



Brussels, XXX
[...] (2013) XXX draft

DG TRADE Working Document

**DRAFT GUIDELINES ON THE DETERMINATION OF THE PROFIT MARGIN
USED IN ESTABLISHING THE INJURY MARGIN**

LEGAL BASIS

1. The determination of the injury margin is an important step in the application of the lesser-duty-rule when determining the level of an anti-dumping or anti-subsidy duty (see *inter alia* Articles 7(2) and 9(4) of Council Regulation (EC) No 1225/2009 and Articles 12(1) and 15(1) of Council Regulation (EC) No 597/2009).
2. The injury margin is the margin adequate to remove the injury to the Union industry.
3. The injury margin is calculated by comparing an exporting producer's export price with the non-injurious price of the Union industry. The latter consists of the Union industry's cost of production plus a reasonable profit margin.

II. DETERMINATION OF THE PROFIT MARGIN

4. According to the Court, the profit margin to be used when calculating the target price that will remove the injury in question must be limited to the profit margin that the Union industry could reasonably count on under normal conditions of competition, in the absence of dumped imports.¹ Therefore, the profit margin for the purpose of the injury margin calculation is not necessarily identical with the one desirable to ensure the survival of the Union industry and/or an adequate return on capital.

III. METHODOLOGY TO DETERMINE THE PROFIT MARGIN

5. The determination of the non-injurious price, and in particular the target profit, implies the assessment of a complex economic situation. The complexity results from a number of elements. In particular, identifying the profit that the Union industry could expect to obtain in the absence of injurious dumping/subsidisation is an analysis involving hypotheses. Indeed, injurious dumping or subsidisation can have different effects on the Union industry's sales and profit margin. It can have price effects (i.e. the Union industry's sales prices decrease as a result of injurious dumping/subsidisation), it can have volume effects (i.e. the Union industry's sales volumes decrease) or it can be a combination of both. Therefore, the determination of the target profit margin is more than a mathematical exercise. The emphasis is on achieving a reasonable result that takes account of the particular circumstances of the case.
6. A useful basis for determining the target profit is the profit margin obtained by the Union industry during the part of the injury investigation period in which the dumped and/or subsidised imports did not have any negative effects on the situation of the Union industry. The Commission considers that the injury investigation period should in

¹ See Case T-210/95 European Fertilizer Manufacturer's Association (EFMA) v Council [1999] ECR II-3291 (paragraph 54 et seq.). In paragraph 60, the Court pointed out: "It follows that the profit margin to be used by the Council when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports. It would not be consistent with Articles 4(1) and 13(3) of the basic regulation to allow the Community industry a profit margin that it could not have expected if there were no dumping."

principle cover a period of three to four years prior to the investigation period. This time span is often a period during which the imports of the product concerned were either absent or did not reach significant volumes.

7. If, for instance, the increased market penetration of imports of the product concerned only started in the second year of that period, the profit margin of the first year could constitute a good basis for the target profit. If the effect of the imports was not felt during two or even three years of the injury investigation period, a weighted average profit margin of these years could be used.
8. It should be ensured that dumped or subsidized imports from other third countries did not have a negative impact during the part of the injury investigation period that is envisaged as a basis for the target profit.
9. If the method described in the preceding paragraphs cannot be used because imports of the product under investigation had already penetrated the Union market at the beginning of the injury investigation period, the following alternative methods are available:
 - If the product concerned has previously been subject to a recent AD or AS investigation, it may be appropriate to use the target profit determined in that investigation, provided that the investigation does not reveal evidence that the situation of the Union industry has significantly changed since then.
 - The profit achieved for a more general category of products, i.e. a wider category of products that also includes the product subject to investigation (e.g. electronic consumer goods in general as opposed to the specific consumer electronic product subject to investigation), neighbouring products etc., may also be used. The profit obtained on such alternative products should be achievable for the Union industry in the absence of injurious dumping/subsidisation.
 - Information contained on the product under consideration in the Bank for the Accounts of Companies Harmonized ('BACH')² database may also be a basis for determining the target profit. It contains harmonised annual accounts statistics (including data on profits on turnover) of non-financial enterprises for 11 Union Member States, Japan and the United States of America, when the Union industry is based, partially or entirely, in the covered Member States.
 - Where none of these methods can be used, the Commission will use any other reasonable method, taking into account the particular circumstances of a given case.

IV. FURTHER CONSIDERATIONS

10. A single target profit is calculated for the product concerned, even if the product concerned is imported from several countries subject to investigation.

² The database is available free of charge at the following address:
<http://www.eccbso.org/pubblica/database.asp>

11. A single target profit is calculated for the entire range of the Union industry's like product. In other words, the target profit is the same for all types, grades etc. of the like product.
12. The target profit is calculated as a percentage on the Union industry's turnover.

V. PROCEDURAL ISSUES

13. The determination of the injury margin including the target profit is required in new investigations initiated pursuant to Article 5 of the Basic Anti-Dumping Regulation and Article 10 of the Basic Anti-Subsidy Regulation. It is also required in full interim reviews covering dumping/subsidies and injury. It is not necessary to determine the injury margin in expiry reviews since the measures subject to review can only be confirmed at the same level or repealed.
14. Interested parties may provide their views and information on the profit margin that the Union industry could reasonably expect in the absence of injurious dumping/subsidisation. Such information may be verified in the course of the investigation.