HERBERT SMITH FREEHILLS

EU ANTI-DUMPING

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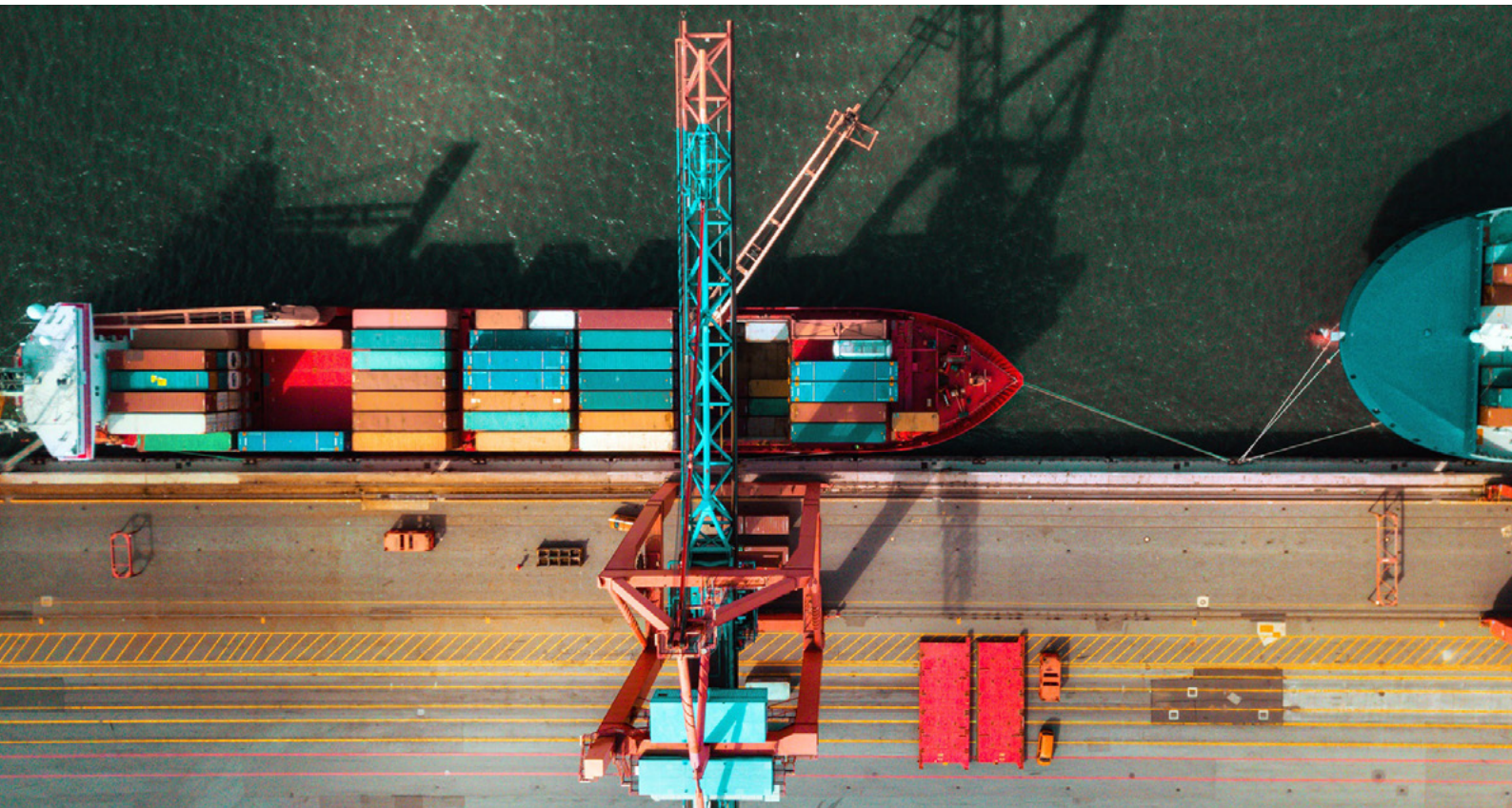

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Introduction

This guide provides an overview of EU anti-dumping law and practice. The main rules pertaining to EU anti-dumping law are laid down in Regulation 2016/1036 (see link). These rules are explicitly based on and must be consistent with those contained in the WTO Anti-Dumping Agreement (see link). Under EU law, anti-dumping measures may be imposed only if:

1. Imports into the EU are found to be *dumped;*
2. The dumped imports have caused or threaten to cause *injury* to the relevant Union industry; and
3. The imposition of anti-dumping measures would not be against the *Union interest.*
4. In reaching the above findings, the Commission must observe applicable procedural requirements, including the due process rights of interested parties.

