



# GUIDELINES ON THE APPLICATION OF FORMS OF DUMPING DUTY

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November 2013

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## A. INTRODUCTION

These Guidelines set out issues to be considered when determining the form of duties that the Anti-Dumping Commission (the Commission) will recommend to the Minister. They are also meant to guide applicants or interested parties when preparing their applications or submissions in relation to investigations, reviews or other processes where the form of dumping duty will be considered. The forms of duty are the methods by which the amount of interim dumping duty payable on goods exported to Australia is calculated.

The forms of duty are made operable through the *Customs Tariff (Anti-Dumping) Regulation 2013* which commenced on 11 June 2013. These Guidelines relate to that Regulation.

Previously, the only method for calculating dumping duty was the 'combination' duty method. The new Regulation provides that the forms of duty available to the Minister now include:

- combination of fixed and variable duty method<sup>1</sup> ('combination' duty);
- fixed duty method;
- floor price duty method; and
- *ad valorem* duty method.

These forms of dumping duty calculation all have the purpose of removing the injurious effects of the dumping. However, in achieving this goal certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty.

For countervailing duties, imposed under Section 10 of the *Customs Tariff (Anti-Dumping) Act 1975*, the duty may be an *ad valorem* rate, a fixed rate, or a combination of those methods. The changes to the methodologies for calculating dumping duties provide the Minister with flexibility that is already a feature of the countervailing duty system.

Article 9.3 of the World Trade Organization (WTO) Anti-Dumping Agreement (ADA) requires that the amount of dumping duty shall not exceed the margin of dumping. In the Australian anti-dumping system if excess duty is collected procedures operate to refund that excess. This is the case no matter what form of duty applies.

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<sup>1</sup> The combination of fixed and variable dumping duty method commenced in late 1992. It replaced a floor price duty method that had operated previously for 'anti-dumping' duties.

## B. BACKGROUND

The Productivity Commission's (PC) 2009 report<sup>2</sup> on the anti-dumping system, at recommendation 6.6, addressed the forms of duty. The PC noted the potential for certain forms of duty to become ineffective in a rising market or to become unreasonably punitive in a falling market.

The PC recommended that a different duty collection system be applied which included methods to make the form of duty more flexible in order to limit the problems it had identified.

The then Government considered the PC's recommendations and decided that the anti-dumping system should be changed to allow a more flexible approach regarding the form of dumping duty. The Government's 2011 *Streamlining*<sup>3</sup> policy recognised that flexibility regarding the form of the measure is provided for in the WTO ADA; that Australia's adoption of this approach would be consistent with other jurisdictions; and that certain forms of duty can best suit particular case circumstances.

The *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012* moved the 'combination duty' from the *Customs Tariff (Anti-Dumping) Act 1975* to the *Customs Tariff (Anti-Dumping) Regulation 2013* and also added the other forms of dumping duties.

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<sup>2</sup> *Australia's Anti-Dumping & Countervailing System*, Inquiry Report No 48, 18 December 2009, <http://www.adcommission.gov.au/reference-material/documents/anti-dumping-PC148.pdf>

<sup>3</sup> *Streamlining Australia's anti-dumping system*, June 2011, <http://www.adcommission.gov.au/reference-material/OtherPublications.asp>

## C. GUIDANCE

### (i) Combination of fixed and variable duty method – Regulation 5(2)

#### Key considerations

- This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.
- It is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.
- It can be applied more precisely to certain goods in some cases.
- The ‘effective’<sup>4</sup> rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The ‘effective’ rate increases in a declining market making it punitive.
- Consequently, reviews may be more likely due to the effects of a rising or falling market than would be the case with an *ad valorem* duty method.
- The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.
- The ascertained export price used in this measure can become out-of-date.

#### Discussion

The ‘*combination duty*’ comprises two elements:

- (a) The fixed duty element – this component of the duty remains the same on all importations. The fixed element is determined when the Minister exercises powers to ‘ascertain’ an amount (i.e. set a value) for the export price and for the normal value<sup>5</sup>. The fixed element can be applied differently. It can be a percentage amount which applies to the higher of the ascertained export price or the actual export price (known as the ‘dumping export price’ (d xp) in the automated entry system); or it can be applied per unit<sup>6</sup> of the goods (e.g. the weight of the goods - \$100/t); or it can be a combination of the two; and

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<sup>4</sup> The ‘effective’ rate of the duty collected is the *ad valorem* equivalent of the duty i.e. the *total duty collected* as a proportion of the current actual export price. More information about this concept is provided at Part (iv) *Ad valorem* duty.

