

## Annexure-3

## Comparative Table of Practices and Procedures

Sl. No.	Issues	WTO Provision	Practices			Remarks
			US	EU	India	
1	Institutions	<p>No specific institutional framework suggested in the ADA</p> <p>Members are free to decide their institutional arrangement for investigation, imposition and collection of AD</p> <p>And institutional framework for Administrative and Judicial Reviews</p>	<p>Dual Track Investigation</p> <p>DOC (Under Import trade Administration) investigates the dumping and subsidization aspects.</p> <p>ITC (an independent quasi-judicial body) investigates the injury to the domestic industry caused by dumping</p> <p>Both the institutions are independent of each other but finding of one has considerable effect on the other</p>	<p>Council of Ministers of the European Community is the apex decision-making body for the trade-remedy actions, including antidumping</p> <p>An Advisory Board as a consultative body consisting of official representatives from all 15 Member States</p> <p>Very elaborate investigation teams for both dumping and injury</p>	<p>Institutional framework in India is in formative stage and therefore, weak and unstructured</p> <p>Directorate General of Antidumping and Allied Duties and the Designated Authority, under the Ministry of Commerce and Industry, is responsible for antidumping investigation</p>	<p>The quality of determinations largely depends upon the quality of institutional arrangements for both, investigation and final determination of nature and extent of measure required for defense against unfair trade. The Agreement, understandably, does not prescribe any specific model. The analysis shows that it is the political economy compulsions in the member countries that decide the type of institutional arrangements</p>

2.	Initiation	Decision to initiate an antidumping proceeding must be based on “sufficient and positive evidence” of dumping, injury, and causation	<p>Submission of complaints simultaneously to ITC and DOC</p> <p><i>Self-initiation</i> of investigation is rare</p> <p>Pre-initiation consultation with the petitioners by DOC</p> <p>DOC is supposed to decide about the admissibility of the complaints within 20 days of its filing</p> <p>Initiation of investigation is virtually automatic because it permits the petition to be amended from time to time</p>	<p>Complaints can be submitted to the EC or to a member state, which will forward it to the EC</p> <p><i>Suo moto</i> initiation of original proceedings is done in very special circumstances</p> <p>Pre-initiation consultation and draft complaint before the final version is submitted: avoids rejection of complaints at initiation stage</p> <p>Prefers to initiate the investigation first and then terminate it, if dumping and/or injury cannot be established</p>	<p>Initiation process in India is pretty simple.</p> <p>Petition from or on behalf of Domestic industry and industry associations</p> <p><i>Suo moto</i> initiation are rare</p> <p>No pre-initiation consultation</p> <p>DGAD can take up to 45 days to initiate a case</p> <p>Standard of proof / evidence required to initiate a case is low.</p>	<p>ADA does not define the standard of proof required to initiate a case.</p> <p>There is no strict obligation on the part of the Domestic industry to provide concrete evidence of dumping and injury at the time of initiation.</p> <p>WTO panels have clarified that authorities should not resort to ‘fishing investigations’ though standard of proof at initiation stage is lower than subsequent stages</p> <p>Initiation appears to be a mere formality in most of the countries</p>
3	Interested Party	Exporters or foreign producers or importers of a product subject to	Interested party includes even labour unions along with the domestic producers and trade associations,	‘Interested party’ includes ‘consumer organizations’ along with the complainants,	Follows WTO Rules. However, importance given to importers and users	Interests of the consumers of the Subject goods (Industrial or

		investigation;  The governments of the exporting Members; Business association.	importers and exporters	importers and exporters, and their representative associations	of subject goods in the investigation process is low.	otherwise) do not find sufficient consideration in the investigation.
4.	Preliminary Findings and Provisional Measures	Provisional measures may be applied only when a properly conducted preliminary investigations yields an affirmative finding of dumping and injury and in the authority's judgment a provisional measure is required to prevent the injury being caused to the domestic industry.  May take the form of a provisional duty or, cash deposit or bond equal to the estimated provisional antidumping duty payable  Provisional duty cannot be imposed	The injury and dumping investigations are separated and conducted by the US ITC and DOC respectively  Injury questionnaire to the importers, domestic producers and the foreign exporters is quite exhaustive and looks for evidence of injury and threat of injury  On the basis of the data gathered through questionnaire and the staff conference, the investigating officer prepares, what is known as the "Staff Report", which is submitted to the Commission at least 10 days before the 45 <sup>th</sup> day from the initiation  Standards of proof in a preliminary injury	Single authority conducts both injury and dumping investigation in EU  Preliminary investigation in the EU is more elaborate and the standards of test are very high  Resorts to sampling techniques to pick up 'representative' companies for investigation.  The questionnaire is very exhaustive and calls for a large variety of data. It contains questions related to dumping determination and a separate document is	Single authority conducts both injury and dumping investigation in India  Process is less elaborate and authority generally bases its findings on the basis of verified data of the Petitioners.  Exporters and importers are issued separate questionnaires for response  Questionnaires are not very exhaustive  Domestic industry's petition contains injury information	Widely differing practices at preliminary stage and standard of proof is also very different. Since the US and India do not conduct a very detailed investigation before imposition of provisional duty, it may lead to imposition of duty when it was not warranted.  US system provides for Bond or cash deposits and refund of duties with interests. But the Indian AD law does not have an operational refund procedure.