The first three sections below provide an overview of EU rules and practice with respect to dumping, injury and the Union interest assessments. The fourth section provides a practical overview of EU anti-dumping procedures.

Dumping

Anti-dumping measures may be imposed only if a product is found to be dumped. A product is considered dumped when its export price is less than the normal value of the same or like product not sold for export to the EU.

Calculating normal value

Normal value in market economy countries may be calculated in one or more of the following ways:

1. On the basis of domestic sales prices of the exporting producer;
2. On the basis of prices of other exporters or producers in the same country;
3. On the basis of export prices to a third country; or
4. By constructing a normal value based on the costs of production plus a reasonable amount to cover selling, general and administrative costs and profit.

The primary basis for determining normal value is the first option, namely, domestic sales prices of the exporting producer. The Commission will resort to one of the other three bases only if, *inter alia*, domestic sales are not representative or if they are not in the ordinary course of trade.

The questions of representativeness and whether domestic sales are in the ordinary course of trade are discussed further below. Special rules applicable to goods produced in case of significant distortions in the market of the exporting country are also discussed.

Global representativeness

When determining what basis for normal value should be used, the Commission will first analyse whether the total volume of domestic sales of the like product to independent customers is representative, ie whether the total volume of such sales represents at least 5% of the total volume of the corresponding export sales to the EU.

Where the domestic sales volume of the like product is not at least 5% of the corresponding export sales to the EU, normal value may be established on the basis of prices of other exporters or producers or be constructed (options (2) and (4) above). More often than not, the price is constructed. Calculation of normal value based on third country export prices (option (3) above) is rarely used in the EU.

Product type representativeness

If the total volume of domestic sales is considered representative, the Commission will seek to determine representativeness on a product type basis. In this determination, the Commission will assess whether the volume of a product type sold on the domestic market to independent customers during a certain period represents 5% or more of the total volume of a comparable product type sold for export to the EU.

Where there are no representative sales for a product type, the Commission will seek to establish normal value using the prices of other exporters and producers or by resorting to constructed normal value (options (2) and (4) above). As mentioned, more often than not, constructed normal value is used.

Ordinary course of trade

For product types where initial analysis shows that domestic sales volume is representative, the Commission will examine whether those domestic sales can be considered to be in the ordinary course of trade. If one or more sales transactions are not considered to be in the ordinary course of trade, they will be excluded from the normal value calculation. This is the case, for instance, where the sales are loss making, are made between related parties or are otherwise not comparable. Exclusion of such sales prices can also trigger recourse to constructed normal value if the remaining domestic sales volume is not considered representative.

Significant market distortions

Since December 2017 the EU has adopted an alternative methodology for the calculation of normal value in cases where state interference distorts the economy of the exporting country. If a good originates from a country in which significant market distortions exist, normal value will thus not be determined with respect to the rules discussed above (ie primarily on the basis of domestic sales prices if they are representative and in the ordinary course of trade). Instead, normal value will usually be determined on the basis of costs of production and sale reflecting undistorted prices or benchmarks. The Commission will perform a separate assessment for each exporter and producer when determining whether it is appropriate to use domestic prices and costs in the exporting country.

Significant market distortions are defined as distortions which occur when reported prices or costs are not the result of free market forces because they are affected by substantial government intervention. This may be the case where:

1. The market in question is served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
2. There is state presence in firms allowing the state to interfere with respect to prices or costs;
3. Public policies or measures discriminate in favour of domestic suppliers or otherwise influence free market forces;
4. There is lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
5. Wage costs are distorted;
6. Access to finance is granted by institutions which implement public policy objectives or otherwise do not act independently of the state.

In determining undistorted prices or benchmarks for the purposes of constructing normal value, the Commission may use:

1. Corresponding costs of production and sale in an appropriate representative country, ie a country with a similar level of economic development as the exporting country;
2. Undistorted international prices, costs or benchmarks; or
3. Domestic costs, but only to the extent that they are positively established not to be distorted.