<sup>5</sup> This example does not introduce the concept of lesser duty. This simply means that rather than a normal value being used to determine the duty amount, a ‘lesser duty’ has operated using a ‘non injurious’ price rather than the normal value.

<sup>6</sup> Generally it will be the statistical unit listed in the tariff – but some cases may use a different unit of quantity to what is shown for the statistical key. Also, there may be no relevant statistical key for some commodities in which case one will be selected by the Commission.

- (b) The variable duty element – the variable duty component stems from a feature of this form of duty whereby, having ‘ascertained’ the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than that ‘ascertained’ export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price). It is called a ‘variable’ element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

This form of duty is similar to a fixed duty method but with an added variable duty element where the actual export price is lower than the ‘ascertained’ export price which is part of such duties. The fixed duty component is normally the most significant part of the total duty collected under a combination duty. As such, a combination duty has similar advantages and disadvantages to the fixed form of duty.

A combination duty always uses an ‘ascertained’ export price. This ascertained price is based on data that is already ageing at the time measures were imposed. This means that the combination measure can become out of date and may need more frequent reviews.

The effects of a rising and falling market when there is a combination duty are illustrated in Table 1.

**Table 1 – Operation of a Combination Duty in a falling or rising market**

(i) **Where the fixed element is an amount per unit**

|                                 |             |        |        |
|---------------------------------|-------------|--------|--------|
| Ascertained Normal Value        | \$100/tonne |        |        |
| Ascertained Export Price        | \$80/tonne  |        |        |
| <b>Rising market</b>            |             |        |        |
|                                 | Year 1      | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100       | \$150  | \$200  |
| Amount of duty/tonne            | \$20        | \$20   | \$20   |
| ‘Effective’ rate of duty        | 25%         | 13%    | 10%    |
| <b>Falling market</b>           |             |        |        |
|                                 | Year 1      | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100       | \$75   | \$50   |
| Amount of duty/tonne            | \$20        | \$25   | \$50   |
| ‘Effective’ rate of duty        | 25%         | 33%    | 100%   |

(ii) **Where the fixed element is an *ad valorem* duty**

|                                 |             |        |        |
|---------------------------------|-------------|--------|--------|
| Ascertained Normal Value        | \$100/tonne |        |        |
| Ascertained Export Price        | \$80/tonne  |        |        |
| <b>Ad valorem duty imposed</b>  | 25%         |        |        |
| <b>Rising market</b>            |             |        |        |
|                                 | Year 1      | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100       | \$150  | \$200  |
| Amount of duty/tonne            | \$25        | \$37.5 | \$50   |
| ‘Effective’ rate of duty        | 25%         | 25%    | 25%    |

| <b>Falling market</b>           |        |        |        |
|---------------------------------|--------|--------|--------|
|                                 | Year 1 | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100  | \$75   | \$50   |
| Amount of duty/tonne            | \$25   | \$25   | \$50   |
| 'Effective' rate of duty        | 25%    | 33%    | 100%   |

#### *Rising Market*

In example (i) above the effects of a rising market are illustrated. In this example the combination measure includes a fixed duty element as an amount per unit. The total duty collected has been eroded over time. The duty collected expressed as a proportion of the export price (this is described as the 'effective' rate of the duty in the Table, another term for it may be the '*ad valorem* equivalent' of the duty) has fallen from 25% to 10% in the rising market.

In example (ii) in Table 1 the circumstance of a rising market is illustrated. In this example the combination measure includes an *ad valorem* duty. No duty erosion has occurred – the rate has remained at 25% in the rising market.

#### *Falling Market*

In a falling market the duty collected can become punitive under a combination measure. This is true whether the fixed element is collected as an amount per unit or as an *ad valorem* duty. The punitive effect is illustrated in Table 1 for both forms of combination duty. While an applicant industry may be attracted to this form of duty for this reason the fact there can be such negative effects on other industries in a falling market is something the Commission and the Minister may have to consider. User industries are likely to have an interest and may wish to make submissions to the Commission on these effects.

For the combination duty there can be similar practical problems to the 'floor price' duty method where there are a multitude of models or types of a good<sup>7</sup>.

