

**Korean Association of International Economic Law - 2018 WTO Moot court
competition**

Maurya – Anti-dumping measures on plastic folders from Shakya

1. Introduction

1. The democratic republic of Maurya ["Maurya"] is a WTO member and a leading user of the anti-dumping instrument. It adopted its own Anti-Dumping Act in 1996 which replicates the WTO Anti-Dumping Agreement.¹ Anti-dumping investigations are conducted, and measures are imposed by the Mauryan Anti-Dumping Commission ["ADC"].
2. Based on a complaint from the sole domestic producer of hard plastic folders (used for filing documents),² Maurya initiated an anti-dumping investigation against imports of this product from its neighboring country, Shakya on 1 July 2017. Shakya is a WTO member.
3. Several exporting producers from Shakya registered themselves with the ADC and indicated their willingness to be sampled. These companies accounted for 99% of the Mauryan imports of hard plastic folders from Shakya in the dumping investigation period, *i.e.* 1 June 2016-31 May 2017 ["dumping IP"], and of these, three companies accounting for 60% of the imports were sampled (based on the largest representative volume of imports to Maurya that could be investigated within the time available). Provisional anti-dumping measures were not imposed in the case. On 1 March 2018, the ADC issued a definitive disclosure to all the interested parties and gave them 21 days to file comments.

¹. Please refer to the WTO Anti-Dumping Agreement -- provided along with this brief -- for the relevant provisions of the Mauryan Anti-Dumping Act 1996.

². Example of the product concerned:



4. On 15 June 2018, Maurya imposed the following anti-dumping duties on imports of plastic folders through the publication of the final decision in the Official Gazette.

Name of the company	% of imports represented	Definitive dumping margin	Definitive injury margin	Definitive duty rate
Mbest Folders	15%	15%	120%	15%
Mega Folders	15%	25%	123%	25%
T-fast Stationery	30%	0%	88%	0%
Non-sampled companies³	39%	20%	121.5%	121.5%
All other non-cooperating companies⁴	1%	25%	123%	25%

5. Shakya exporting producers consider that the ADC violated several provisions of the WTO Anti-Dumping Agreement and urged Shakya to bring a WTO case. Being close neighbors, Shakya wants to first conduct informal consultations with Maurya and both have agreed to meet on 15 October 2018.
6. In order to have meaningful consultations, Shakya has appointed a law firm to prepare a draft request for WTO consultations and a detailed submission replicating the first written submission of a WTO dispute. Furthermore, Shakya has decided to focus on key WTO violations stemming from the facts noted in section 2 below and conveyed to Maurya namely: (i) the illegality of the dumping margin calculation for the exporting producers including the illegal application of facts available; (ii) the failure to base the injury margin calculation on positive evidence and an objective examination of the relevant facts; (iii) the illegality of the causation determination; and (iv) the failure to disclose essential facts under consideration which form the basis for the application of the definitive anti-dumping measures.
7. Maurya being confident of the legality of its measures also appointed a law firm to assist the ADC. The law firm has been asked to draft a detailed defence on the

³. Their margins were based on the weighted average of the margins established for Mbest Folders and Mega Folders.

⁴. The residual dumping margin applicable to non-cooperating exporting producers was set at the level of the company with the highest dumping margin.

lines of a first written submission -- routinely filed in the WTO panel proceedings -
- with regard to the ADC's determinations on the above-mentioned issues.

2. Relevant details regarding the anti-dumping investigation against hard plastic folders

8. In the definitive disclosure received by interested parties on 1 March 2018 and the decision published on 15 June 2018, the ADC noted that in view of the conclusions reached with regard to dumping by exporting producers from Shakya, and consequent injury to the Mauryan domestic industry, in accordance with Article 9 of the Anti-Dumping Act, definitive anti-dumping measures will be imposed on imports of hard plastic folders from Shakya for a period of five years. The ADC further noted that the duty will be based at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

2.1 Dumping determination

9. Individual dumping margins were calculated for the sampled exporting producers and according to the ADC:

"...the individual dumping margins were based on the information that could be verified during the on-the-spot verification. The normal values and the export prices were compared for the sampled companies on an ex-works basis and to ensure a fair comparison, the normal values and/or the export prices were adjusted for differences affecting prices and price comparability including for transport, insurance, handling, loading and ancillary costs, packing costs, credit costs and commissions. The dumping margin was first calculated per product type and then weight averaged. All the sampled companies exported product types A, B and C."

10. With respect to the **normal value** establishment, the domestic sales were first checked for representativeness. If the total domestic sales volume of the like

product to independent customers on the domestic market per exporting producer represented at least 5% of its total export sales volume of the product concerned to Maurya during the dumping IP, the domestic sales were used as the starting point. All the sampled exporting producers met this threshold.

11. The methodology applied to establish the normal value was explained by the ADC as follows:

“Normal value was based on the actual domestic sales prices irrespective of whether those sales were profitable or not, if: (i) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80% of the total sales volume of that product type; and (ii) the weighted average sales price of that product type was equal to or higher than the unit cost of production. In this case, the normal value was the weighted average of the prices of all domestic sales of that product type during the investigation period. However, when the 80% threshold was not met, or the weighted average price of the product type was below the unit cost of production, the normal value was based on the actual domestic price per product type of only the profitable domestic sales of the product type during the investigation period.