If several countries with a similar level of economic development as the exporting country exist under option (1), the Commission will give preference to a country with higher social and environmental standards. This could generally entail higher anti-dumping duties in view of the higher domestic prices and costs in such countries.

In order to facilitate the determination of the existence of significant distortions, the Commission is to publish reports describing the market circumstances in certain countries or sectors about which there are well-founded indications of the possible existence of significant distortions. A report on the market circumstances in China was already published on 20 December 2017.

Calculating export price

Export prices are generally calculated using actual price data. Adjustments are, however, frequently necessary where, for example, the EU importer is associated with the exporting producer or there is some other form of compensatory arrangement so that the export price paid or used for accounting purposes appears unreliable. In such a case, the export price is constructed on the basis of the price at which the products are first resold to an independent buyer, which is then adjusted so as to result in an "at Union frontier" price.

Comparing normal value and export prices

Once normal value and export price are determined, they must be compared with each other. In other words, it must be determined whether the export price is less than the normal value (ie whether dumping has occurred).

For the purpose of determining whether dumping has occurred, the Commission has traditionally compared prices on an ex-works basis (ie excluding any costs after a product leaves the factory) and exclusive of any indirect taxes. Therefore, in practice, numerous adjustments must be made to sales prices before they can be compared. These include deducting amounts associated with shipping and other after-sales costs. Adjustments to normal value and export prices will also be made to take into account differences in levels of trade (eg wholesaler versus retailer), differences in product characteristics, and any other factors that may affect price comparability.

Calculating the dumping margin

Once the normal value and export prices have been adjusted and are deemed comparable, the dumping margin may be calculated. The dumping margin will be calculated by taking into account normal value and export prices over a period of time. This period is normally six months to one year and ends close to the date of initiation of the investigation.

Methodologies

Under EU law, the dumping margin may be calculated in one of three ways:

1. Weighted-average to weighted-average method;
2. Individual transaction to individual transaction method; or
3. Weighted-average to individual transaction method.

The Commission will generally use the first method. Using this method, the weighted-average price of all export transactions to the EU during an investigation period is compared with a weighted average normal value during the same period. The resulting amount is expressed as a percentage of the CIF export price to reach a dumping margin. A simplified example is provided below.

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Weighted-average ("WA") dumping margin calculation example

WA normal value (50 EUR)

WA export price (45 EUR)

CIF price (50 EUR)

Dumping margin equals
((50-45)/50)*100 = 10%

Option (2), the individual transaction to individual transaction method, is rarely used because it involves determining a corresponding normal value for each export transaction and therefore is difficult to apply in most circumstances.

Option (3), the weighted-average to individual transaction method, will only be used if there is a pattern of export prices which differs significantly amongst different purchasers, regions or time periods.

Injury

The Commission may impose anti-dumping measures only if dumped imports have caused injury to the Union industry. Injury includes

- present material injury to the Union industry;
- threat of material injury to the Union industry; and
- material retardation of the establishment of a Union industry. Most EU anti-dumping investigations have concerned present material injury, although many have dealt with threat of material injury. Few EU anti-dumping investigations have, to date, concerned material retardation.

The Union industry

Injury must be caused to the Union industry. Therefore, it is important to identify the producer or producers that will be examined for the purposes of the injury assessment, ie those considered to be "the Union industry". EU law defines the Union industry as the Union producers of products "like" the allegedly dumped product or any group of them whose collective output constitutes a major proportion of total EU production of the like product. While the percentage of production does not need to exceed 50% of the total production, the satisfaction of the major proportion requirement has to be assessed on a case-by-case basis.

If Union producers are related to exporting producers or importers, or are themselves importers of the allegedly dumped product, they may be excluded from the definition of the Union industry. In addition, Union producers may be excluded from the definition of the Union industry if the anti-dumping investigation concerns only a particular region of the EU which is considered as an isolated market.

Material injury

When determining whether present material injury exists, the Commission will first examine the volume of dumped imports and the effect of the dumped imports on prices in the EU market for like products. For this determination, the Commission will analyse the volume and prices of imports over time (normally four years) and assess whether there has been significant price undercutting by the dumped product as compared to the like Union industry product. In some cases, the Commission will also analyse whether the effect of the dumped imports is to depress Union industry prices or prevent Union industry price increases, which would have otherwise occurred.