In *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870* the Federal Court held that variable factors determined in a Notice published under section 269TG of the *Customs Act 1901* imposing the dumping duties should reflect the dumping determination for the goods, and the Minister may not vary the notices by putting into effect different variable factors by model or finish type. This is relevant when deciding on the form of duty to be selected.

For some commodities there can be a large number of models with significantly different prices. In some cases the difference between the lowest and highest prices in the product range has been well over 100%. Where the 'ascertained' export price component of the combined duty must be determined as an average for all the models the 'broad brush' nature of this calculation can make the combined duty unsuitable.

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<sup>7</sup> The 'ascertained export price' in the combination duty is based on the dumped export prices. The 'floor price' of the floor price duty method is a normal value or non-injurious price. While the two schemes differ in this respect they share the same problem where there are many models.

A combination duty can be suitable for cases where the Commission considers that there is a likelihood of price manipulation because of complex related party company structures, or a proven case of price manipulation. This is because the combination duty has a fixed element<sup>8</sup> to it that it ensures the effectiveness of measures where there is a likelihood of price manipulation or circumvention. Table 2 below demonstrates how there is no incentive for an exporter to lower their prices to avoid the imposition of dumping duties when a combination duty is used. Under the combination duty, where the price had been lowered (to 70) as shown in the last column, the duty collected has increased (to 30).

**Table 2 – Comparison of a combination duty and *ad valorem* duty where the price may be manipulated**

|                                                     |                  |               |                        |                      |
|-----------------------------------------------------|------------------|---------------|------------------------|----------------------|
| Ascertained Normal Value (ANV)                      | \$100            |               |                        |                      |
| Ascertained Export Price (AEP)                      | \$80             |               |                        |                      |
|                                                     |                  |               |                        |                      |
|                                                     | <b>Duty rate</b> | <b>Year 1</b> | <b>Increased price</b> | <b>Lowered price</b> |
| Actual Export Price (DXP) of the goods              |                  | 80            | 90                     | 70                   |
| <b>Combination duty imposed (fixed duty method)</b> |                  | \$20          | \$20                   | \$30                 |
| - Fixed amount                                      | ANV-AEP          | (\$20)        | (\$20)                 | (\$20)               |
| - Variable amount (only when DXP<AEP)               | AEP-DXP          | (\$0)         | (\$0)                  | (\$10)               |
| <b>Total Combination Duty</b>                       |                  | \$20          | \$20                   | \$30                 |
| <b><i>Ad valorem</i> duty imposed</b>               | (25%)            | \$20          | \$22.5                 | \$17.5               |

As noted, the combination duty and the fixed duty schemes utilise an ‘ascertained’ export price. This ‘ascertained’ export price is usually set in the traded currency<sup>9</sup>. However, if it had been fixed as an Australian dollar amount and after the measure was implemented the AUD depreciates, there can be additional exchange effects resulting from that depreciation and these effects may increase the likelihood of a review request. This would not be the case with an *ad valorem* duty.

## (ii) Floor price duty method – Regulation 5(4)

### ***Key considerations***

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- This duty method can limit the negative effect of price increases in the goods that are associated with an *ad valorem* duty method. This may be a factor relevant to the Minister when considering the effect of the duty on downstream industries, depending on the circumstances.

<sup>8</sup> Part (iii) of the Guideline explains more about the operation of a fixed duty method.

<sup>9</sup> See chapter 27 of the *Dumping and Subsidy Manual* (August 2012) dealing with Interim Dumping Duties, <http://www.adcommission.gov.au/reference-material/manual/default.asp>

- It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under an *ad valorem* duty method which would decrease the amount of duty paid.
- A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. In a falling market, as per a fixed or a combination duty method, this form of duty can become punitive.
- This duty method, like the combination duty and fixed duty, may not suit the situation where there are many models or types of the good with significantly different prices.

### ***Discussion***

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A 'floor price' duty method sets a 'floor' – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. (In certain circumstances, a lesser non injurious price may also be used). Conversely, if the export price is equal to or greater than \$100 per tonne, no duty would be collected.

The floor price is either the normal value or the non injurious price, whichever becomes applicable under the duty collection system. This method does not use an ascertained export price as a form of 'floor price' as is used in the combination duty method.

An advantage of this form of duty is that for products where there are increasing prices in the market this method will prevent unnecessary further price increases. Above the floor price no additional duty is collected.

