
Brief Note on the Turkish Ministry's Assessments Regarding Certain Arguments in Some of Its Trade Remedies Investigations Completed in 2022

Brief Note on the Turkish Ministry's Assessments Regarding Certain Arguments in Some of Its Trade Remedies Investigations Completed in 2022

Article by Ertuğrul Can Canbolat and Su Başak Satır

In 2022, the Turkish Ministry of Trade (“**Ministry**”) continued its intensive work in trade remedies and made certain striking assessments which may shed light on the potential approaches that might be adopted by the Ministry in the future cases and which matter to exporters in their international trade compliance policies. The scrutiny in the current global economic conjuncture with respect to the foreign trade-related issues and the increasing trend in the use of trade remedy tools require the exporting companies to closely monitor investigating authorities’ response to complicated technical issues. Otherwise, the export expectations as well as competitiveness may be interrupted for many years. Accordingly, this brief note aims to provide comprehensive information about the Ministry’s assessments regarding certain arguments in its trade remedies investigations.

Dental Fittings Originating in Republic of Korea

On 14 April 2022, through Communiqué No. 2022/12 on the Prevention of Unfair Competition in Imports, the Ministry completed its dumping investigation on the imports of “dental fittings”^[1] originating in Republic of Korea (“**Korea**”). The concerned dumping investigation was initiated on 12 May 2021 upon a complaint lodged by domestic dental fittings producers and many exporting/importing companies cooperated with the Ministry. Due to the large number of cooperating producers/exporters, the Ministry employed the sampling methodology and the top three companies that export to Turkey the most were taken into the sampling.

Specific to the investigation, the 5% test (by which the Ministry assesses whether the quantity of the exporter’s domestic sales of the concerned product is representative for the purpose of normal value calculation, *i.e.*, whether the sales of like products in the Korean market constitute 5% or more of their sales to Turkey on the basis of quantity) was found to be too high for each sub-product type. The rate in this test was applied as 1%, since the product type has too many sub-types and similar sub-types have close costs and sales prices.

Additionally, a Korean company requested the Ministry to use the constructed values calculated from the sale prices of the importing company in Turkey, not its own sale prices to Turkey when determining the export price. The Ministry rejected this request on the grounds that the construction of export price was an exceptional method and that the investigating authorities could apply it only under certain conditions, pursuant to the Anti-Dumping Agreement and domestic legislation. In this regard, the Ministry examined the provisions in the partnership agreement of the relevant importing

company. It was observed that the majority of the company's shares were owned by real persons residing in Turkey, not the exporting company located in Korea and that the chairman of the board of directors of the company could only be one of those real persons. It was further surmised that those persons constituted the majority of the members of the board of directors and the decisions of the board of directors could be taken with the initiative of the majority. Therefore, the Ministry determined that the company could make its own decisions and is managed independently from the exporting company.

Accordingly, the Ministry calculated dumping margins varying between 10.8% to 34.4% of the CIF value. For non-sampled cooperating exporters/producers, the dumping margin of 28% of the CIF value was calculated by taking the weighted average of the dumping margins of the sampled companies. On the other hand, the dumping margin calculated for non-cooperating companies was 66.7% of the CIF value.

Another noteworthy point is that the Ministry conducted its price effect analyses (i) for each sampled company and (ii) for all cooperating companies together. In this context, the Ministry established imports from two sampled companies had caused price undercutting and price depression (ranging between 0-5%) while one sampled company had not caused any price undercutting or depression. With respect to the latter, the Ministry first calculated CIF value by adding 3.5% for freight, insurance, loading and customs expenses to the ex-factory export prices to Turkey, and then the importer's profit margin determined as the average of the data of the cooperating importers was added to the CIF value. Contrary to the price effect analyses for each sampled company, the Ministry only expressed for the general price effects that the calculated price undercuts were at significant level considering the direct substitutability and price sensitivity of the users. Apart from those, the Ministry highlighted that the price undercutting calculations were carried out on the basis of average prices of all transactions during the period of investigation together, but not instant data.

Lastly, the Ministry applied the lesser duty rule within the framework of the public interest principle and decided to impose anti-dumping measures lower than the calculated dumping margins. Accordingly, the Ministry imposed anti-dumping measures as (i) 10% of the CIF value for a cooperating company with 10% dumping margin (which has been determined as not causing any price undercutting or depression), (ii) 15% of the CIF value for cooperating producers/exporters (both sampled and non-sampled), and (iii) 25% of the CIF value for other producers/exporters located in Korea.