As a second step in the material injury determination, the Commission will investigate the specific situation of the Union industry, analysing trends over time. In assessing the situation of the Union industry, the Commission will analyse numerous factors including production, capacity utilisation, productivity, domestic sales volume and prices, market share, export volume and prices, profitability and employment.

Threat of material injury

In making a threat of injury determination, the Commission must give consideration to factors such as the following:

1. Whether there is a significant rate of increase of dumped imports into the EU market indicating the likelihood of substantially increased importation;
2. Whether there is a sufficiently freely disposable, or an imminent and substantial increase in, capacity of the exporting producer(s) indicating the likelihood of substantially increased dumped exports to the EU market;
3. Whether imports are entering at prices that will have a significant depressing or suppressing effect on Union industry prices, and would likely increase demand for further imports; and
4. Whether inventories of the product being investigated suggest that imports could increase in the future.

Causation

If there is a finding of injury to the Union industry, as a final step, the Commission will seek to determine whether the injury was or will likely be caused by dumped imports. When making this determination, the Commission will first seek to ascertain whether there is a coincidence between the price/volume of dumped imports and any deteriorating situation of the Union industry. Second, the Commission will seek to determine if there are other known factors which are causing or threaten to cause injury to the Union industry. Such factors may include, *inter alia*, (i) restrictive trade practices within the EU; (ii) imports from other countries; (iii) relocation of production outside the EU; or (iv) insufficient productivity of the Union industry.

Injury margin

When assessing injury, the Commission will generally calculate an injury margin for each exporter. Although EU rules do not expressly define an injury margin calculation methodology, the Commission most often applies a formula which compares a Union producer selling price with sales prices of dumped imports into the EU. The resulting injury is expressed as a percentage of the CIF Union frontier price in order to obtain an injury margin.

As when calculating the dumping margin, before comparing the Union producer price with the selling price of the dumped imports, the Commission will make numerous adjustments in order to ensure that the prices are comparable. Thus, for example, customs duties will be added to the CIF price and differences in levels of trade and/or physical characteristics will be taken into account.

The injury margin calculation is important since it can affect the level of any duties finally imposed. In general, anti-dumping duties correspond to the dumping margin found. However, if the injury margin is lower than the dumping margin, the Commission will generally set the level of the anti-dumping duty at the level of the injury margin in accordance with the so-called 'lesser duty rule'. At the same time, if the case concerns imports produced using raw materials and energy which have been provided at artificially low prices and account for at least 17% of the cost of production of the product concerned, the lesser duty rule will not apply, insofar as this is in the Union interest. Exporting producers and other interested parties that oppose anti-dumping duties therefore have a strong interest in seeking to make the relevant export price used in the injury margin calculation as high as possible while at the same time seeking to ensure that the relevant Union producer price is as low as possible.

Union interest

If there is a finding of dumping and injury caused by dumped imports, anti-dumping measures may not be imposed if the Commission finds that doing so is clearly not in the Union interest. When making this determination, the interests of the Union industry, importers, users and consumers will be taken into account. In several EU investigations, anti-dumping measures have either not been imposed or been terminated based on a finding that their imposition/continuation would have been against the Union interest – for example, because anti-dumping measures would have unduly increased prices for consumers or lead to shortages of supply for users.

EU anti-dumping procedure

Pre-initiation and initiation

In the EU, most new anti-dumping investigations are initiated on the basis of a complaint from Union producers. These complaints must contain evidence of injurious dumping. The Commission also requires a showing of a Union interest. Once a complaint is received, the Commission has 45 days to accept or reject it. In that period, it will examine the content of the complaint and consult with the so-called Trade Defence Instruments Committee which is made up of EU Member State representatives.

If the Commission considers that the complaint is sufficiently substantiated, they will initiate an investigation and publish a notice in the Official Journal of the European Union. Prior to initiating the investigation, they will notify the relevant governments of the country of origin of the allegedly dumped goods.

A new investigation will not be initiated if, *inter alia*, (i) there is insufficient evidence of dumping and/or injury caused by dumping; (ii) the level of dumped imports is *de minimis* (eg if the EU market share of the dumped imports is less than 1%); or (iii) the complaint is not made by or on behalf of the Union industry. As regards the latter case, a complaint is made by or on behalf of the Union industry when:

1. It is supported by those Union producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Union industry expressing either support for or opposition to the complaint; and
2. Union producers expressly supporting the complaint represent more than 25% of the total production of the like product produced by the Union industry.