Moreover, in cases where exporters have room to further decrease their export prices, and the market is sensitive to price instability, a duty method is needed that would prevent further price decreases. In this situation a fixed amount of duty, or an *ad valorem* duty, would not prevent the fall and the floor price method would be preferred<sup>10</sup>.

One disadvantage of the floor price duty method, either as a stand-alone measure or combined with other forms of duty, is that it may quickly become out of date. When measures are imposed the data on which the dumping was calculated is already dated, and even more so when, during the life of the measure, there have been no reviews.

As a result, there is the potential for measures involving a floor price to become ineffective in removing the injury when prices are rising. In this circumstance, the normal value and export price can exceed the floor price. Accordingly, while there may still be dumping, no duty is collected. Further, in a declining market, the duty imposed can become punitive. Like the fixed duty in the same situation, while the applicant industry may be attracted to this effect,

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<sup>10</sup> In Atlantic Salmon from Norway a floor price was used for this reason. Commission Regulation (EC) No 2529/97 of 16 December 1997 imposing provisional anti-dumping and countervailing duties on certain imports of farmed Atlantic salmon originating in Norway *Official Journal L 346*, 17/12/1997 P. 0063 – 0066; Council Regulation (EC) No 1890/97 of 26 September 1997 imposing a definitive anti-dumping duty on imports of farmed Atlantic salmon originating in Norway — Council Declaration *Official Journal L 267*, 30/09/1997 P. 0001 - 0018

the fact there can be such negative effects on other industries is a factor the Minister may have to consider.

A floor price can quickly lose its effectiveness and may need frequent reviews. This effect was recognised by the PC<sup>11</sup>.

In the EU some floor prices have been indexed when a suitable index has been found, such as a major material value. In Australia, there can be an indexed floor price in an undertaking because the terms of the undertaking agreement itself set out the conditions. But, Australian law does not specifically allow for indexing in the case of a floor price duty method.

Another disadvantage of a floor price is that it is not suitable for goods which have a wide range of models or types. It was noted that the combination duty shares a similar problem. For example, some chemicals may have hundreds of types. This may not be a problem if the spread of prices between these types is insignificant, however it will be a problem where there is a wide range of prices. It can mean that the floor price calculated as an average for all the models can be too 'broad brush' to make it meaningful.

### **(iii) Fixed duty method – Regulation 5(6)**

#### ***Key considerations***

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- It is suited to circumstances where there are complex company structures with related parties; and circumstances where circumvention of measures is likely.
- It can be applied more precisely to certain goods in some cases.
- The 'effective' rate of this duty diminishes in a rising market, and increases in a declining market.
- Consequently, reviews may be more likely due to the effects of a rising or falling market on the fixed duty method more so than would be the case with an *ad valorem* duty method.
- The increasing 'effective' rate of the fixed duty in a declining market can have an adverse effect on downstream industries, and the Minister may wish to take this into account when deciding on the duty method to apply.
- Like the combination duty and floor price duty methods it may not suit the situation where there are many models or types of the good with significantly different prices.

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<sup>11</sup> In Canada where a floor price is used in many of its findings, Canada Border Services Agency has a program of regular reviews of measures every 18 months or so in order to ensure the currency of the measure.

## ***Discussion***

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A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. That is, \$10 per tonne must be paid regardless of whether the actual export price of the goods at the time of import is \$100 per tonne or \$500 per tonne.

The main advantage of this form of duty is that it ensures the effectiveness of measures where there is a likelihood of price manipulation or circumvention. This may often be associated with:

- complex company structures such as where there are wholly owned subsidiaries and where parties are related; or
- where there are new forms of the product via mixtures with other products emerging.

The final situation can also result in a risk of price manipulation or circumvention.

Where such circumvention is identified this may be reason to change the form of duty, for example from *ad valorem* duty to fixed duty.

A fixed duty method has another advantage in that it can be more precisely applied than the *ad valorem* duty method in some cases. An example is the rate of duty imposed by the EU on candles. In that case candles were imported in sets (pillars, holders or other items). An *ad valorem* duty would apply to the value of the set but the targeted good was the candle only. Accordingly they determined the duty on the sets as a fixed duty but calculated the fixed duty rate using the value of the fuel content of the candles only.

