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HOW TO DEFEND AGAINST ANTIDUMPING INVESTIGATIONS IN TURKEY

Antidumping investigations in Turkey, like those conducted globally, are essential safeguards to protect the domestic market from the harmful effects of unfairly priced foreign imports. Therefore, it is crucial for foreign producers to understand how to defend against antidumping investigations to avoid the imposition of additional antidumping duties, which can have substantial financial and operational impacts.

Antidumping measures are vital tools used by governments worldwide to shield domestic industries from unfair competition resulting from imports sold below their normal value. In Turkey, these measures are particularly significant in maintaining fair competition for local producers, ensuring that foreign companies do not destabilize the domestic market with artificially low-priced goods. For foreign manufacturers, comprehending Turkey's antidumping regulations and procedures is essential, as these measures can greatly affect their market access, pricing strategies, and overall competitiveness within the Turkish market.

I. The Procedures to Initiate an Antidumping Investigation in Turkey

The antidumping system is overseen by two distinct bodies: the "Board of Evaluation of Unfair Competition in Importation" (the Board) and the "Department of Dumping and Subsidy Investigation" (the Department). The Board is responsible for making decisions regarding the initiation of investigations, acceptance of undertakings, termination of investigations, and the imposition of antidumping duties. The Department conducts preliminary examinations based on complaints, recommends whether to initiate investigations or take measures, and carries out these investigations.

a. Initial Application

Antidumping investigations are typically initiated based on a written application submitted by or on behalf of the domestic industry. However, the authorities, such as the Ministry of Trade, also have the power to initiate an investigation without a formal application. For an antidumping investigation to commence, there must be sufficient evidence demonstrating dumping, injury to the domestic industry, and a causal link between the two. The application submitted by the domestic industry should include details such as the applicant's identity, the volume and value of domestic production, a description of the allegedly dumped product, its country of origin or export, the names of known exporters, importers, and foreign producers, as well as the normal value and export prices of the product in question.

b. Domestic Industry Requirement

For an application to be considered valid and made on behalf of the domestic industry, it must meet specific support thresholds. The total production of domestic producers who support the application must exceed that of those who oppose it. Moreover, the supporters must account for at least 25% of the total production within the domestic industry. These conditions ensure that an antidumping investigation is not initiated frivolously and reflects the concerns of a substantial portion of the domestic industry. The initial evidence provided in the application is crucial, as it forms the basis for determining whether there is sufficient justification for the authorities to proceed with a full investigation.

c. Establishing Causation: Key Requirements for a Successful Antidumping Investigation

To impose antidumping duties in Turkey and for local manufacturers to make a successful antidumping claim, it is not enough to demonstrate the existence of dumping and the resulting injury or threat of injury to the domestic industry. A crucial requirement is establishing a causal link between the dumped imports and the injury or threat of injury. This involves proving that the adverse effects on the domestic industry—such as reduced sales, profits, market share, or capacity utilization—are directly attributable to the dumped imports rather than to other factors.

Authorities consider various factors to determine whether the injury is caused by dumping or by alternative reasons. These factors include the volume and prices of non-dumped imports, a decline in demand or changes in consumption patterns, trade-restrictive practices or competition among other foreign and domestic producers, and technological advancements or changes in the export performance

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and productivity of the domestic industry. If it is found that these other factors are the primary cause of injury, antidumping duties cannot be justified.

Additionally, antidumping duties will not be imposed if the volume of dumped imports from a specific country is less than 3% of the total imports of similar products into Turkey, as it is considered negligible. However, if dumped imports from multiple countries are considered cumulatively and countries with individual shares of less than 3% collectively account for more than 7% of the total imports of the relevant product, this negligibility rule does not apply. Thus, local manufacturers must provide clear evidence not only of dumping and injury but also of a direct causal relationship between them to secure antidumping protection.

II. Investigation Stage – Preliminary Analysis

i. *Preliminary Analysis Stage*

The preliminary analysis is conducted within 45 days, after which the case is presented to the Board for a decision on whether to initiate an investigation. If the Board decides to proceed, a communiqué is published in the Official Gazette, and the relevant parties, including the government of the exporting country and known interested parties, are notified. A non-confidential version of the complaint and questionnaires are sent to known exporters, importers, and producers, who must respond within 37 days of the notification date, including postal time. Investigations are typically concluded within one year, although this period may be extended to 18 months under special circumstances.

To verify submitted information or gather additional details, on-the-spot investigations may be conducted at the premises of the producers/exporters in the exporting country and domestic producers. If any party refuses access or fails to provide necessary information within a reasonable timeframe, preliminary and final determinations may be made based on the available facts.

ii. *Provisional Measures*

Provisional measures may be imposed after the first 60 days of the investigation, provided there is a preliminary affirmative determination of dumping and consequent injury to the domestic industry, and such measures are deemed necessary to prevent ongoing injury during the investigation. Interested parties are informed of provisional measures via a communiqué published in the Official Gazette. The duration of provisional measures is typically 4 months, but may be extended up to 6 months upon request by exporters representing a significant portion of the trade involved. During the investigation, exporters or the authorities may offer price undertakings, which, if accepted, could lead to the suspension or termination of the investigation without further measures.

