

WTO INCONSISTENCIES IN PAKISTAN'S ANTI-DUMPING DUTIES ACT, 2015: A LEGISLATIVE REFORM ANALYSIS OF SECTIONS 5, 15, AND 58

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Abstract

Pakistan enacted Anti-Dumping Duties Act, 2015 (henceforth, will be called ADA, 2015) to give domestic effect to the WTO Agreement on Implementation of Article VI of GATT 1994 (henceforth, will be called WTO Anti-dumping Act). However, there are some structural and procedural gaps especially in its Sections 5, 15, and 58, which may render it inconsistent with Pakistan's multilateral commitments. These inconsistencies were confirmed by the World Trade Organization Panel Report in Pakistan – Certain Paper Products (WT/DS538/R, 2021). The Panel found violations of ADA, 2015 especially in Articles 2.1, 3.1, 3.2, 3.4, 11.3, and 11.4. This article examines the specific textual and structural deficiencies in each provision, cross-references it with applicable WTO jurisprudence. It also proposes precise legislative amendment to bring Pakistan's domestic law in compliance with WTO



INTRODUCTION

Pakistan on became a Member of the World Trade Organization (WTO) on 1 January 1995. Pakistan was obligated give legal effect to binding obligations under the Agreement on Implementation of Article VI of GATT 1994, commonly known as the Anti-Dumping Agreement. These obligations require Members to ensure that domestic anti-dumping legislation conforms both in text and application to the substantive and procedural disciplines established by the WTO Anti-Dumping Agreement.

The ADA, 2015 was enacted to give domestic legal effect to this multilateral framework. It repealed its predecessor, the Anti-Dumping Duties Ordinance, 2000, and claimed that

Pakistan's anti-dumping law is in conformity with WTO disciplines. However, the drafting of the Act left critical structural gaps, particularly in Sections 5 (normal value), 15 (injury determination), and 58 (sunset reviews), that have exposed Pakistan to successful WTO challenge.

The WTO Panel of 2021 in case of 'Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (Pakistan – BOPP Film)', found Pakistan has violated WTO Anti-Dumping Agreement, Articles 2.1, 3.1, 3.2, 3.4, 11.3, and 11.4 in connection with its anti-dumping investigation concerning BOPP Film imported from the

United Arab Emirates. The case stands as the most comprehensive judicial examination of the Anti-Dumping Act, 2015. It provides the jurisprudential foundation for the reform.

This article is divided into six sections. Section I, starts with a brief orientation to the applicable WTO legal framework and then Section II, Section III and Section IV, examine the deficient provisions of ADA, 2015. These sections review the existing statutory gap, and the manner in which the gap generated the violation found in *Pakistan – BOPP Film*. Part V presents precise proposed amendment for parliamentary enactment and in a way are proposed recommendations. Part VII provides comparative review of legislative solutions adopted by major trading economies.

Research Methodology

By the very nature of the topic the research relies on actual legal texts and dispute settlement's published reports, hence the research is based on primary sources. The articles align the text and WTO Jurisprudence to recommend amendments of legal text Anti-Dumping Act, 2015 of Pakistan. However, some secondary reports were also reviewed as a background study.

Section I

The WTO Anti-Dumping Agreement: Applicable Legal Framework

The ADA establishes the international disciplines within which WTO Members may apply anti-dumping measures. Article VI of GATT 1994 permits Members to impose anti-dumping duties where a product is exported at a price below its 'normal value' and where such dumped imports cause or threaten to cause material injury to the domestic industry. The WTO Anti-Dumping Agreement operationalizes this permissive authorization through a detailed set of disciplines governing every stage of the anti-dumping process—from initiation of investigations through final determination and duty imposition to periodic review.

Three provisions are of central relevance to this analysis. First, Anti-Dumping Agreement Article 2.1 defines dumping by reference to the concept

of "normal value, which is ordinarily the comparable price of the like product in the ordinary course of trade in the exporting country". WTO adjudicatory bodies have consistently interpreted Article 2.1 to impose a contemporaneity requirement on normal value evidence, demanding that the pricing data should reflect conditions at the time of investigation rather than some earlier historical period.

