> <p>‘Captive production’ of the domestic ‘like product’, that is internally transferred for processing into downstream article without entering the</p>	<p>The like product definition provided for in the EC Antidumping Regulation concentrates on the physical characteristics and interchangeability of end use of the products. In EC however, the standards for determination of domestic like product and imported like products are same.</p>	<p>Guiding principle is the technical and commercial substitutability of the products to the product under consideration</p>	<p>Due to the flexibility and discretion available to the authorities to determine the ‘like article’ based on subjective judgments, the scope of the like article can always be expanded or contracted in favour of the domestic industry.</p>

			merchant market, is excluded from the injury analysis			
2	Domestic Industry	Domestic industry' constitutes the domestic producers as a whole engaged in the manufacture of the Like Article and any activity connected therewith whose collective output of said article constitutes a 'major proportion' of the total domestic production	The US law is designed to protect only the U.S. industries and not all companies located within US, which may include foreign companies, set up units in the US. The ITC also excludes those companies whose primary interest is in importation than in manufacturing the like product. 'Focus primarily' on the part of the industry that was most likely to be injured, i.e., the merchant market	The EC Regulation also provides that when the Community production of the product has no separate identity, the effect of dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which include the like product.	Does not follow strict criteria. in a situation where there are very few producers and a strict exclusion criteria may land 'no domestic industry' determination or a very small section which will fall below the 'standing' threshold level of 25%, the Authority may base their decision on other factors and include all such domestic producers within the 'domestic industry' consideration. Captive producers are also excluded	Clarity on this dual test of 25% and 50% as to which of them should be the cut-off limit for determining the standing of the domestic industry has remained unresolved so far.
3	Injury	Material Injury: existence of harm to the industry, which is not insignificant, immaterial or unimportant Threat of Material	ITC determines whether (1) there is clear evidence that there is material injury or threat of material injury, and (2) likelihood exists that no contrary evidence will arise in a	Examines (a) the volume of dumped imports; (b) the effect of the dumped imports on prices in the Community market for like products; and (c)	The volume impact is examined, either in absolute terms, or relative to production or consumption in India The price effect is	Injury determination based on 15 parameters is the weakest link in AD system. It does not provide

		<p>Injury: likelihood of material injury being caused to the domestic industry, if the dumped imports are allowed to continue to enter the importing country unchecked</p> <p>Shall be based on facts and not merely on allegations, conjectures or remote possibility.</p> <p>Retardation of establishment a “developing industry” which has not yet begun commercial production but substantial resources have been committed for commercial production to begin</p>	<p>final investigation.</p> <p>Material Injury occurs when there is “harm which is inconsequential, immaterial, or unimportant”.</p> <p>Method usually used is ‘price under cutting’ i.e., comparison of ‘adjusted weighted average resale prices’ of foreign products with the prices of similar products in the domestic market.</p> <p>Uses counterfactual models to measure injury margins</p> <p>Retardation is a rarely used provision in USITC</p>	<p>the consequent impact of the dumped imports on the Community Industry</p> <p>Analyses 15 parameters but the injury determination is based on “price undercutting”, ‘Price suppression’ or ‘price depression’</p> <p>Threat of material injury is always examined along with material injury</p> <p>Injury based on Material Retardation is not a very common practice in EC</p>	<p>examined in terms of the “price undercutting”, “price depression” or “price suppression” with respect to domestic industry, which prevents it from recovering costs and a reasonable profit margin</p> <p>Determination based only on threat to material injury is rare. It is generally determined along with the material injury determination.</p>	<p>how these parameters are to be objectively evaluated and what results would indicate existence of injury. In the absence of any such guideline it leaves discretion for the authorities to conclude existence of injury in variety of situations.</p>
4	Cumulative assessment of Injury	<p>Permitted when imports are from many sources, and such imports are simultaneously injuring the domestic industry, provided they are not in negligible quantities,</p>	<p>Cumulation is mandatory in the US for an injury determination when the complaint is against dumped imports from more than one country</p>	<p>EC’s threshold limit for de minimis imports is different from ADA.</p> <p>De minimis in EC: Imports from each country not negligible</p>	<p>Indian rules on cumulation are identical to the Agreement in terms of grounds and threshold levels for considering cumulated examination of injury.</p>	<p>Cumulative assessment has been found to enhance the chance of positive injury determination.</p> <p>Countries with very</p>