Other, of Polyesters Originating in Korea and Socialist Republic of Vietnam

On 24 November 2022, the Ministry concluded the dumping investigation concerning the imports of "other, of polyesters"^[2] originating in the Korea and the Socialist Republic of Vietnam ("Vietnam") through Communiqué No. 2022/33 on the Prevention of Unfair Competition in Imports. The notable points in the Ministry's assessments relates to four main points: product scope (*i.e.*, problems faced by the users in terms of delivery terms, quantity, and quality), factors not taken

into consideration when calculating the dumping margin, price effect analyses (countrywide vs company-wise), and ongoing anti-dumping measures concerning imports from other countries.

First of all, the Ministry stresses the following against the allegations made by several interested parties with respect to the product scope:

- the domestic industry has the required quality management system certificates.
- provided that the domestic industry is not obliged to produce all product types, it has a board product portfolio.
- the domestic industry stressed that (i) if it has the requested products in its inventory, their delivery is realised without any delay, (ii) if it does not have the requested products in its inventory, the delivery terms and conditions are provided to the customer and the production of those products starts upon the agreement, and (iii) all potential comments, suggestions, complaints and demands of the customers are solved by the aftersales support departments. It is also stated that the case team observed the product inventories during their verification visits at the domestic industry's plants.
- the exporting companies also do not compensate the costs incurred by the customers due to the production losses.
- the domestic industry complains about all concerned product types including the types which were inadvertently not referred to in the non-confidential version of its application and the domestic industry is also capable of producing the relevant product types.

Secondly, the Ministry evaluated the dumping margins through the sampling methodology. In this regard, the Ministry explained that:

- since it was realised during the on-the-spot verifications that the Korean domestic market operates on open account basis and that the foreseen maturities do not operate, the credit cost adjustment was not taken into account in domestic sales.
- due to the fact that the calculation of the credit cost is based on maturities which are the main factors in the formation of the sales price determined by the exporting companies and the maturity does not occur in case of early payment, no adjustment was made regarding the negative payment terms declared for the early payments.
- since the quantity test and profitability calculations have been conducted in line with the Anti-Dumping Agreement, there was no need to change the calculation as stated by an exporter who has claimed that the test for the representative volume of domestic sales should not be made by excluding the sales below cost and also the profit margin should be re-established.
- since (i) the reference table and the relevant note in the publicly available independent audit report of the relevant exporting company indicates that the company has two separate operations for polyester and estate rental, (ii) in the mentioned report, the main business of polyester is distinguished from the estate rental business in order to observe the profitability of the main business, (iii) this separation is significant for the investors of the relevant company, and (iv) the relevant company has losses in its main business according to the profit section of the income statement in the relevant report, there was no need to change in

the SGA and financing expenses which have been calculated on the basis of the determinations in the mentioned independent audit report.

- since the supply of the raw material (even if it is at small quantity) to a related company at a price lower than the similar ones without having any third party's offer is not in line with the Anti-Dumping Agreement, there was no need to revise the PTA purchase price which have been increased in the calculation of the production cost.
- since it was seen during the verification visit that the sub-standard products are defected and have relatively lower unit prices, the claims regarding the inclusion of the sub-standard products in the domestic sales were not accepted.
- since it was understood that (i) the same internal product codes were used in the exporting company's production tracking, accounting records and invoices, (ii) the internal product codes stated to be used for different markets did not serve this purpose, (iii) there were multiple products with different definitions under the product codes created for the investigation, and (iv) there were significant differences between the cost and sales prices of the internal product codes, the claim of the company (*i.e.* the product codes created within the scope of the investigation should be used instead of the company's internal product codes, the products under the created product codes have the same technical specifications, the company's internal product codes do not define the characteristics of the product) was not accepted. Although the company made an explanation that the fluctuation in the costs of domestic product codes was due to the changes in raw material prices and labour costs, the Ministry stressed that a similar fluctuation was not detected in other companies operating in the Korean market.
- the claim regarding the inward processing regime was rejected.

Accordingly, the Ministry calculated the dumping margins ranging between 8% and 14.45% of the CIF value for producers in Korea and 37.54% of the CIF value for producers in Vietnam.