A key disadvantage of a fixed duty, as mentioned in the *Streamlining* report, is that in a rising market the protective effect of the fixed duty can become quickly eroded. This was also the case of one of the forms of combination duty as explained at part (i) of this Guideline.

For example, a duty of \$25 per tonne when the export price is \$100 per tonne is equal to a 25% 'effective' rate of duty; but if the export price doubles the 'effective' rate of duty becomes 12.5%. In a falling market, the protective effect works in the opposite direction – if the export price falls to \$75 per tonne the 'effective' rate of duty becomes 33%; and increases the more the export price falls.

**Table 3 – Operation of a Fixed Duty in a falling or rising market**

|                                 |            |        |        |
|---------------------------------|------------|--------|--------|
| Duty rate                       | \$25/tonne |        |        |
|                                 |            |        |        |
| <b>Rising market</b>            |            |        |        |
|                                 | Year 1     | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100      | \$150  | \$200  |
| Amount of duty/tonne            | \$25       | \$25   | \$25   |
| 'Effective' rate of duty        | 25%        | 17%    | 12.5%  |
|                                 |            |        |        |
| <b>Falling market</b>           |            |        |        |
|                                 | Year 1     | Year 2 | Year 3 |
| Actual Export Price (DXP)/tonne | \$100      | \$75   | \$50   |
| Amount of duty/tonne            | \$25       | \$25   | \$25   |
| 'Effective' rate of duty        | 25%        | 33%    | 50%    |

Consequently, reviews may be more likely due to the effects of a rising or falling market on the fixed duty method more so than would be the case with an *ad valorem* duty method (see Table 4 for a comparison of all the different forms of duty).

As in the case of a combination duty, and floor price, where there are many models with a significant spread in prices this form of duty can become impractical for the same reasons already explained above.

#### **(iv) *Ad valorem* duty method – Regulation 5(7)**

##### ***Key considerations***

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- The simplest and easiest form of duty to administer when delivering the intended protective effect.
- It has an advantage where there are many models or types (it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation).
- It has an advantage for goods which are subject to significant price variations over time because:
  - a) the *ad valorem* duty method does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate - that arises under the other methods; and
  - b) the *ad valorem* duty method may require less frequent reviews than these other duty methods in this situation.
- It may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry.
- It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence<sup>12</sup>.

##### ***Discussion***

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The most common form of duty in other main jurisdictions imposing dumping duties is the *ad valorem* duty. It is duty applied as a proportion of the export price. It is like other long standing *ad valorem* duties of Customs. The duty amount, in Australia's case, is usually the actual FOB (Free on Board) export price multiplied by the percentage dumping duty rate.

An *ad valorem* duty method is one of the simplest forms of duty and it is easy to administer.

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<sup>12</sup> Such behaviour may be addressed through the circumvention activity dealing with avoidance of the intended effect of the duty – see subsection 269ZDBB(5) of the *Customs Act 1901*. This subsection will take effect on 1 January 2014.

An *ad valorem* dumping duty is determined for the product meaning that a single ascertained export price only is required when determining the dumping margin. But that ascertained export price is not used to work out the amount of duty to be collected on each shipment. Only the *ad valorem* rate applies to the known export price of each shipment that is entered subsequent to the imposition of the duty. It is useful to apply in cases where there are many models subject to measures and prices diverge between models.

An *ad valorem* duty suits a situation where a commodity's prices<sup>13</sup> vary significantly over time because:

- (a) an *ad valorem* duty method which applies the duty to the actual export price (known as DXP in the duty collection system) does not show the same variability in the 'effective' rate of the duty that arises under the combination or fixed duties, as export prices change (see **Table 4** below); and
- (b) an *ad valorem* method may not need to be subject to frequent review unlike the other duty methods.