Submission of information to the Commission

When the Commission publishes the notice of initiation of an anti-dumping investigation, they will provide basic information about the scope of the investigation (eg the allegedly dumped product) and request information from interested parties. Generally, there are very short deadlines for the submission of the requested information. Although deadlines can sometimes be extended, most information initially requested must be submitted within 40 days or less.

For exporting producers especially, providing the type and scope of information requested by the Commission can be very burdensome. Nevertheless, it is in their interest to cooperate. Exporting producers that cooperate often receive a much lower duty than those that do not. For example, in an investigation concerning candles, numerous cooperating producers received a zero duty while non-cooperating producers were subject to an anti-dumping duty of 549.33 EUR per tonne. As a result, cooperation can provide a significant competitive advantage.

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The information which must be submitted shortly after the initiation of an anti-dumping investigation is briefly discussed below.

Sampling information and questionnaire responses

When an investigation is initiated, the Commission will request detailed information from interested parties primarily related to prices and costs associated with the allegedly dumped product. This information is used for the dumping and injury calculations. Parties are given at least 30 days to reply and extensions are normally possible.

If the Commission considers that the number of potential cooperating exporting producers, Union producers and/or importers/users is too large to individually analyse all of their information within the 14 months they have to complete an investigation, they will not immediately request detailed questionnaire responses. Instead, in the notice of initiation, the Commission will request more limited "sampling" information. For example, with respect to exporting producers, information pertaining to the identity/contact details, turnover, sales volume and activities of the company is usually requested. In addition, companies are invited to provide other information which they consider useful to assist the Commission in the selection of the sample.

Sampling information must generally be submitted within 15 days of the date of publication of the notice of initiation.

The sampling information received is then used to choose a limited amount of exporting producers, Union producers and/or importers/users that will be required to fill out the more detailed questionnaire. The Commission normally chooses the companies with the largest representative volume of production, sales or exports to be included in the sample.

Representative third country comments

If an investigation concerns a country with significant market distortions, the Commission will indicate shortly after initiation of the investigation, by means of a note, how it envisages establishing normal value. Normally, this will be based on prices in an appropriate representative third country (eg Brazil). Parties to the investigation will have 10 days to comment on this issue.

Other information

In the notice of initiation, the Commission will also invite parties to provide any other information, comment on the Union interest and request a hearing. Comments on the Union interest are usually requested within 37 days of the publication of the notice.

Investigation

Following the submission of questionnaire responses and other information by interested parties, including exporting producers, Union producers and importers/users, the Commission will begin to analyse the information received. They may also ask for supplementary/additional information. As part of the investigation process, the Commission will conduct on-site visits for the purpose of verifying information provided by companies in their questionnaire responses. These verifications typically take from three to five days, but may take longer depending on the complexity of the case at hand.

In parallel to the Commission investigation, interested parties are given a right to inspect non-confidential versions of information submitted by other interested parties. Such information includes questionnaire responses, comments on dumping, injury and other matters.

During the investigation stage, the Commission will also schedule time for hearings so that interested parties may present their views orally. Hearings are generally ex parte, ie between the party concerned (eg an exporting producer and the Commission). Importers, exporters, representatives of the government of the exporting country and Union industry complainants may also request to meet parties with adverse interests in a so-called "confrontation meeting". In the latter case, participation is not mandatory.

Provisional anti-dumping measures

Provisional anti-dumping measures may be imposed at any time between 60 days and 8 months after initiation of the anti-dumping investigation. In practice, these are generally imposed only once the Commission has conducted on-site verifications.

In order to impose provisional anti-dumping measures, the Commission must have reached a provisional determination of injurious dumping. They must also have concluded that

- the Union interest calls for intervention,
- the investigation was properly initiated, and
- Interested parties have been given an adequate opportunity to make their views known and to submit information.

Disclosure of findings

Interested parties may request in writing the disclosure of the underlying essential facts and considerations on the basis of which provisional measures are imposed (if any). Disclosure is normally provided in writing shortly following the publication of the decision to impose provisional anti-dumping measures.