III. How to Defend Against Antidumping Investigations

i. *Submission of Questionnaires by the Exporters*

Once an antidumping investigation is initiated in Turkey, questionnaires are dispatched to known importers and exporters of the product under investigation. In cases involving subsidy investigations, these questionnaires are also sent to the government of the exporting country. The recipients are assumed to have received the questionnaires within a week of dispatch and are generally given 30 days to respond, a period that may be extended upon justified request, subject to the investigation's time constraints. Throughout the investigation, the Directorate General may require additional information or documents from the relevant parties. To validate the information provided or to obtain further details, on-site verifications can be conducted, provided the exporting company consents, the relevant country is informed, and there are no objections.

Questionnaire responses are a vital component of defending against antidumping claims in Turkey, as they constitute the first line of defense for exporters and importers. The information submitted in these forms is crucial, as it forms the core evidence on which the investigation's determinations are based. Accurate, comprehensive, and strategically crafted responses provide the best opportunity to challenge allegations of dumping and contest claims of low export prices made by domestic producers.

Depending on the specifics of each case, the responses should be tailored to disprove claims of dumping by presenting evidence of fair pricing practices or exposing inaccuracies and inconsistencies in the local industry's assertions. Thus, meticulous preparation and expert advice in completing these

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questionnaires are essential for mounting a strong defense and potentially avoiding or reducing the impact of antidumping duties.

ii. Additional Rights of Exporters

During an antidumping investigation in Turkey, exporters and other relevant parties are granted specific rights to ensure a fair and transparent process. The Directorate General facilitates the opportunity for these parties, as well as industrial users of the product under investigation and consumer organization representatives (if the product is sold at the retail level), to present their views.

Hearings may be organized to allow for opposing views to be voiced, either upon written request by the interested parties or at the Directorate General's invitation. However, any oral information provided during these hearings must be subsequently submitted in writing to be considered by the authorities.

Exporters and other interested parties also have the right to access non-confidential information that could aid them in defending their positions, provided they submit a written request to the Directorate General. This right includes documents submitted by other parties to the investigation but does not extend to internal documents prepared by the Directorate General itself.

When provisional measures are imposed, exporters can request an explanation of the essential information and findings on which these measures are based. This request must be made in writing and as soon as possible after the provisional measures take effect, with confidentiality maintained. Before a final determination is made, the key information and findings that will influence the decision on whether to impose definitive measures are shared with the relevant parties.

iii. Key Procedures for Exporters When Submitting Defense and Information

Exporters involved in an antidumping investigation in Turkey must adhere to specific procedural requirements when submitting their defense and related information to the Ministry of Trade. Compliance with these procedures is essential to ensure that the submitted data is considered valid and effectively contributes to their defense.

1. **Format and Submission Requirements:** Foreign-based firms, institutions, and organizations must submit their responses to the questionnaires and any official opinions in writing. However, all attachments related to these responses and opinions must be provided exclusively in electronic format, such as via CD or USB, and sent to the Ministry's postal address.
2. **Language of Communication:** All written and oral communications related to the investigation must be conducted in Turkish. Except for responses to the questionnaire, any information, documents, opinions, or requests submitted in a language other than Turkish will not be taken into account by the authorities. Therefore, ensuring that all submissions are properly translated into Turkish is critical.
3. **Written Submissions:** All responses to the questionnaire and any other information, documents, opinions, and supporting evidence related to the investigation must be submitted in writing unless otherwise specified by the authorities. This requirement underscores the importance of detailed and well-documented written submissions to substantiate the defense.
4. **Supplementary Information and Evidence:** Interested parties are also allowed to submit additional information, documents, and opinions that they believe are relevant to the investigation. These should be accompanied by supporting evidence and submitted to the General Directorate in writing within the specified deadlines. This provision allows exporters to present a comprehensive defense by including any supplementary data that may bolster their case.

Adhering to these procedures is crucial for exporters to ensure that their responses and evidence are accepted and fully considered in the antidumping investigation process in Turkey.

IV. Conclusion

In conclusion, defending against antidumping investigations in Turkey requires a deep understanding of the legal framework, procedural requirements, and strategic considerations involved. Exporters must carefully navigate the process by providing accurate and comprehensive responses to questionnaires, as these form the foundation of their defense. Additionally, understanding the importance of demonstrating fair pricing practices and disproving local producers' claims is critical to countering allegations effectively. Exporters should also take full advantage of their rights to access information,

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participate in hearings, and submit supplementary evidence to strengthen their position. Ultimately, meticulous preparation, adherence to procedural guidelines, and expert legal advice are essential to minimize the impact of potential antidumping duties and maintain competitive access to the Turkish market.

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