Second, Anti-Dumping Article 3, governs injury determinations. Article 3.1 establishes the overarching standard: all injury findings must be "based on positive evidence and involve an objective examination' of the volume of dumped imports, their price effects, and the consequent impact on the domestic industry". Article 3.2 specifies that investigating authorities must examine whether dumped imports have undercut domestic prices, depressed them, or prevented price increases that otherwise would have occurred. Article 3.4 enumerates the economic factors and indices that must be examined in assessing the impact on the domestic industry.

Third, Anti-Dumping Article 11 governs the duration and review of anti-dumping measures. Article 11.3 establishes the five-year 'sunset' rule, under which any anti-dumping duty must be terminated unless a review determines that expiry would be likely to lead to continuation or recurrence of dumping and injury. Article 11.4 imposes a procedural discipline on the conduct of sunset reviews, requiring that they be completed within a period similar to original investigations that is ordinarily twelve months, and in no case more than eighteen months from initiation.

Section II

Section 5 – Normal Value: The Currency of Evidence Problem

A. The WTO Obligation: Contemporaneity Under Article 2.1

The requirement that normal value be determined on the basis of current and representative evidence derives from a convergence of Anti-Dumping Articles 2.1 and 5.3. Article 2.1 requires that the normal value comparison be conducted on the basis of a

'comparable price' reflecting actual market conditions in the exporting country. Article 5.3 requires that before initiating an investigation, the investigating authority must "satisfy itself that there is sufficient evidence' to justify doing so". Read together, these provisions establish that an investigating authority cannot rely on pricing evidence that is insufficiently contemporaneous with the investigation period without specific justification.

In *Pakistan – BOPP Film*, the Panel made clear findings on this question. The United Arab Emirates challenged Pakistan's reliance on normal value evidence that was approximately twenty-two months old at the time of initiation and approximately thirty-one months old at the time of the final determination. The Panel found that the NTC had neither attempted to obtain more recent data nor explained why the outdated data remained representative of market conditions during the investigation period. Thus, the Panel held, rendered its decision that the normal value calculation were legally deficient under Article 2.1.

B. Section 5 of the ADA 2015: The Statutory Gap

Section 5 of the ADA, 2015 defines normal value "as the comparable price of the like product in the ordinary course of trade when destined for consumption in the exporting country". Where domestic market sales do not permit a proper comparison, Section 5 allows determination by reference to third-country export prices or constructed value under Section 6.

There is no obligation in Section 5 of ADA 2015 requiring the NTC to ensure that normal value evidence is current and sufficiently contemporaneous with the period of investigation. Further, there is no provision to seek updated data when information in a petition is stale, and no threshold beyond which old data is presumed inadequate. This textual silence created the legal space that can be exploited.

C. The Proposed Amendment: New Section 5A
The following provision is proposed to be inserted immediately after Section 5 of the ADA, 2015:

Section 5A. Currency and Reliability of Evidence for Normal Value Determination

5A(1) In determining normal value under Section 5, the Commission shall ensure that the evidence upon which such determination is based is current, reliable, and representative of pricing conditions prevailing during the period of investigation.

5A(2) Evidence shall be considered sufficiently current if it relates to a period that reasonably corresponds to the period of investigation, having regard to the nature of the product, the structure of the relevant market, and the time elapsed between collection of such evidence and the date of the final determination.

5A(3) Where evidence relied upon for normal value pre-dates the initiation of investigation by more than twelve (12) months, the Commission shall: (a) make reasonable efforts to obtain or verify more recent pricing data from the exporting country's domestic market; (b) if more recent data is not obtainable, record in writing the specific reasons for its unavailability; and (c) include in its published determination an explanation of why the evidence relied upon, notwithstanding its age, continues to be reliable and representative of market conditions during the period of investigation.

5A(4) The Commission shall not base a final determination of dumping on evidence relating to normal value that it has not affirmatively found to be accurate and adequate within the meaning of Article 5.3 of the WTO Anti-Dumping Agreement, read with Article 2.1 thereof.

The twelve-month threshold in proposed Section 5A(3) is calibrated to the standard investigation period used under Section 39 of the ADA 2015 and does not create an absolute prohibition on using older data, but rather establishes a procedural obligation of explanation and attempted verification.