Interested parties are also entitled to request disclosure of the essential facts and considerations and the basis on which the Commission intends to recommend the imposition of definitive anti-dumping measures, or the termination of an investigation without the imposition of measures. Disclosure is in writing and is normally made at least one month before the Commission begins the formal process of proposing either termination of the investigation without measures or the imposition of definitive measures. Interested parties may respond to such final disclosures only within a short period (ie generally 10 days).

Outcomes

In general, an anti-dumping investigation can have one of two outcomes: either anti-dumping measures are imposed or not. These outcomes are discussed further below.

Termination of the investigation without anti-dumping measures

The investigation will be terminated and anti-dumping measures will not be imposed if there is a finding of no dumping, no injury caused by dumping or that anti-dumping measures would be against the Union interest. Investigations will also be terminated if the dumping margin or volume of imports is *de minimis* or if the original complaint has been withdrawn (unless the Commission decides to pursue the investigation after withdrawal of the complaint).

Definitive anti-dumping duties

Definitive anti-dumping duties will be imposed if there is a finding of injurious dumping and the Union interest calls for intervention. The Commission is entrusted with imposing anti-dumping duties. However, a decision to impose definitive anti-dumping duties can be blocked by the Trade Defence Instruments Committee if a qualified majority of its members deliver an opinion against the decision. The Trade Defence Instruments Committee consists of one representative from each of the EU Member States and is chaired by a representative of the European Commission.

Under EU law, anti-dumping duties are usually set at the lower of the dumping or injury margin unless, as mentioned, the case concerns imports of products produced using raw materials and energy provided at an artificially low price. Duties are normally imposed for five years. If a provisional duty has been imposed, the Commission will decide whether to collect the provisional duty fully or partially, which happens in almost all cases. In exceptional cases, definitive anti-dumping duties may also be collected up to 90 days before the application of provisional duties.

Undertakings

Exporting producers may offer so-called undertakings to the Commission once there has been a provisional determination of injurious dumping. Normally, undertakings may not be offered later than five days before the end of the period to comment on the final disclosure. Undertakings are offers, that may be submitted by any exporting producer, to revise export prices or to cease exports at dumped prices in a manner which eliminates the injurious effect of dumping.

Where undertakings are accepted, any provisional or final anti-dumping duties do not apply to imports of the product covered by the undertaking. The advantage of price undertakings for exporters is that they can keep the additional income resulting from the price increase, whereas anti-dumping duties are paid to the EU.

Undertakings are generally negotiated and concluded on an *ad hoc* basis between exporting producers and the Commission. In recent years, however, the Commission has been more reluctant in accepting undertakings.

Reviews

Once anti-dumping measures have been imposed, EU law provides for a number of review possibilities, including: (1) interim reviews; (2) new exporter reviews; (3) anti-absorption reviews; and (4) expiry reviews.

Interim reviews

Interim reviews are primarily initiated to determine whether dumping and/or injury has increased or decreased. Interim reviews may also be initiated to re-examine the Union interest assessment, product scope and other matters concerning the need for the continued imposition of anti-dumping measures. Interim reviews may be initiated by the Commission or at the request of a Member State, exporting producer, importer or Union producer. Requests for review from exporting producers, importers or Union producers may only be accepted if at least one year has elapsed since the imposition of the anti-dumping measures.

New shipper reviews

Exporting producers that did not ship to the EU during the period covered by the original investigation are automatically subject to the residual (and often the highest) anti-dumping duty. Therefore, EU rules provide the opportunity for these exporting producers to request a review and be granted an individual dumping margin if definitive anti-dumping measures are imposed.

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Anti-absorption reviews

If, after the original investigation period and prior to or following the imposition of anti-dumping measures, prices of the dumped product decline, remain the same or do not sufficiently increase, an anti-absorption proceeding may be initiated. It may be initiated following a request from a Member State or other interested parties or at the initiative of the Commission. In an anti-absorption investigation, the Commission will analyse how export prices have developed and whether dumping margins need to be recalculated.

Expiry reviews

Anti-dumping measures normally expire five years from the date of their imposition or from the date of the most recent review that covered dumping and injury. However, they will not automatically expire if an expiry review is requested and initiated. Expiry reviews may be requested by Union industry producers up until three months before the expiration of anti-dumping measures. They may also be initiated by the Commission *ex officio*. If a review is initiated, anti-dumping measures will normally be extended for an additional five years if it is definitely determined that (i) dumping and injury would continue or recur if anti-dumping measures expire; and (ii) continued anti-dumping measures would not be against the Union interest.