Thirdly, unlike the approach in the dental fittings case above, the price effect analyses were conducted on a country basis, and the claims of certain exporting companies for a calculation based on each exporting company and product type were rejected. Furthermore, the Ministry highlighted that the establishment of price undercutting in terms of the products with high price elasticity is a significant indicator.

Lastly, it was claimed by certain exporting companies and a business association that the injury was not caused by the countries subject to the investigation but instead by imports from China, India and Malaysia which are subject to the anti-dumping measures and cause injury to the domestic industry as determined by the Ministry in its very recent last expiry investigation against those (concluded in 2021 as well). That being said, the Ministry expressed that this does not affect the causality between the dumping and injury caused by the import from Korea and Vietnam.

Consequently, it was decided to impose anti-dumping measures varying between 8% and 14.45% of the CIF value for the imports from Korea, and 37.54% of the CIF value for the imports from Vietnam.

Cocoa Butter Originating in Malaysia

On 21 September 2022, the Ministry concluded a dumping investigation concerning the imports of “cocoa butter, fat and oil”[\[3\]](#) originating in Malaysia through Communiqué No. 2022/23 on the Prevention of Unfair Competition in Imports.

Similar to the abovementioned two investigations, the Ministry employed the sampling methodology due to the large number of cooperating producers/exporters and the top two companies that export to Turkey the most were taken into the sampling. The arguments put forward by some of the cooperating parties against the dumping margin calculation of the Ministry are:

- the price of cocoa butter is linked to the London Cocoa Exchange and hence, no dumping is possible for the concerned product. In this framework, it was stated that (i) there are two main factors determining the price of the cocoa butter (*i.e.*, the bean price announced on the London Cocoa Exchange, and the ratio multiplier value consisting of the producers’ costs and margins), (ii) long-term contracts are concluded on this basis and (iii) thus, the prices for ratio and bean are fixed for a sale to be realised in the future.
- the OCT (*ordinary course of trade*) test should not be applied, and all domestic sales should be taken into account.
- the cost of the concerned product is an assigned cost and the real costs may be different.

In this context, the Ministry first stated that its implementation of the OCT test is in line with the legislation; then emphasized that the ratio multiplier value was set by the producer/seller and thus, the producer/seller had the capacity to form price differences between its customers; and finally, explained that it used the data, – which were provided by the sampled companies and verified by the case team –, and the cost of production in many industries are determined according to various variances and allocation keys. As a result, the dumping margins calculated by the Ministry vary between 7.21% and 16.81% of the CIF value.

Furthermore, after determining the dumping margins and the existence of the injury on the basis of the import trends, price effect analyses and economic indicators of the domestic industry, the Ministry examined the claims regarding the causality. One of the noteworthy points in terms of the injury side was the claim of certain interested parties that in case a measure was imposed on the concerned product, it would have inflationist effects on the Turkish chocolate/biscuit sector. Within this scope, the Ministry stated that the cost of cocoa butter in the production of chocolate and biscuit was limited and hence, the possible increase in the prices of these products would be limited. Moreover, it was asserted that the anti-dumping measures are only imposed to imports preventing fair competition. Thereby, it was evaluated that the importers could import the concerned products from countries which were not subject to the measure.

Apart from those, factors such as imports from other countries, domestic industry’s financial expenses, domestic industry’s export sales, the impact of COVID-19, inflation and technological differences between domestic and foreign industry (the Ministry established that there were no such

differences) were not found to be of nature that can break the causal link between the dumped imports and the material injury/threat thereof to the domestic industry.

Finally, the Ministry applied the lesser duty rule within the framework of the public interest principle and decided to impose anti-dumping measures lower than the calculated dumping margins. Accordingly, the Ministry imposed anti-dumping measures varying between 7% and 10% of the CIF value.

Digital Printing Films Originating in Germany

On 10 June 2022, the Ministry completed a dumping investigation concerning the imports of “digital printing films”^[4] originating in Germany through Communiqué No. 2022/18 on the Prevention of Unfair Competition in Imports. The concerned investigation was initiated on 27 May 2021 upon a complaint lodged by a domestic producer claiming that the imports of digital printing films originating in Germany had been dumped and thereby caused injury and/or threat thereof to the relevant Turkish domestic industry.

