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Seminar on Trade Defence Instruments
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Trade Defence Instruments: The Practicalities: Some observations

1.0 Introduction

With over fourteen years experience in writing and submitting all CIRFS and PlasticsEurope cases and as the author of five of the eight new cases opened by the Commission authorities in 2003, it may be of interest to participants to make a few personal observations.

2.0 Lodging a Complaint

2.1 Introduction

It should be stressed that the complaints office are open, efficient, effective and extremely rigorous in initiating cases. In general, the submitting of an anti-dumping, anti-subsidy or circumvention complaint is reasonably straight forward, although time consuming particularly for complainant companies.

2.2 Normal Value

One issue that is increasingly worrying concerns normal value. For many of the products which are produced by members of CIRFS or PlasticsEurope it has been necessary to calculate a normal i.e. a constructed value in order to determine the level of dumping. This is difficult in itself particularly with respect to calculating depreciation where the time scale often differs by country. However, what is more problematic is that when the Commission actually makes its investigation, subsequent to initiation, it sometimes finds that small volumes are consumed on the domestic market (the 5 per cent rule) and

subsequently the normal value calculation necessary to initiate the case is, in practice, disregarded. Thus, there is a dichotomy vis-à-vis evaluating the level of dumping in order to lodge a complaint and the likelihood that the estimate made will be overridden when the 5 per cent rule is invoked. Arguably in such instances it is impossible to demonstrate dumping when initiating a case of this type.

A second point on normal value is that while the non-discrimination principles adhered to by the authorities are legally binding, the additional work required in determining whether any exporting country is dumping is on occasion huge. While the import unit value is accepted when there is a very large difference between the average Community import unit value and that of an exporting country, in those instances where the values are relatively close it has been necessary to also calculate constructed values or to provide a great deal of additional evidence for example invoices. Again more flexibility and pragmatism would be helpful to the complainant.

2.3 Modification of Approach

A third point on initiation is that in some instances the opinions and approaches taken by the complaints office change following internal consultation. This results in additional pressure on scarce resources as the entire submission may have to be extended or modified.

2.4 Resources

As the complaints office is the sole avenue for industry to approach the European authorities at a time when there are increasing numbers of unfair trading practices it is essential that increased resources be channelled to the complaints office.

3.0 The Questionnaire

Regarding orientation visits and the devising of the questionnaire the following points are important to note.

3.1 Simplification

It must be possible for the questionnaire to be simplified. It should be remembered by the Commission authorities that many complainant companies are small and medium sized enterprises with few resources. Thus, while producers are adversely affected by dumped imports, they may not have the resources to complete the questionnaire in the detail and in the time scale required by the Commission. This problem will become worse with ten new members.

3.2 Product coding

The product coding is of particular concern. In many instances where there has been a previous investigation, a new investigation against other supplying countries has resulted in a significant modification in the product code, **ALTHOUGH** it is the same product as in a previous complaint.

3.3 Rationalisation

Furthermore, in many instances ownership changes and changes in computerised accounting systems make it extremely difficult to provide comparable data over five years.

The authorities could aid producers by allowing increased flexibility to complainant companies in completing the questionnaire. Indeed, more generally it is vital that sufficient support is given to meet the needs of small and medium sized enterprises.

3.4 Lack of Uniformity

There is little consistency in the teams of investigators chosen, with the result that there is duplication in orientation visits. Knowledge gained by officials is not fully utilised (salmon, ball bearings, polyester staple). One would hope that previous experience would be a useful resource. While impartiality is to be admired, it should not be pursued to the detriment of effectiveness. One has simply lost count of the number of times the same production processes have been explained and the same questions answered to yet another new team of

investigators. One is reminded of a comment made by Mr C. Petronius who apparently wrote in AD 66.

> *"We trained hard but it seemed that every time we were beginning to form up into teams, we would be reorganised. I was to learn later in life that we tend to meet any new situation by reorganising. And a wonderful method it can be for creating the illusion of progress while producing confusion… inefficiency, and demoralization"*

Perhaps the new trade Commissioner should take note.

4.0 Transparency

There would appear to be a lack of transparency during the investigation itself. While one is aware that there will be internal meetings between the different services of the Commission, it certain instances it would be helpful to understand precisely the rationale for a change in a decision. Often one can deduce the reasoning, but in some instances the given reasons seem inadequate. Although economics is simply a rationalisation of political goals, pragmatic explanations would assist complainants. Two recent examples are the termination of provisional measures on Pakistan in Council Regulation (EC) 1467/2004 and the termination of filament yarns of cellulose acetate, Commission Decision (EC) 167/2003.

5.0 The Republic of Korea

There seems to be a mysterious issue regarding the Republic of Korea. In many anti-dumping actions taken against the Republic of Korea in the polyester sector, it appears that companies are not adversely affected by investigations, nor by anti dumping duties. The level of dumping against the Republic of Korea tend to be higher when other countries make investigations for example Turkey (polyester staple, polyester textured filament yarn), Mexico (polyester staple), India (polyester staple). Are Commission investigators more rigorous than their

counterparts elsewhere or less so? It would be useful to compare the approaches and results of different investigation teams from other countries.

One issue which has been highlighted is that given the control of chaebols, transshipment between companies is possible when one or two companies have low or no anti-dumping duties.

Some attempts have been made to investigate the problem. For PET bottle grade chips, for example, customs officials in one member state noticed that very large consignments entered the country from one company (definitive anti-dumping duty of Euro 28.2 per tonne compared with some other companies in excess of Euro 100.0 per tonne) through two importing companies. While this would be a logical response the sheer increase in volume raises suspicious of transshipment. There has been little response from the member state as yet, and it is considered that there is sufficient evidence for OLAF to investigate. It would be helpful if the Commission authorities stated in its statistical review on anti-dumping, anti-subsidy and safeguard measures how much revenue was received, on a case by case basis and to utilise these revenues to check imports, examine certificates of rules of origin, and assist in the controlling of fraud.

An additional possible avenue of investigation and indeed solution would be to utilise TARIC and its equivalents in other countries to ascertain the global level of exports from companies in the Republic of Korea and compare these with the levels of production capacity.

6.0 Law Firms

The behaviour of some law firms is also a source of concern. Over more than a decade the attitude of some such companies in written responses is moving towards being possibly considered as libellous. One such example occurred in the most recent PET bottle chips case against China, Australia and Pakistan. To quote “given this very serious misconduct on the part of the complainant and their unclean hands”. More importantly however is the impact of such

behaviour on some Commission investigators who should not be subjected to unfair pressure.

It should be noted that law firms also suggest how to circumvent anti dumping duties by, for example, transshipping from one company to another, as was implied in a seminar in the Baltic States this spring.

Finally the content of the non limited confidential files submitted by some law firms on behalf of exporters and users is utterly unacceptable, as in many instances there is no information whatsoever.

The Commission authorities could perhaps examine such unacceptable behaviour and to perhaps introduce a code of conduct to which law firms should adhere and, if not, to draw up a list of law companies not complying to certain standards, particularly when they seek to undermine the decisions of the Council of Ministers.

7.0 Concluding Comment

A final observation is that while the Commission is seen to be impartial there is great concern that in some Member States the true assessment of community interest in particular and trade defence instruments in general is undermined by a political foreign policy stance being decreed, for example, the policy of pursuing at any cost, unfettered free trade with the result that proposals being put forward by the Commission are undermined. It should always be stated without any ambiguity that any trade defence measure is purely a technical measure and not any statement of economic policy or political mantras .

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