For Mbest Folders the normal value was based on the domestic sales prices per product type. As the domestic sales were on different incoterms, the delivered sales were adjusted to the ex-works level. The company did not submit the domestic freight and insurance amounts in the anti-dumping questionnaire but provided these before the verification visit however not on a transaction-specific level. The ADC considers that this information was submitted beyond the reasonable period for providing key information and therefore, could not accept or verify the belatedly provided data. Thus, for sales made to independent customers on a delivered basis in the domestic market, best facts available within the meaning of Article 6.8 of the Anti-

Dumping Act were applied. Domestic freight and insurance amounts for the investigation period were taken from the website of the transport company used by Mbest Folders. For all the other aspects, the data of the company was used.

For Mega Folders, the normal value was constructed because during the on-the spot verification, the company failed to prove the accuracy of the sales volume and value reported for four out of the eight sampled transactions. The company provided updated excel sheets and data towards the end of the verification on the ground that it was a time-consuming process to check all the transactions. The revised transaction-specific domestic sales data running into thousands of lines could not be accepted and verified at such late stage of the investigation. Hence, in pursuance of Article 6.8 of the Anti-Dumping Act, normal value was constructed. The cost of production as well as selling, general and administrative costs reported by the company were used with minor adjustments. Furthermore, as the accuracy of the domestic sales and hence the domestic profitability could not be verified, a profit of 16.5% was used to construct the normal value. Even if the domestic sales had been considered, all sales would have been below cost. Thus, the profit was established on the basis of “any other reasonable method” provided in Article 2.2.2(iii) of the Anti-Dumping Act. 16.5% was considered to be reasonable profit margin because the Mauryan industry expected to make such profit absent dumping and in a recent anti-dumping case against autos, Shakya exporters had been found to have similar profitability.”

12. As regards the **export price**, the ADC noted that the data of the sampled exporting producers was used to establish the weighted average ex-works export price per product type, but sample sales and off-spec sales were excluded.
13. Following the definitive disclosure, Mbest Folders and Mega Folders requested the ADC for information and details on the dumping margin calculation. The ADC sent

them an excel sheet each on 5 March 2018 which noted the product-specific weighted average normal values and export prices at ex-works level as well as the final dumping margins.

14. The third sampled company, T-fast Stationery, was found not to be dumping. However, the ADC noted that this company “... *has not been excluded from the scope of the investigation or future reviews to avoid the circumvention of the measures by companies exporting through this zero-margin company.*”

2.2 Injury determination

15. With respect to its finding of injury within the meaning of Article 3 of the Anti-Dumping Act, at the first step, the ADC assessed the volume and price effects of the dumped imports. In this regard, the ADC only excluded the imports from T-fast Stationery. It determined that:

“During the injury investigation period, i.e. 1 January 2014-31 May 2017, plastic folder imports from Shakya excluding those from T-fast Stationery - which were not considered as they were found not to be dumped -- increased as did their market share. The prices of these dumped imports fell in parallel and consistently undercut the prices of the domestic producer. In view of the fact that the domestic industry consists of only one producer, the average sales prices of the domestic industry and the undercutting margins per product type cannot be disclosed for confidentiality reasons. Hence, in response to the request from the exporting producers, the ADC is unable to disclosure further data.”

16. The ADC next examined the impact of the dumped imports on the domestic industry. It evaluated 14 out of the 15 economic indicators (listed in Article 3.4 of the Anti-Dumping Act) having a bearing on the state of the domestic industry during

the injury investigation period. The ADC however did not address the actual and potential negative effects on the growth of the domestic industry.

17. The ADC determined that “... *the situation of the sole domestic producer has deteriorated over the period considered as production, production capacity, capacity utilization, sales, market share and profitability (even though still positive) declined as did employment.*” On this basis the ADC concluded that the domestic industry was materially injured during the injury investigation period.

2.3 Causation

18. In accordance with Article 3.5 of the Anti-Dumping Act, the ADC examined whether the dumped imports from Shakya caused material injury to the domestic industry. It also examined whether other known factors could at the same time have injured the domestic industry so that any possible injury caused by factors other than the dumped imports was not attributed to the dumped imports. The other factors assessed included (i) imports of hard plastic folders from third countries, and (ii) the export performance of the domestic industry.
19. The ADC determined that increased low-priced dumped imports from Shakya caused the material injury suffered by the domestic industry. It reasoned that among others, “... *the pattern in which the imports gained market share and the domestic industry lost market share was found to be corresponding. The latter’s market share loss correlated to the increase in the dumped imports. Import prices from Shakya decreased by 13% during the period considered and during the same period, the domestic producer’s prices fell more sharply. The dumped imports undercut the domestic industry prices steeply thereby exerting price pressure on the latter. The price behavior of the increasing dumped imports did not allow the domestic industry to maintain its market share or to become profitable.*”

20. As regards the effect of the third country imports the ADC noted that these imports consistently held around 25% market share whereas the market share of the Shakya imports had shot up from 5% to 25% during the injury investigation period. It further noted that the former imports were higher priced and therefore did not cause any injury to the domestic industry.
21. As regards export sales of the domestic industry, the ADC noted that the domestic producer was home-oriented and exported minimal amounts over the years (less than 1%). According to the ADC, “...*fluctuations in the export sales could not have injured the domestic industry so as to break the causal link between the dumped imports and the resulting injury.*” Mega Folders argued that the ADC should have also assessed the impact of the non-dumped imports, but the ADC noted that “...*this was not necessary because even with the exclusion of the non-dumped imports, the domestic industry was suffering injury and the volume and price effects of the dumped imports are evident.*”
22. The ADC therefore concluded that other factors did not contribute to the injury suffered by the domestic industry.