Since the economic indicators provided by a complainant in its complaint constitutes the basis of injury allegations that result in the initiation of trade remedy investigations, the Ministry conducts verification visits at the premises of domestic producers, in order to verify information provided by the complainant as well. In this regard, as a consequence of the verification of the economic indicators of the complainant in the mentioned case, the Ministry realised that there had been no injury or threat thereof before the domestic industry that would justify the imposition of anti-dumping measures and accordingly, no dumping margin calculation was made with respect to the exporters/producers located in Germany.

Additionally, in evaluating the allegation from the complainant that the imports of digital printing films originating in Germany had caused price effects (*i.e.* price undercutting and price underselling), the Ministry observed that there had been neither price undercutting nor price underselling since (i) the concerned imports had been realized with unit prices that were 2-6% higher than the prices of the complainant and (ii) the complainant had reported high profitability during the period of investigation. The examination of the complainant’s economic indicators revealed that although a decrease in the production of the complainant had occurred, this mainly had been caused by a decrease in export sales. Moreover, it was seen that the complainant’s end-of-period stocks had decreased, stock circulation rate had increased and, in line with the growth in profitability, cash flow and returns in investments had increased significantly. In a holistic evaluation of the complainant’s economic indicators, the Ministry observed that the complainant had not faced either material injury or threat of material injury and decided to terminate the investigation without imposing any anti-dumping measures on the imports of digital printing films originating in Germany.

Hot-rolled Flat Steel Originating in European Union and Korea

On 7 July 2022, the Ministry concluded the dumping investigation concerning the imports of “hot-rolled flat steel”^[5] originating in the European Union (“EU”) and Korea through Communiqué No. 2022/21 on the Prevention of Unfair Competition in Imports.

The concerned investigation was initiated on 9 January 2021 upon the complaint from the Turkish Steel Producers Association on behalf of the domestic producers claiming that the imports of hot-rolled flat steel originating in the EU and Korea was dumped and thereby caused injury and/or threat thereof to the relevant Turkish domestic industry.

The investigation period for the dumping determination has been determined as 01.10.2019-30.09.2020, while the injury assessment period has been determined as 01.01.2018-30.09.2020. In this regard, some of the interested parties have opposed to the investigation period and injury investigation period; and they claimed that (i) the relevant WTO Committee has a recommendation letter stating that the injury investigation period shall not be less than three years, (ii) the last quarter of 2019 has been included twice in the analysis and (iii) this creates an inconsistency. In response to those arguments, the Ministry stressed that the injury investigation period and investigation period are determined by considering the alleged dumping and injury periods, as well as the timing of the application/application examination/investigation initiation stages.

In terms of the Ministry’s determinations regarding the product scope of the measures, it has been decided that (i) sheets in a plate form rolled in the plate mill, (ii) high-speed steels and tool steels, (iii) products with 0.006% or less carbon content (IF steel), and (iv) IF steel products are excluded from the scope of the anti-dumping duty. In response to claims by the parties regarding that certain product types cannot be produced by the domestic industry, the Ministry held that there is not any precondition regulating that all the imported products and/or the exact same ones shall be produced by the domestic industry; and that otherwise, it would become impossible to impose a measure against the unfair competition in imports.

With respect to the import of products originating in the EU, the Ministry employed sampling method to complete the investigation in due time, and biggest European exporters ArcelorMittal and Tata Steel were selected in the sampling. Individual margin calculation requests from other non-sampled companies located in the EU could not be met since the number of exporters/producers are so large and it would be unduly burdensome and prevent the timely completion of the investigation. In this regard, the Ministry calculated dumping margins varying between 23.47% and 49.70 of the CIF value for companies located in EU; and varying between 14.08% and 18.59% of the CIF value for the companies located in Korea.

As the dumping margins for and import volumes from the EU and Korea were found to be above the negligible levels and the imported products competed with each other as well as with the domestic like products, the effects of the imports originating in the EU and Korea has been assessed cumulatively by the Ministry. Accordingly, the Ministry found that there has been a price undercutting of 4-8% caused by the imports from concerned countries. With respect to price

depression, the Ministry deemed that the significant decrease in the domestic industry's profitability indicated that there has been a price depression substantially higher than price undercutting margins.

