

B. DETERMINATION OF MATERIAL INJURY, THREAT OF MATERIAL
INJURY AND MATERIAL RETARDATION

Article 3

Determination of Injury¹

(a) A determination of injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry. In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

(b) The valuation of injury - that is the evaluation of the effects of the dumped imports on the industry in question - shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

(c) In order to establish whether dumped imports have caused injury, all other factors which, individually or in combination, may be adversely affecting the industry shall be examined, for example: the volume and prices of undumped imports of the product in question, competition between the domestic producers themselves, contraction in demand due to substitution of other products or to changes in consumer tastes.

¹When in this Code the term "injury" is used, it shall, unless otherwise specified, be interpreted as covering cause of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.