Section III

Section 15 – Injury Determination: The Positive Evidence Deficit

A. The WTO Obligation: Article 3.1, 3.2, and 3.4

Article 3.1 of the ADA establishes the foundational standard for injury determination: all such determinations must be 'based on positive evidence' and involve 'an objective examination.' These two requirements operate cumulatively. "The positive evidence standard, as elaborated by the Appellate Body in *United States – Hot-Rolled Steel*, requires that evidence be factual, verifiable, and directly probative—as distinguished from conjecture, inference unsupported by data, or conclusions not traceable to the investigation record".

Article 3.2 specifies three distinct price-effect scenarios that an investigating authority must examine: "price undercutting—whether dumped imports are sold at prices significantly below those of the domestic like product; price suppression—whether dumped imports are preventing price increases that would otherwise have occurred; and price depression—whether dumped imports are causing domestic prices to fall significantly". The authority must affirmatively examine and make findings on each of these three scenarios—not merely assert their relevance in the abstract.

Article 3.4 enumerates the economic factors and indices that must be examined in evaluating the impact on the domestic industry, including output, sales, market share, profits, productivity, return on investments, capacity utilization, employment, wages, growth, and the ability to raise capital or investments. WTO panels have further established that the examination of these factors must be genuine—not merely a formalistic listing of data points—and that the authority's reasoning must be transparent and traceable in the published determination.

B. The Deficiency in Section 15 and the BOPP Film Findings

In *Pakistan – BOPP Film*, the Panel found Pakistan's injury determination violated Articles 3.1, 3.2, and 3.4 on multiple grounds. First, the

NTC's injury analysis relied predominantly on data that was approximately three years old at the time of final determination, without any attempt to obtain more recent information or to explain why historical data remained representative.

Second, the Panel found that the NTC had not conducted a genuine analysis of price undercutting. The NTC noted in its determination that domestic prices were higher than import prices, but did not calculate a margin of undercutting as a percentage of the domestic price, did not assess whether any price difference was 'significant' within the meaning of Article 3.2, and did not examine price suppression or depression at all. This failure constituted a violation of Article 3.2 in its entirety.

Third, while the NTC's determination listed the Article 3.4 factors, it did not genuinely analyze each factor in relation to the evidence. Several factors were addressed with single-sentence conclusions unsupported by any reasoning connecting the cited data to the finding. This rendered the determination facially insufficient under Article 3.4's objective examination requirement.

C. The Proposed Amendment: Revised Section 15

Section 15 is proposed to be replaced in its entirety to include 'positive evidence' standard as a statutory obligation. It also makes mandatory analyses of the three distinct price-effect as required by Article 3.2. Supplements it with requirement of the Article 3.4 factor list with a currency of evidence obligation, and introduces a statutory documentation requirement compelling the NTC to record its analytical reasoning in all published determinations.

Section 15. Determination of Injury

15(1) Standard of Examination. A determination of injury shall be based on positive evidence and shall involve an objective examination of: (a) the volume of dumped imports and the effect of such imports on prices in the domestic market for like products; and (b) the consequent impact of such

imports on the domestic producers of such products.

15(3) Price Effects. With regard to the effect of dumped imports on prices, the Commission shall affirmatively examine and make a finding on whether: (a) the dumped imports are sold at prices significantly below those of the like product of the domestic industry (price undercutting), including by calculating the undercutting margin as a percentage of the domestic industry's price; (b) the dumped imports are significantly depressing domestic prices; or (c) the dumped imports are preventing price increases that would otherwise have occurred (price suppression). The Commission shall state in its determination which price effect(s), if any, it has found, and shall support each finding with specific, quantified evidence from the record of investigation.

15(7) Analytical Documentation. The Commission's published determination shall set out, for each factor examined under sub-sections (2), (3), and (4): the evidence considered, the Commission's finding, and the reasoning connecting the evidence to that finding. It is not sufficient to list factors or cite data without accompanying analysis and conclusions drawn therefrom.

The 'analytical documentation' requirement in proposed Section 15(7) is the most jurisprudentially significant element of the reform as it legislates against the practice condemned in *BOPP Film*, that is the formalistic enumeration of evidence without genuine analysis. It will align Pakistan's law with analogous requirements in the Canadian Special Import Measures Act and the EU's Basic Anti-Dumping Regulation.