		<p>they compete with each other and with the domestic product, and have similar channels of distribution</p> <p>Import quantities are not negligible if, import share from a country is more than 3% of total imports of that product or cumulatively accounts for 7% from all such sources.</p>	<p>Conditions for Cumulation: (a) they are all subject to investigation under either the antidumping or countervailing duty law; (b) they compete with each other and with the domestic like product; and (c) their marketing is reasonably coincidental.</p> <p>“Reasonable overlap” (5%) of competition for cumulation</p>	<p>i.e., represent a <i>market share</i> of 1% or more, or imports from all countries with negligible export i.e., less than 1% market share but collectively accounting for a <i>market share</i> of 3% or more.</p>	<p>But it does not provide any other guidelines about the methods in which the competition aspects are to be examined. However, cumulation is a normal practice in India wherever it is</p>	<p>negligible shares may get clubbed with others and injury may be attributed to their exports where the impact of such imports may be negligible.</p>
6	Causation and Non-attribution	<p>Provides for ‘Demonstration’ of the ‘causal link’ between the dumped imports and the material injury before antidumping duties can be levied.</p> <p>Provides for segregation and separation of other factors also causing injury to the domestic industry at the same time, and those factors are not to be attributed</p>	<p>The more common approach is to look at injury and causation as related questions.</p> <p>The ITC follows the statutory outline of looking at the volume effect, price effects and adverse impact of dumped imports. It looks at various factors like: (1) whether the volume of imports, or the increase in volume, is significant; (2)</p>	<p>EC’s causal link investigation follows two methods: Cumulation, or “Concurrent injury” investigation and assessment of the effect of other factors on the industry in a causal relation analysis to isolate the effects of such factors from injury caused by dumping.</p> <p>The ‘concurrent injury’</p>	<p>. The Rules under Annexure II require it to be demonstrated that the dumped imports are, through the ‘volume’ and ‘price’ effects on the domestic industry, causing injury to the domestic industry. The demonstration of the causal relationship is based on examination of relevant evidence before the Designated Authority, who will</p>	<p>Causation and non-attribution remain complicated and contentious issues in the AD system.</p> <p>The concept Changed from Dumping as ‘Principal cause’ to ‘a cause’ to ‘Proximate cause’</p> <p>In <i>US- HR Steel from Japan</i>¹ case, the Appellate Body ruled</p>

		<p>to domestic injury</p> <p>The Rules list several actors, which may be relevant for demonstrating a causal link. They include, inter alia, volume and prices of imports not sold at dumped prices, contraction in demand or change in pattern of consumption, trade restrictive practices and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.</p>	<p>whether the imported products have undersold the domestic products; (3) whether the domestic industry has lost sales to imported products; and (4) whether domestic prices have been either depressed or prevented from increasing in an economically reasonable manner.</p>	<p>test in the EC tries to identify whether the dumped imports are the cause of the negative situation in the community industry</p> <p>In its “other factors” examination the EC examines certain additional factors like: Poor marketing performance and after-sales services of the Community industry; Wrong assessment of market development; Insufficient product quality or product range of the Community industry; Exchange rate fluctuation; Community industry relocation of production outside the Community to examine if they break the causal link between the injury and the dumped imports:</p>	<p>examine and segregate other factors injuring the domestic industry at the same time. The Rule lists several factors, which may be taken into account for segregation of injury not caused by the dumped imports. They include volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, etc. However, in practice it appears that the attempt to segregate and eliminate other factors, that might be affecting the domestic industry, are pretty low</p>	<p>that, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury.</p> <p>No method of objective evaluation and separation of causes of injury is available.</p>
--	--	--	---	---	---	--

This document was created with Win2PDF available at <http://www.daneprairie.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.