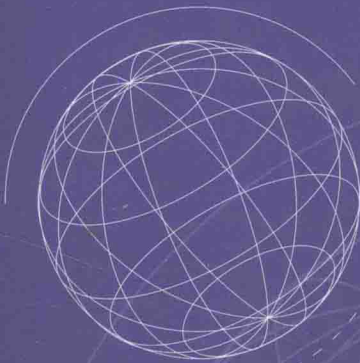




WORLD TRADE
ORGANIZATION

A Handbook on Anti-Dumping Investigations

Judith Czako, Johann Human and Jorge Miranda



CAMBRIDGE

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CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK

40 West 20th Street, New York, NY 10011–4211, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Ruiz de Alarcón 13, 28014 Madrid, Spain

Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 2003

Reprinted 2004

Printed in the United Kingdom at the University Press, Cambridge

Typeface Times 10/12 pt. *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 83042 7 hardback

A Handbook on Anti-Dumping Investigations

The subject of anti-dumping procedures has received growing attention in international trade policy and has become a source of tension between countries. This handbook covers the major areas arising in anti-dumping investigations as embodied in the relevant WTO provisions, providing an exposition of well-sourced information, explanations, and guidance for grasping the intricacies of anti-dumping proceedings. Beginning with a chronicle of an anti-dumping investigation, the book proceeds to consider the crucial issues involved: calculation of dumping margins and determinations of injury, and causation. Well structured and easy to follow, the handbook is designed to assist, in a practical way, investigators delegated the authority to conduct the required investigation. Clearly presented and informative, this book will also interest government officials involved in international trade policy, importing and exporting enterprises affected by anti-dumping investigations, and their representatives, including private legal practitioners and consultants, and academic readers concerned with international trade issues.

JUDITH CZAKO is a Counsellor in the Rules Division of the WTO. Since joining the WTO Secretariat in January 1995, she has advised the Committee on Anti-Dumping Measures and individual WTO Members regarding legal rights and obligations under the Anti-Dumping Agreement.

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JORGE MIRANDA at the time of writing this book was a Counsellor in the Rules Division of the WTO.

FOREWORD

Until the early 1990s, anti-dumping measures were used by only a relatively limited number of countries. Since 1992, however, the situation has changed dramatically. As developing countries began to participate more actively in the world trading system, they were frequently confronted by increasing pressure from domestic industries to take action against allegedly dumped imports. More and more, developing countries responded by taking anti-dumping actions – since 1995 more than half of all known anti-dumping investigations have been opened by developing countries. There is no obligation on WTO Members to provide for the possibility to take anti-dumping actions. However, it is important that Members be able, if they choose, to exercise their right to take such actions in a manner consistent with the complex multilaterally agreed rules set out in the WTO Agreement on Anti-Dumping.

The number of developing country Members requesting hands-on assistance in the anti-dumping area has been consistently high and has even increased. This is why assisting Members in understanding the rules and applying them in conformity with WTO obligations has been an important part of technical assistance provided by the Rules Division over the past several years. This Handbook is in part an outgrowth of that effort, as it is based on the authors' many years of work experience in national investigating authorities prior to joining the WTO Secretariat, as well as their experience in providing technical assistance through training missions and consultations with Members. This latter experience has revealed a strong demand for a written Handbook that can supplement training efforts, and provide a ready reference for investigators. The Handbook is intended as a practical tool – it is not intended to, nor can it, provide legal interpretation of the obligations of the Agreement.

It is sincerely hoped that this Handbook will compensate in some measure for the limited resources available for technical assistance in this area, as well as complement the training that is provided, so as to contribute to capacity-building efforts in developing countries. It is also hoped that a wider audience, including business and academic readers, will find that the Handbook provides a better understanding of the complex rules that govern WTO Members' actions in the anti-dumping area.

Jan Woznowski
Director, Rules Division
World Trade Organization
November 2002

PREFACE

The purpose of this Handbook is to foster a greater understanding of the processes related to an anti-dumping investigation, and to assist, in a practical way, investigators delegated the authority to conduct the required investigation. Issues such as the historical development of anti-dumping action, the rationale behind why companies would engage in dumping, the economic desirability of anti-dumping action, or whether the effects of the price discrimination of dumping should rather be addressed through competition (anti-trust) legislation, *et cetera*, are therefore not addressed. Neither is this Handbook a critique of the current legal framework, nor does it contain any proposals on how the system could, or should, be improved.

Caveats and structure

It should be noted that, although the current multilateral legal framework, as embodied in the relevant World Trade Organisation (WTO) provisions, contains some detailed provisions covering substantive, as well as procedural issues, it does not cover all such issues in detail. It is therefore to a large degree within the discretion of each WTO Member to decide how the administrative procedures of an investigation are organized.

Some guidance is given on these administrative issues, based largely on the different practices followed by Members. However, the Handbook is not a comparative study of all the practices of Members, nor is it an exposé of Panel and/or Appellate Body findings – in fact, no references to dispute settlement reports are contained in this work. It should rather be seen as an effort to provide practical assistance to Members with no, or limited, experience with anti-dumping investigations.

The Handbook consists of three parts:

- Part I: Procedural aspects of an anti-dumping investigation;
- Part II: Calculation of the margin of dumping, based on two simulation exercises; and
- Part III: Determination of injury and the causal link between the dumping and injury, together with a simulation exercise.

It should be noted that there is some degree of repetition regarding some issues in the different parts of the Handbook and in some instances, the reader is only referred to the applicable sections. This has been done on purpose to enable the reader to gain a comprehensive picture of the issues under discussion rather than having to constantly page through the document to find the references. This is especially

the case with Part III: Injury and Causation Determination, which can be used independently from the other parts of the Handbook by investigating authorities mandated to only do the injury and causation investigation.

Finally, a handbook such as this is in large part a collaborative effort. The authors are grateful for the helpful comments, suggestions, and editorial input of their colleagues in the Rules Division of the WTO Secretariat, as well as for the comments of other friends and colleagues shown earlier drafts of the work, which helped immeasurably in improving it. In particular, the authors wish to thank Jan Woznowski, Director of the Rules Division, who was the driving force behind the project, and Christina Benson, Bruce Cullen, Maria Susanna Arano, and Mario Ruiz, for their invaluable assistance in preparing materials for the Handbook. Of course, all errors are the authors' own, and any opinions expressed are strictly personal and do not represent official views of the WTO Secretariat or any Member.

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