Section IV

Section 58 – Sunset Reviews: Methodology and Deadline Failures

A. The WTO Obligations: Articles 11.3 and 11.4

ADA Article 11.3 establishes the 'sunset' principle: any definitive anti-dumping duty must be terminated no later than five years from the date of its imposition, unless a review determines

that expiry would be likely to lead to continuation or recurrence of dumping and injury. The likelihood standard imposes demanding evidentiary requirements. The Appellate Body has held that a “likelihood determination must: (1) be based on positive evidence gathered during the review itself, not merely on the prior affirmative determination; (2) employ a dumping methodology consistent with the requirements of WTO Anti-Dumping Agreement Article 2; and (3) be supported by reasoning that connects the evidence to the finding”.

Anti-Dumping Agreement Article 11.4 establishes that sunset reviews must be conducted and completed “within a period of time similar to that provided for in paragraph 10 of Article 5”—that is, ordinarily within twelve months and in no case more than eighteen months from initiation of the review”.

B. The BOPP Film Violations of Articles 11.3 and 11.4

The Panel in *Pakistan – BOPP Film* found Pakistan in violation of both Articles 11.3 and 11.4 in connection with its sunset review of the anti-dumping duty on BOPP Film. The violations were distinct but related. On Article 11.3, the Panel found that the NTC's likelihood-of-dumping finding was legally insufficient for two independent reasons: the dumping margin relied upon was calculated using the same stale data condemned in connection with the original investigation and was therefore not calculated consistently with WTO Anti-Dumping Agreement Article 2; and the NTC's likelihood finding was essentially a circular inference from the existence of the prior determination rather than an affirmative conclusion based on fresh positive evidence gathered during the review.

On Article 11.4, the Panel found that Pakistan had not completed its sunset review within twelve months of initiation, and that no abnormal circumstances existed to justify the delay. Both violations were ultimately uncontested by Pakistan.

C. Section 58 of the ADA 2015 and Proposed Amendments

Section 58 of the ADA 2015 provides that any definitive anti-dumping duty shall be terminated not later than five years from the date of its imposition, unless the Commission determines on the basis of a review that expiry would be likely to lead to continuation or recurrence of dumping and injury. Section 58 sets no statutory deadline for completion of sunset reviews and contains no requirement that a likelihood finding should use dumping methodology consistent with Anti-Dumping Agreement Article 2 or be grounded in fresh positive evidence. These omissions in legal text of Pakistan were precisely found out in *BOPP Film*.

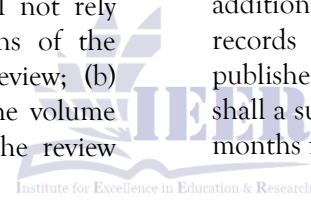
Section 58. Sunset Reviews (Revised)

58(3) Standard of Likelihood Determination. The likelihood determination under sub-section (1) shall: (a) be based on positive evidence gathered during the review, and shall not rely solely on the existence or conclusions of the original investigation or any prior review; (b) involve an objective examination of the volume and price effects of imports during the review

period and their actual or likely impact on the domestic industry if the duty were to expire; and (c) include an assessment of the likely level of dumping upon expiry of the duty, based on evidence of dumping during the review period, or, where such evidence is unavailable, an adequate explanation of why reliance is placed on other indicators.

58(4) WTO-Consistent Dumping Methodology. Where the Commission calculates a margin of dumping as part of the likelihood determination under sub-section (1)(a), such margin shall be calculated in accordance with Sections 5 through 14 of this Act, including the obligation under Section 5A to ensure the evidence used is current, reliable, and representative.

58(5) Statutory Deadline for Completion. (a) A sunset review shall ordinarily be completed within twelve (12) months from the date of initiation. (b) In cases of special difficulty, the period may be extended by not more than six (6) additional months, provided the Commission records in writing the specific grounds and publishes a notice of extension. (c) In no case shall a sunset review extend beyond eighteen (18) months from the date of initiation.