**Table 4: The 'effective' rate of duty of each duty method**

| Ascertained factors:      |                                        | Ascertained Normal Value (ANV) \$100 |            |            |            |
|---------------------------|----------------------------------------|--------------------------------------|------------|------------|------------|
|                           |                                        | Ascertained Export Price (AEP) \$80  |            |            |            |
| Duty Methods              |                                        | Year 1                               | Year 2     | Year 3     | Year 4     |
|                           | Actual Export Price (DXP) of the goods | \$70                                 | 90         | 130        | 60         |
| <i>Ad Valorem</i>         | Total duty (DXP x 25%)                 | \$17.5                               | \$22.5     | \$32.5     | \$15       |
|                           | <b>Effective rate %</b>                | <b>25%</b>                           | <b>25%</b> | <b>25%</b> | <b>25%</b> |
| Fixed Duty                | Total duty (ANV - AEP)                 | \$20                                 | \$20       | \$20       | \$20       |
|                           | <b>Effective rate %</b>                | <b>29%</b>                           | <b>22%</b> | <b>15%</b> | <b>33%</b> |
| Floor Price               | Total duty (ANV - DXP)                 | \$30                                 | \$10       | \$0        | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                           | <b>11%</b> | <b>0%</b>  | <b>67%</b> |
| Combination Duty Method 1 | Total duty (ANV-AEP)+(AEP-DXP)         | \$30                                 | \$20       | \$20       | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                           | <b>22%</b> | <b>15%</b> | <b>67%</b> |
| Combination Duty Method 2 | Total duty (DXP x 25%)                 | \$30                                 | \$22.5     | \$32.5     | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                           | <b>25%</b> | <b>25%</b> | <b>67%</b> |

***The 'effective' rate of the duty collected***

The 'effective' rate of the total duty collected under each method is the duty calculated as a proportion of the current actual export price. This concept was used earlier in the Guideline to illustrate the effects of a rising and a falling market on the duty collected under the combination and fixed duty methods.

<sup>13</sup> The Anti-Dumping Commission examined the duties imposed in the USA and EU on various commodities such as steel, glass, and other commodities and observed that an *ad valorem* rate of duty had been favoured for such commodities.

The 'effective' rate usefully compares each method by using a common measure. Table 4 illustrates how the *ad valorem* duty method shows the most stability over time as export price has increased from 70, to 90 and 130, then fallen to 60.

The two different forms of combination duties are described in the table. Combination Duty Method 1 is where the fixed element of the duty is set as an amount per unit. Combination Duty Method 2 on the other hand is where the fixed element of the duty is set as an *ad valorem* rate. In this latter case, the *ad valorem* element applies to the higher of the ascertained export price or the actual export price.

### ***The anticipated price effect***

Different forms of duty can have different price effects. Table 5 works out the anticipated price effect by adding the duty collected under each method to the relevant actual export price. Because the duty collected must be known for this purpose the data in Table 4 has been repeated in Table 5, and the price effects are illustrated in the highlighted area of that table.

**Table 5: Anticipated price effects of each duty method**

| Ascertained factors:      |                                        | Ascertained Normal Value (ANV) |            | \$100      |            |
|---------------------------|----------------------------------------|--------------------------------|------------|------------|------------|
|                           |                                        | Ascertained Export Price (AEP) |            | \$80       |            |
| Duty Methods              |                                        | Year 1                         | Year 2     | Year 3     | Year 4     |
|                           | Actual Export Price (DXP) of the goods | \$70                           | 90         | 130        | 60         |
| <i>Ad Valorem</i>         | Total duty (DXP x 25%)                 | \$17.5                         | \$22.5     | \$32.5     | \$15       |
|                           | <b>Effective rate %</b>                | <b>25%</b>                     | <b>25%</b> | <b>25%</b> | <b>25%</b> |
| Fixed Duty                | Total duty (ANV - AEP)                 | \$20                           | \$20       | \$20       | \$20       |
|                           | <b>Effective rate %</b>                | <b>29%</b>                     | <b>22%</b> | <b>15%</b> | <b>33%</b> |
| Floor Price               | Total duty (ANV - DXP)                 | \$30                           | \$10       | \$0        | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                     | <b>11%</b> | <b>0%</b>  | <b>67%</b> |
| Combination Duty Method 1 | Total duty (ANV-AEP)+(AEP-DXP)         | \$30                           | \$20       | \$20       | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                     | <b>22%</b> | <b>15%</b> | <b>67%</b> |
| Combination Duty Method 2 | Total duty (DXP x 25%)                 | \$30                           | \$22.5     | \$32.5     | \$40       |
|                           | <b>Effective rate %</b>                | <b>43%</b>                     | <b>25%</b> | <b>25%</b> | <b>67%</b> |
| Anticipated price effect  | <i>Ad Valorem</i>                      | \$88                           | \$113      | \$163      | \$75       |
| (DXP + Total duty)        | Fixed Duty                             | \$90                           | \$110      | \$150      | \$80       |
|                           | Floor Price                            | \$100                          | \$100      | \$130      | \$100      |
|                           | Combination Duty Method 1              | \$100                          | \$110      | \$150      | \$100      |
|                           | Combination Duty Method 2              | \$100                          | \$113      | \$163      | \$100      |

Noteworthy price effects from Table 5 are:

- In years 1 to 3 where prices are rising the *ad valorem* duty method and the Combination Duty Method 2 which uses an *ad valorem* duty as one of its elements have the most similar effects and cause the largest price increase;

- the floor price method has the least impact on prices as export prices increase;
- In year 4 when prices fall the ad valorem duty method and the fixed duty method reflect the price decrease more.