Domestic industry's economic indicators have shown that (i) the domestic industry could manage to increase its production, capacity utilisation rate, and market share due to the effect of the expanding domestic market, (ii) the domestic industry's inventory circulation speed and productivity increased, (iii) the domestic industry's unit industrial cost and operating expenses decreased, (iv) despite the increase in its production, productivity and inventory circulation speed and the significant decreases in its unit costs, the unit profit/profitability significantly declined as a result of the fact that the decrease in the unit prices was more than the decrease in the cost, and (v) because of the significant decrease in the unit profit/profitability, there has been significant descension in its economic indicators such as product cash flow and rate for return of the investments. As a result of the holistic evaluation of the given, it has been determined that, there has been deterioration in the domestic industry's economic indicators.

Considering that the domestic industry's material injury coincided with the imports from the subject countries and the increase of the market share of those imports during the same period, and the concerned imports significantly undercut and/or depressed the domestic industry's prices, it has been evaluated that the main reason for the domestic industry's material injury is the dumped imports from the subject countries. With respect to other factors that may cause injury (imports from third countries, export sales of the domestic industry, COVID-19's effects, competition in the domestic market between the domestic producers, safeguard measure imposed in 2018, increases in workers' wages, increase in investments and its effects on profitability) were found not of nature that can break the causal link between the dumped imports and the material injury/threat thereof to the domestic industry. Consequently, the Ministry, by applying the public interest principle and within the framework of lesser duty rule, imposed anti-dumping measures varying between 7% and 12.8% of the CIF value for the concerned product originating in the EU; and varying between 7% and 8.95% of the CIF value for the concerned product originating in Korea.

Expiry Review Investigations

Glass Lids/Covers Originating in China, Indonesia, and Hong Kong

On 13 May 2022, the Ministry concluded its expiry review investigation concerning anti-dumping measures on imports of glass lids/covers^[6] originating in China, Indonesia, and Hong Kong through Communiqué No. 2022/13 on the Prevention of Unfair Competition in Imports. No exporter/producer cooperated with the Ministry.

With regard to the dumping margin, the dumping margins calculated in the original investigation and the first expiry review investigation, the production and export capacities of the concerned countries were evaluated as they were deemed to demonstrate the behaviours of the exporter companies. In the original investigation^[7], a dumping margin of 150.55% of the CIF value had been calculated for products originating in China. In the first expiry review investigation, dumping

margins of 131% and 109% of the CIF value for China, varying between 10.04% and 70% of the CIF value for Indonesia and 95% of the CIF value for Hong Kong were calculated. Moreover, it was observed that while China's market share in global exports increased, Indonesia's and Hong Kong's decreased between 2018 and 2020. As a result of the holistic evaluation of these factors, it was evaluated that dumping was likely to continue or reoccur if the existing measures were revoked.

Regarding the injury determinations, the Ministry observed that the imports from concerned countries did neither undercut nor depressed the prices of domestic industry. Moreover, it was determined that imports from China increased by 540% between 2018 and 2020, while there were no imports from Indonesia in 2019 and 2020. Additionally, it was stated by Hong Kong that no exports to Turkey was made in 2019 and 2020. Further, it was established that China was at the first spot globally in terms of production and export capacity with a 58.49% market share. Accordingly, the Ministry concluded that dumping and injury were likely to continue or reoccur if the existing measures concerning China were revoked. Therefore, it was decided to continue the anti-dumping measures of 0.52 USD/kg for the products originating in China and revoke the measures for the products originating in Indonesia and Hong Kong.

Published by Lexology on March 31, 2023.

[1] Classified under the CN Code 9021.29.00.00.00.

[2] Classified under the HS Code 5402.47.

[3] Classified under the CN Code 1804.00.00.00.00

[4] Classified under the CN Codes 3919.90.80.30.11 00.

[5] Classified under the CN Codes [7208.10.00](#), [7208.25.00](#), [7208.26.00](#), [7208.27.00](#), [7208.36.00](#).

[7208.37.00, 7208.38.00, 7208.39.00, 7208.40.00, 7208.52.10, 7208.52.99, 7208.53.10, 7208.53.90, 7208.54.00, 7211.13.00, 7211.14.00, 7211.19.00, 7212.60.00, 7225.19.10, 7225.30.10, 7225.30.30, 7225.30.90, 7225.40.15, 7225.40.90, 7226.91.20, 7226.91.91, 7226.91.99.](#)

[\[6\]](#) Classified under CN code 7010.20.00.00.00

[\[7\]](#) The original investigation that constituted the basis of the expiry review investigation regarding imports of stoppers, lids, and other closures originating in China was concluded on 20 December 2003.