Section V

Proposed Legislative Amendments – Summary

The following presents proposed amendments analyzed in this article in a tabular form (amendments proposed are in line with the finding of *Pakistan – BOPP Film*):

Provision	WTO Article	BOPP Film Finding	Proposed Response
New § 5A(1)-(3)	ADA Art. 2.1	NTC relied on pricing data 31 months old at final determination	Mandate current evidence; 12-month trigger for verification duty
New § 5A(4)	ADA Art. 5.3	No affirmative accuracy/adequacy finding made	Prohibit final determination without affirmative adequacy finding
Rev. § 20(1)	ADA Art. 3.1	No positive evidence standard applied	Codify 'positive evidence' and 'objective examination' as statutory duty
Rev. § 15(3)	ADA Art. 3.2	No price undercutting/suppression/depression analysis conducted	Mandate separate quantified findings on all three price effects

Rev. § 15(6)	ADA 3.1	Art.	3-year-old injury data used without justification	Impose 12-month currency obligation; explanation duty for older data
Rev. § 15(7)	ADA 17.6(i)	Art.	Factors listed without genuine analysis	Statutory per-factor documentation requirement in all determinations
Rev. § 58(3)	ADA 11.3	Art.	Likelihood finding based on circular inference	Require positive evidence gathered during review; prohibit reliance on prior finding alone
Rev. § 58(4)	ADA 11.3	Art.	Dumping margin in review not ADA Art. 2-consistent	Express cross-reference: margin must comply with §§ 5-14 including new § 5A
Rev. § 58(5)	ADA 11.4	Art.	Sunset review not completed within 12 months	Statutory 12-month deadline; 18-month absolute ceiling

Section VI

Comparative Law Analysis

The reform challenges that Pakistan face are not unique. All WTO Members that have anti-dumping regimes have confronted the tension between the specific procedural disciplines of the Anti-Dumping Agreement of WTO and domestic legislative traditions. A survey of some jurisdiction like the European Union, India, the United States, and Canada will show the legislative techniques that other Members employ to ensure compliance with WTO Law. It will provide a practical template for Pakistan.

A. The European Union

The EU's Basic Anti-Dumping Regulation ensures the currency of evidence through an explicit investigation-period discipline: Article 6.1 of Regulation 2016/1036 requires that the investigation period for dumping 'shall normally cover a period of no less than six months immediately prior to the initiation of the proceedings, "thereby anchoring all normal value and export price evidence to a defined contemporaneous window". The EU's analytical documentation practice—requiring a separate explanatory memorandum addressing each Article 3.4 factor in detail—provides the most developed model for the proposed Section 20(7) reform.

B. India

India's Anti-Dumping Rules, 1995 (as amended) represent perhaps the most relevant comparator for Pakistan given the structural and economic similarities between the two jurisdictions. Rule 6(6) of the Indian Rules provides that the "Designated Authority shall not make any finding based on information provided in the petition unless it is satisfied that the information is accurate and adequate for the purpose of initiation". India's Injury Manual further elaborates the requirement to calculate undercutting margins as a percentage of domestic prices—the precise methodology proposed in Section 15(3)(a) of the present reform.

C. The United States

The United States addresses the sunset review methodology question through 19 U.S.C. § 1675a(c), which establishes that in conducting a sunset review, the administering authority shall determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping, based on the dumping margin in the original investigation or a subsequent review, the volume of imports during the period of the order, and any other relevant factor. The US model of using previously calculated margins as a starting point—while subjecting them to methodological scrutiny consistent with Anti-

Dumping Agreement Article 2 requirements—is incorporated into the proposed Section 58(4) of the present reform.

D. Canada

Canada's Special Import Measures Act (SIMA) provides perhaps the most explicit analytical documentation mandate of any comparable jurisdiction. Section 37.1(1) of SIMA requires the Canadian International Trade Tribunal, in making an injury determination, to “state the considerations that led to the determination, including the consideration of each of the factors, characteristics and indices referred to in the regulations made under paragraph 40(g)”. This per-factor analytical documentation requirement is the model for proposed Section 20(7), which imposes the equivalent obligation on the NTC.

Conclusion

The deficiencies in Pakistan's ADA 2015 relate to the core disciplines of the WTO Anti-Dumping Agreement, and hence, are not minor. They touch upon the integrity of the normal value calculation, the objectivity of the injury determination, and the rigour of the periodic review process. Their confirmation by the WTO Panel in *Pakistan – BOPP Film* has imposed both a legal obligation to reform and a diplomatic imperative to demonstrate Pakistan's commitment to the rules-based multilateral trading system.

The proposed amendments presented in this article offer a legislative response violations as enumerated in Panel report of above referred case. New Section 5A addresses the currency problem in normal value. The revised Section 15 transforms the existing factor-listing provision into a genuine analytical mandate that tracks the Anti-Dumping Agreement's substantive requirements. The revised Section 58 closes the two violations confirmed in *BOPP Film*—the methodological deficiency in likelihood determinations and the absence of a statutory completion deadline for sunset reviews.