		<p>before the expiry of 60 days from initiation and shall remain in force for a period of 6 months from imposition, extendable by another 3 months</p>	<p>determination is generally poor</p> <p>Dumping questionnaire in several parts is extremely detailed and is about 130 pages of single space document</p> <p>Domestic industry may file supplementary information</p> <p>DOC does not undertake any verification during the preliminary determination and its findings are based mostly on the questionnaire responses</p> <p>Estimated duty set in the preliminary determination is the maximum duty liability for the importer until the DOC's final determination</p> <p>The "cap" can only be changed after the final dumping and injury determination</p> <p>A negative preliminary</p>	<p>sought from the exporters commenting on the alleged injury to the domestic industry;</p> <p>Completes all verifications prior to Preliminary Findings</p> <p>Provisional duty so determined is intimated to the Council, which must accept or reject it within 1 month with qualified majority.</p> <p>Customs services of the Member nations of EU collect the duty;</p> <p>Law provides for refund of provisional duty in case of negative determination.</p>	<p>and the Authority may seek additional information subsequently</p> <p>Domestic verifications are generally completed before the preliminary findings</p> <p>DA determines positive injury and dumping margins and recommends imposition of provisional antidumping duty. The Central Government, acting on these recommendations may impose provisional duty not exceeding the dumping margin</p> <p>After notification of the provisional measure Indian customs collect the</p>	
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			investigation by the DOC does not terminate the proceedings. However, it affects the deadline of ITC to complete its final determination		duty provisionally.  Indian AD Rules provide for refund of provisional duty if the final determination is negative or reduces the duty. But the rules are not operational.	
5	Final Determination and definitive Duty	<p>Agreement makes it mandatory for the authorities to come out with their final findings of the investigation within a period of 12 months from the date of initiation (extendable by another 6 months in exceptional cases).</p> <p>It must contain determination of dumping margin; Objective determination of Injury and causal links</p> <p>It must not attribute</p>	<p>Complicated and involve several steps by both the ITC and the DOC.</p> <p>ITC's final determination schedule depends on the outcome of DOC's preliminary as well as final determinations</p> <p>Investigators prepare questionnaires for the final determination and send them to domestic industries, foreign producers of like product and importers (both related and unrelated).</p> <p>Allows the interested parties</p>	<p>Final determination stage in the EC is very short and limited to disclosures and final arguments only.</p> <p>Disclosures takes place before one month from the final determination and gives at least ten days time to the parties to comment on the disclosures</p> <p>Investigating team prepares the final determination reports and initiates the consultation process</p>	<p>In India major portion of investigation is done after the preliminary findings</p> <p>Authority seeks the views of all interested parties on the preliminary findings and conducts a public hearing after the provisional measures are notified by the Dept of Revenue</p> <p>Conducts exporters verification if the</p>	<p>The balance of the burden of proof appears to be heavily loaded against the defendants.</p> <p>Under the US system even the duty collected after the final findings is not definitive and is subject to adjustment as per its unique administrative review process.</p> <p>Unique system of 'Public interest test' at final stage by the European</p>