In considering the potential application of an *ad valorem* duty following an investigation into footwear<sup>14</sup>, the EU did not use *ad valorem* duties because of likely price effects on high priced footwear. A floor price was preferred because it more precisely targeted the low to mid-level footwear which was causing the injury.

Another potential disadvantage of the *ad valorem* duty method stems from the fact that where prices are lowered the importer pays less duty. In some cases this may lead to circumvention because the export price may be deliberately lowered in order to minimise the effects of the duty. However, any artificial lowering of export prices can be detected through monitoring of the measures and be subject to an anti-circumvention inquiry.

It should be noted, however, that the Commission examined the incidence of such behaviour in countries commonly using an *ad valorem* duty. The Commission found that there had only been a limited number of reviews to examine circumvention behaviours after the imposition of an *ad valorem* duty i.e. price manipulation under *ad valorem* duties is not a widespread problem.

## (v) **Mixed Duties**<sup>15</sup>

### ***Key considerations***

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- Mixed duties allow for flexibility when imposing measures as certain desired features of one duty method can be applied to one type of goods, and the desired features of another duty method may be applied to other types of goods (e.g. different types of goods with different characteristics can have a different form of duty).

### ***Discussion***

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Having different duty methods means that some exporters may be subject to one duty method, such as a floor price duty method, while other exporters (even from the same country) can be subject to another duty method, such as *ad valorem*.

Using mixed duties makes it possible for the Minister to address the possible effects of the duties on downstream industries. So, for example, a floor price duty method may apply to some exporters or types of goods in order to limit the consequent price rises of a duty; while

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<sup>14</sup> See *Council Regulation (EC) No 467/98 of 23 February 1998 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather or plastics originating in the People's Republic of China, Indonesia and Thailand – Official Journal L 060, 28/02/1998 P. 0001 – 0029.*

<sup>15</sup> The term 'mixed duties' in this context is not referring to the combination of fixed and variable duty method.

other exporters or goods may be subject to a fixed duty method or an *ad valorem* duty method.

An example is the measures imposed by the EU on magnesium oxide (caustic magnesite) from China<sup>16</sup>. The administering authority was aware that the pulp and paper industry in the EU was in a difficult trading situation and, as the pulp and paper industry was a large user of the material subject to duties, it was determined that duties on caustic magnesite could exacerbate their problems. The EU decided to implement a minimum floor price on all exporters from China.

A subsequent review examined the effectiveness of the floor price. The EU authorities had to weigh the benefit the floor price had in limiting price increases with known circumvention problems. The compromise was to retain the floor price for all unrelated parties in order to limit price increases. The EU authority considered related parties were manipulating prices to avoid duty under a floor price scheme. In addition, an *ad valorem* duty was imposed on related parties because there was found to be a reduced risk of circumvention with an *ad valorem* duty applying to exporters selling to related parties. Also, EU Customs had established procedures for dealing with low transaction values between related parties when applying *ad valorem* duty. In the case of damaged goods, which were a feature of the trade, a single floor price was considered to be undesirable as it would have applied an excessive duty, so a downward adjustment was implemented to the floor price to cater for the normally lower price of damaged goods. This meant there were two floor prices operating - one for normal goods/unrelated parties and the other floor price for damaged goods – and in addition the *ad valorem* duty.

Some countries choose to implement mixed duties which take into account the level of cooperation. Canada, for example, has chosen to implement a floor price for cooperating exporters and an *ad valorem* duty for the non co-operators and all others.

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<sup>16</sup> Council Regulation (EC) No 985/2003; 5 June 2003, Amending the anti-dumping measures imposed by Council regulation (EC) No 1334/1999 on imports of magnesium oxide originating from the People's Republic of China.