Implementation of these reforms should be accompanied by corresponding revisions to the

Anti-Dumping Duties Rules, 2001; investment in NTC investigative capacity. These institutional reforms are prerequisites for the proposed legislative amendments to deliver their intended effect.

Pakistan's broader trade remedy framework—including its countervailing duty and safeguard legislation—also requires parallel legislative reform. The analysis presented in this article, however, focuses on the most urgent and litigation-confirmed deficiencies. It is the authors' hope that this analysis will contribute to the scholarly and policy debate that must accompany any meaningful reform of Pakistan's trade remedy system and, more broadly, to the literature on the implementation challenges facing developing country Members of the WTO in maintaining Anti-Dumping Agreement-compliant domestic legislation.

REFERENCES

- Marrakesh Agreement Establishing the World Trade Organization*, opened for signature Apr. 15, 1994, 1867 U.N.T.S. 154 (entered into force Jan. 1, 1995); *Agreement on Implementation of Article VI of GATT 1994*, Apr. 15, 1994, 1868 U.N.T.S. 201 [hereinafter ADA or Anti-Dumping Agreement]. Pakistan's Schedule of Commitments and instrument of ratification are on file with the WTO Secretariat.
- Anti-Dumping Duties Act, 2015*, Act No. XIV of 2015 (Pak.), pmbl. (“An Act to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994 and to the Agreement on implementation thereof”). The Act entered into force on September 5, 2015.

- Panel Report, Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates*, WTO Doc. WT/DS538/R (circulated Aug. 11, 2021) [hereinafter *Pakistan – BOPP Film Panel Report*]. The Panel was composed pursuant to DSU Article 8.7. No appeal was filed, and the report was adopted by the Dispute Settlement Body on September 22, 2021.
- General Agreement on Tariffs and Trade 1994, art. VI, Apr. 15, 1994, 1867 U.N.T.S. 187. The ADA elaborates the conditions under which Article VI may be invoked and sets binding procedural and substantive standards.
- ADA, *supra* note 1, art. 2.1. Where domestic sales do not permit a proper comparison, normal value may be established by reference to third-country export prices or by constructed value under Articles 2.2 and 2.3.
- ADA, *supra* note 1, art. 3.1. The Appellate Body has confirmed that the standard of 'positive evidence' requires evidence that is factual, verifiable, and directly probative of the matter being established. *Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, 192, WTO Doc. WT/DS184/AB/R (adopted Aug. 23, 2001).
- ADA, *supra* note 1, art. 11.3. The Appellate Body has confirmed that a likelihood determination must be based on positive evidence and may not rest solely on the prior affirmative determination. *Appellate Body Report, United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, 173–180, WTO Doc. WT/DS296/AB/R (adopted July 20, 2005).
- ADA, *supra* note 1, arts. 2.1, 5.3. Article 5.3 has been interpreted as establishing an affirmative obligation of quality control at initiation. *Panel Report, Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*, 7.56–7.62, WTO Doc. WT/DS60/R (adopted Nov. 25, 1998).
- Pakistan – BOPP Film Panel Report*, *supra* note 3, 7.29–7.47. The Panel noted that the NTC relied on pricing data from a period ending in September 2012, while the investigation was initiated in July 2014 and the final determination was issued in February 2015.
- Anti-Dumping Duties Act, 2015*, *supra* note 2, § 5. Section 5 tracks the language of ADA Article 2.1 on its face but omits the procedural obligations that WTO adjudicatory bodies have held to be implied by the substantive standard.
- The twelve-month threshold is consistent with practice under Council Regulation (EU) 2016/1036 of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union, art. 6(1), 2016 O.J. (L 176) 21, 32 [hereinafter EU Basic AD Regulation], which provides that the investigation period for dumping shall normally cover a period of no less than six months immediately prior to the initiation of the proceedings.
- Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, 192, WTO Doc. WT/DS184/AB/R (adopted Aug. 23, 2001). The Appellate Body noted that the term 'objective examination' relates to the investigative process itself, requiring the investigation to be conducted in an even-handed manner.