If the expiry review procedure results in a conclusion that anti-dumping measures should be terminated, the duties paid while the procedure was ongoing will be reimbursed upon request from the customs authorities.

Circumvention investigations

Following the initiation of an anti-circumvention investigation, anti-dumping measures may be extended to imports from third countries of the like product or to imports of the slightly modified like product, or parts thereof, from the same country subject to anti-dumping measures if (i) there is evidence of circumvention; (ii) there is evidence that the remedial effects of the duties are being undermined; and (iii) there is evidence of dumping in relation to the normal values previously established. Circumvention is defined as a change in the pattern of trade between a third country and/or an exporting producer and the EU, which is done for the purpose of evading or circumventing an anti-dumping measure. Most cases of circumvention involve relocation of assembly of a product to a third country following the imposition of anti-dumping measures.

Circumvention may also involve transhipment, rechannelling sales through producers or exporters with low duties and an alteration of the product exported to the EU. Investigations may be initiated on the initiative of the Commission or at the request of a Member State or any interested party. Upon initiation of an investigation, the Commission shall request customs authorities to subject imports to registration.

Appealing anti-dumping measures

Anti-dumping determinations can be challenged before the European Courts, either directly or in the context of a reference from an EU Member State national court. Recently, a number of anti-dumping measures have been annulled by the European Courts, leading, in most cases, to the reimbursement of the duties paid.

About Herbert Smith Freehills

Herbert Smith Freehills is one of the world's leading professional services businesses, bringing together the best people across our 27 offices, to meet all your legal services needs globally. We can help you realise opportunities while managing risk.

About us

Understanding your requirements, objectives and operating environment is important to us - we listen and take time to do this. You have ready access to our deep global sectoral expertise, as well as our local market understanding, to help you achieve your commercial objectives.

Operating as one global team, we use innovative systems and processes to ensure your work is delivered intelligently, efficiently and reliably. We care about the markets and communities we work within and constantly strive to make them better.

International trade and WTO law

Our international trade group is dedicated to assisting clients in maximising the opportunities and minimising the risks deriving from the ever increasing regulation of international trade in goods and services.

We have extensive experience advising both companies and sovereign governments on matters across the full spectrum of international trade law, including:

- Negotiations of international trade agreements
- WTO disputes
- Economic sanctions and export controls
- Customs rules
- Trade defence instruments.

We are not only experts in international trade law but also in all aspects of EU law aimed at either implementing the EU's international trade obligations or regulating EU import and export flows of goods and services. This means that our trade team benefits from the necessary experience and expertise to provide comprehensive advice to companies operating in and/or exporting to the EU and to help them navigate the intricate network of international trade-related rules, whether defined at international, EU or national level.

Our trade team combines seasoned private practitioners and a former head of international trade law at the European Commission's Legal Service. Collectively, the team has been involved in more than 25 WTO cases and advised on more than 50 international trade related cases in the European courts.

Our EU trade defence experience

Our team routinely assists companies in trade defence investigations, both in the EU and in other jurisdictions.

We have extensive experience representing complainants, exporting producers, importers, users, and trade associations in anti-dumping, countervailing and safeguard investigations. As such, our team is ideally placed to advise companies on how to best mitigate the risks associated with trade defence investigations while maximising any benefits deriving therefrom.

Our market-leading trade specialists have been involved in trade defence investigations in multiple jurisdictions, thus gaining a strong and comparative understanding of how trade defence rules are implemented globally. Additionally, they have taken part in several WTO dispute settlement proceedings concerning the WTO rules on trade defence investigations and trade defence measures.

We have represented clients in a number of EU trade defence proceedings, including the following:

- **polyethylene terephthalate** originating in Oman and Saudi Arabia
- **mono ethylene glycol** originating in the United States of America and the Kingdom of Saudi Arabia
- **cardboard paper products** from Spain, Italy and Poland
- **ammonium nitrate** originating in Russia
- **biodiesel** originating in the United States
- **bioethanol** originating in the United States
- **wireless modems** originating in China
- **leather footwear** originating in China and Vietnam
- **polyester staple fibres** originating in China, Korea, India, Saudi Arabia and Taiwan
- **non-malleable cast iron** from China
- **granular PTFE** originating in China
- **leather handbags** originating in China
- **fluorspar** originating in China
- **citrus fruits** originating in China
- **recordable compact discs** originating in China, Hong Kong, India, Malaysia and Taiwan
- **recordable versatile digital discs** originating in China, Hong Kong and Taiwan
- **footwear with textile uppers** originating in China and Indonesia
- **footwear with uppers of leather or plastics** originating in China, Indonesia and Thailand
- **cokes** originating in China
- **cast iron manhole tops** originating in China
- **dead burned magnesia** originating in China
- **stainless steel fasteners** originating in Malaysia
- **welded tubes and pipes** from Belarus, Bosnia and Herzegovina, China, Czech Republic, Poland, Russia, Thailand, Turkey and Ukraine
- **PET film** from India
- **broad spectrum antibiotics** from India

Our team's experience also includes the following EU Court cases in relation to trade defence proceedings:

- **review of ball bearings** originating in Japan
- **bicycles** from China
- **aspartame** from the United States of America
- **pocket flint lighters** originating in Japan, the People's Republic of China, the Republic of Korea and Thailand
- **ferro-silicon** originating in Brazil
- **calcium metal** originating in the People's Republic of China and the Soviet Union
- **plain paper photocopiers** originating in Japan
- **urea** originating in Libya and Saudi Arabia

We also have experience in WTO and FTA dispute settlement proceedings regarding trade remedies, including:

- *Brazil-Aircraft*
- *Canada-Aircraft*
- *US-CVD methodology*
- *US-Corrosion resistant steel*
- *EC-AD duties on bed linen*
- *US-Steel safeguards*
- *EU-Steel safeguards*
- *US-Zeroing*
- *SACU-EU poultry cuts safeguards*

Our team

Lode Van Den Hende
Partner, Brussels and London

Lode is an EU and international trade law specialist with over 25 years' experience and specific expertise in EU regulatory matters and international trade regulation. He litigates in the WTO and represents clients before the European Courts and the European Commission, and has advised private and public sector clients and has participated in EU negotiations as a government representative. Lode is recognised for his ability to design highly creative technical arguments, which have often led to ground-breaking decisions. He also makes the best of his expertise outside the context of formal WTO Dispute Settlement proceedings. Lode regularly appears before the EU courts in proceedings concerning the concrete implications of the EU's international obligations, whether in the framework of the WTO Agreements or other international agreements (including free trade agreements). Lode is recognised as a 'Leading Individual' for 'Trade, WTO, Anti-Dumping and Customs' by the *Legal 500 UK* (2024) and by *Legal 500 EMEA* (Belgium, 2024), as well as a 'Recommended' lawyer for 'Trade & Customs' by *Who's Who Legal* (2024).

Dr Morris Schonberg
Partner, Brussels and London

Morris is an experienced international trade lawyer, with over 10 years of practice. He has extensive experience advising both companies and sovereign governments across the full range of international trade matters, including in relation to anti-dumping, anti-subsidy and safeguard investigations, WTO, customs, international sanctions law and in State-to-State dispute settlement. Morris is dual-qualified as a Solicitor-Advocate (England and Wales) and an Advocaat (Belgium) and represents clients in trade-related litigation before the EU courts, international tribunals and before the WTO dispute settlement body. Morris is recognised as a 'Rising Star' for 'Trade, WTO, Anti-dumping and Customs' by *Legal 500 UK* (2024) and by *Legal 500 EMEA* (Belgium, 2024), as well as for 'International Trade' by *IFLR* (2022).

Eric White
Consultant, Brussels and London

Eric is one of the most experienced international trade lawyers in the EU with over 35 years' experience in EU, trade and WTO law. His work at HSF focuses on WTO law and the EU's rules governing trade with non-EU countries, including the future relationship between the UK and the EU. Prior to joining Herbert Smith Freehills, Eric was a member of the European Commission's Legal Service between 1985 and 2016, where during part of the time he led the Trade Policy and WTO team. In that capacity, he routinely represented the European Commission in cases before the General Court and the European Court of Justice, and the European Union in WTO dispute settlement proceedings. He also participated in, and advised on, the negotiation of various international agreements involving the European Union. Eric is recognised as a 'Leading Individual' for 'Trade, WTO, Anti-Dumping and Customs' by the *Legal 500 UK* (2024).

Notes

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