		<p>the factors other than dumping that might be causing injury</p>	<p>to review the draft questionnaire and comment before they are sent to the parties</p> <p>Staff Report and Pre-hearing Briefs in ITC</p> <p>Public Hearing before the full Commission</p> <p>The “final staff report” along with various supplements becomes the basis on which the Commission makes its final decision;</p> <p>Full Commission takes a vote on whether they believe that injury or threat of injury to domestic industry exists. The vote is always in public and generally taken about one week before the decision is due</p> <p>The date of publication in the <i>Federal Register</i> is the date on which the ‘limited</p>	<p>with the Advisory Committee</p> <p>After the consultation with the Advisory Committee, the final proposal of definitive action along with the results of the consultation with the Committee are sent to the European Council, at least one month before the termination of the provisional measure</p> <p>Council may either accept or reject the proposal acting by a simple majority before expiry of the provisional measure</p> <p>Council may also take into account the Community interests</p> <p>Individual EC Member States collect the definitive duties</p>	<p>same is agreed to by the exporters</p> <p>On the basis of questionnaire responses and verification reports, disclosure statements are issued to all parties disclosing the facts and methods adopted for the determination.</p> <p>After receipt of the comments of the parties on the disclosure authority incorporates the comments and issues the final findings.</p> <p>Central Govt. acting upon the final findings of the authority may or may not impose definitive duties.</p>	<p>Commission</p> <p>Voting system in both EC and ITC takes care of Political economy and Public interests to a large extent.</p>
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			<p>liability' comes to an end.</p> <p>The “cap” applicable after the DOC’s preliminary and final determination ceases to exist and the duty liability becomes unlimited</p> <p>Disclosure conferences and Exporters Verification visits by DOC</p> <p>Law does not require public Hearing in the US, unless one of the parties makes a request for a hearing.</p> <p>Within 75 days after the preliminary determination, the DOC must make its final determination. However, extension is possible up to the 135<sup>th</sup> day</p> <p>If the DOC’s determination is positive, the investigation returns to the ITC for final injury determination.</p> <p>After the final determination, the DOC changes the “Cap” to reflect</p>	<p>Duties are collected definitively and no refund is granted.</p>	<p>Provisional duties collected are to be refunded in case of a negative determination.</p> <p>Final duty imposed is effective from the date of provisional duty unless the “retroactivity” clause is revoked and is collected definitively.</p>	
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			<p>the margin determined in the final determination</p> <p>Final duty order is only an estimation of the duty liability on the imported goods and the final duty is determined through the administrative reviews</p>			
6	Price Undertaking	<p>A price undertaking from the exporter in the form of an undertaking to revise his prices upward to eliminate the dumping or injury margin may be accepted by the authorities</p>	<p>The US system of suspension agreements provides the opportunity for “dynamic pricing”.</p> <p>Price undertaking is not encouraged because of difficulty in implementation and monitoring</p>	<p>Price undertaking is generally encouraged and accepted at any time after the imposition of provisional duties but before the imposition of definitive duties</p>	<p>Price undertaking is not an usual feature in Indian Antidumping history</p>	<p>Price undertaking as a mechanism to check dumping is not effective</p>
7	Administrative Reviews	<p>Review of the measures imposed by the same authority that had imposed it (Article 11)</p> <p>To take into account the changed circumstance for reviewing the continuation or otherwise and the</p>	<p>US AD system provides for the following types of reviews:</p> <p>Interim Reviews</p> <p>Expiry review</p> <p>Newcomer Reviews</p> <p>Anti-absorption review</p>	<p>EC AD system provides for the following types of reviews</p> <p>Interim Reviews</p> <p>Expiry review</p> <p>Newcomer Reviews</p> <p>Anti-absorption</p>	<p>Indian AD system provides for the following types of reviews</p> <p>Interim Reviews</p> <p>Expiry review</p> <p>Newcomer Reviews</p>	<p>The US System of annual reviews permits exporters to reduce home market price in order to eliminate dumping. In such situations, dumping may be eliminated but without relief to the domestic industry suffering injury</p>



		quantum of duty and its coverage	Anti-circumvention review  Critical Circumstances and Retroactivity	review:  Anti-circumvention review		Reviews make AD measures self-perpetuating  Anti-absorption review and Anti-circumvention review are not mandated under ADA
8	Judicial Reviews	Judicial review of the proceedings by the national judiciary (Article 13) to provide the interested parties an opportunity of judicial appeal against the error in judgment, and legal or procedural infirmities by the authorities	US Court of International Trade hears appeals arising out of the antidumping determinations of the Department of Commerce. Courts in US rely heavily on the technical expertise of the investigating authorities and avoid going into more substantive issues	The Courts would generally accept appeals only if the authorities failed to observe certain procedural guarantees, committed manifest errors in the assessment of the facts, or based their reasoning on considerations amounting to misuse of powers.	First appeal against Designated Authorities findings lies with CESTAT and further appeal lies with the Supreme Court. However, High Courts also exercise their writ jurisdiction at any stage	Because of the unique system for the administrative review process, the judicial proceedings in the US are less effective;  ADA does not provide detailed guideline for judicial reviews and process is to be completed within the national Judicial system.

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