- ADA, *supra* note 1, art. 3.2. See also *Panel Report, Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, 7.161, WTO Doc. WT/DS122/R (adopted Apr. 5, 2001), holding that the authority must make an affirmative finding on at least one of the three price-effect scenarios.
- ADA, *supra* note 1, art. 3.4. The Appellate Body has confirmed that authorities must examine all listed factors, although no single factor or combination of factors is necessarily decisive. *Appellate Body Report, Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, 193, WTO Doc. WT/DS211/AB/R (adopted Aug. 1, 2002).
- Pakistan – BOPP Film Panel Report, supra* note 3, 7.109–7.137. The Panel observed that the NTC relied on information from the applicant's petition covering the period 2010–2013 to make a final determination in 2015, without seeking updated information during the investigation.
- Pakistan – BOPP Film Panel Report, supra* note 3, 7.151–7.175. The Panel cited with approval the approach of the panel in *Thailand – H-Beams*, which required a quantified, comparative analysis of price effects rather than mere qualitative observation.
- Pakistan – BOPP Film Panel Report, supra* note 3, 7.180–7.214. The Panel applied the principle established in *Appellate Body Report, United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*, 115, WTO Doc. WT/DS277/AB/R (adopted Aug. 26, 2004), that Article 3.4 requires examination of each factor, not mere recitation.
- Special Import Measures Act, R.S.C. 1985, c. S-15, § 37.1(1) (Can.) [hereinafter SIMA], which requires the Canadian International Trade Tribunal to set out the considerations that led to its determination, including a consideration of each economic factor specified by the Act.
- EU Basic AD Regulation, *supra* note 9, art. 3(5), which requires that the examination of economic factors and indices 'shall include an evaluation of all relevant factors and indices having a bearing on the state of the industry.' The European Court of Justice has held that this requires a genuine evaluation, not mere recitation. Case T-58/99, *Mukand Ltd. v. Council*, 2001 E.C.R. II-02521.
- Appellate Body Report, United States – DRAMS, supra* note 8, 173–201. The Appellate Body specifically rejected the argument that a prior affirmative determination creates a presumption of continued dumping sufficient to justify maintaining duties without fresh positive evidence.
- ADA, *supra* note 1, art. 11.4 ('The provisions of Article 6 regarding evidence and procedure shall apply to reviews carried out under this Article.'). The reference to Article 5.10 establishes the same temporal constraints applicable to original investigations.
- Pakistan – BOPP Film Panel Report, supra* note 3, 7.303–7.362. The Panel held that a sunset review determination that relies on a dumping margin calculated inconsistently with ADA Article 2 is itself inconsistent with Article 11.3, because Article 11.3's likelihood standard 'necessarily imports the methodological requirements of Article 2.' This reasoning has significant implications for any jurisdiction that uses original investigation data in sunset reviews without recalculation.

Pakistan – BOPP Film Panel Report, *supra* note 3, 7.389–7.405. Pakistan argued that judicial stay orders issued by domestic courts should be excluded from the calculation of the review period. The Panel declined to accept this argument, noting that under WTO law, Members are responsible for the acts and omissions of all organs of their governments, including the judiciary. Reference was made to the general principle of international law articulated in *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, arts. 4–9, Int'l Law Comm'n, 53d Sess. (2001).

EU Basic AD Regulation, *supra* note 9, art. 6(1). On injury methodology, Article 3(5) requires the Commission to examine 'all relevant factors having a bearing on the state of the industry' and to produce a detailed explanatory memorandum in every determination. This analytical documentation obligation directly addresses the gap in Pakistan's Section 15.

Anti-Dumping Rules, 1995, Rule 6(6) (India) [as amended by Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2017, Notification No. G.S.R. 614(E)]. India's Directorate General of Trade Remedies (DGTR) Injury Manual (2019) further elaborates the methodology for price undercutting calculation, requiring that undercutting be expressed as a percentage of the non-injurious price.

19 U.S.C. § 1675a(c) (2018). See also 19 C.F.R. § 351.218 (2023) (setting out the procedural requirements for conducting sunset reviews, including the five-year automatic initiation requirement). The statutory deadline of twelve months for completion of sunset reviews is established by 19 U.S.C. § 1675(c)(5)(B).

SIMA, *supra* note 12, § 37.1(1). The Federal Court of Appeal has interpreted this provision to require genuine analytical engagement with each factor, not mere recitation. *Solmax International Inc. v. Attorney General of Canada*, 2021 FCA 200, 45 (Can.).

